AGENDA

CITY OF TAYLOR, TEXAS
CITY COUNCIL MEETING
CITY HALL, COUNCIL CHAMBERS, 400 PORTER STREET

JULY 9, 2009, 6:00 P.M.

CALL TO ORDER AND DECLARE A QUORUM

INVOCATION

PLEDGE OF ALLEGIANCE

CITIZENS COMMUNICATION
(The City Council welcomes public comments on items not listed on the agenda. However, the Council cannot respond until the item is posted on a future meeting agenda.)

CONSENT AGENDA
(The Consent Agenda includes non-controversial and routine items that the Council may act on with one single vote. The Mayor or any Council member may pull any item from the Consent Agenda to discuss and act upon individually on the Regular Agenda.)

1. Minutes for June 23, 2009. (Susan Brock)

REGULAR AGENDA; REVIEW/DISCUSS AND CONSIDER ACTION

2. Proclamation: In honor of Ms. Beola Jones' 100th Birthday. (Mayor)
3. Consider addendum to IESI solid waste collection and disposal agreement. (Danny Thomas)
4. Consider approving contract with Gallagher for Upper Pressure Plane Pump Station at the Taylor Regional Park and Sports Complex. (Danny Thomas)
5. Consider approving an amendment to Work Authorization Number 3 for KSA Engineers, Inc. for the East Williamson County Higher Education Center off site water and wastewater project. (Danny Thomas)
6. Consider accepting public improvements for Mustang Cove project. (Danny Thomas)
7. Consider addressing H.B. 2113 requiring the designation of a holiday for firefighters. (Jim Dunaway)
8. Consider approving Resolution R09-16 to renew and revise of the annual City investment policy. (Rosemarie Dennis)
9. Consider entering into an Interlocal Agreement authorizing the City of Taylor to participate in a Joint and Cooperative Purchasing Program. (Rosemarie Dennis)
10. Consider amending street naming policy and appointing additional members to the committee. (John Elsden)
11. Consider accepting donation of fire equipment from Williamson County to the City. (Chief Watson)
12. Consider approving Resolution R09-17 to execute the Advance Funding Agreement for the Surface Transportation Program-Metropolitan Mobility (STP-MM) grant award from the Texas Department of Transportation for a bicycle/pedestrian corridor on State Highway 95. (Danny Thomas/Casey Sledge)
13. Consider immediate funding needs for the Taylor Regional Park and Sports Complex. (Jim Dunaway/Casey Sledge)
14. Executive Session I. The Taylor City Council will conduct a closed executive meeting pursuant to the provisions of the Open Meetings Law, Chapter 551, Government Code, and the authority contained in Section 551.087 to discuss or deliberate regarding commercial and/or financial information on a business prospect that the City of Taylor, Texas, seeks to have locate, stay, or expand in or near the City of Taylor, Texas, and with which the City of Taylor, Texas, is

conducting economic development negotiations and/or deliberate the offer of financial or other incentives to the business prospect.

15. Executive Session II. The Taylor City Council will hold a closed executive meeting pursuant to the provisions of the Open Meetings Law, Chapter 551, Government Code, in accordance with the authority contained in Section 551.074 to discuss a personnel issue: the Presiding Judge position in the City's Municipal Court.
16. Consider action from Executive Session I or II.

ADJOURN

The Council may vote and/or act upon each of the items listed in this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, whenever it is considered necessary and legally justified under the Open Meetings Act. I certify that the notice of meeting was posted in the Taylor City Hall Lobby before 6:00 pm on July 6, 2009 and remained posted for at least 72 hours continuously before the scheduled time of said meeting. I further certify that the following news media was notified of this meeting: Taylor Daily Press.

Posted: 7/6/09 By: Susan Brock

Susan Brock, City Clerk

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: 1

Agenda Title: Minutes for June 23, 2009.

Council Action: Motion to approve or approve with corrections

Initiating Department: City Management/City Clerk

Staff Contact: **Susan Brock, City Clerk**

1. INTRODUCTION/PURPOSE

Pursuant to the Open Meetings Law, Chapter 551, Government Code and in accordance with the authority contained in Section 551.021 and the City Charter, the "Minutes" of each City Council must be recorded, compiled and approved by the City Council in subsequent meetings. The purpose of this item is to conform to these legal requirements.

2. DESCRIPTION/ JUSTIFICATION

N/A

3. FINANCIAL/BUDGET

N/A

4. RECOMMENDATION

Approve as submitted or amend with changes noted.

5. REFERENCE FILES

1a. Minutes, June 23, 2009

The City Council of the City of Taylor met on June 23, 2009 at City Hall, 400 Porter St., Taylor, Texas. Mayor Hortenstine declared a quorum and called the meeting to order at 6:00 p.m. with the following present:

Mayor Pro Tem Ella Pumphrey Jez	City Manager, Jim Dunaway
Council Member Christopher Gonzales	City Attorney, Ted Hejl
Council Member Donald Hill	City Clerk, Susan Brock
Council Member John McDonald	

INVOCATION
Mr. Danny Thomas led the group in prayer.

PLEDGE OF ALLEGIANCE

CITIZENS COMMUNICATION
Mr. Wilbert Vorwek came forward to address the Council in opposition to the proposed Fireworks Ordinance 2009-14.

CONSENT AGENDA

1. MINUTES FOR JUNE 11, 2009.
2. ORDINANCE 2009-14, FIREWORKS PROHIBITED FROM WITHIN 5,000 FT OF CITY LIMITS.
3. CONCUR WITH FINANCIALS FOR MAY, 2009.
   Mayor Pro Tem Jez asked to remove Item no. 2 regarding the fireworks ordinance for additional discussion. Council Member Hill moved to approve the consent agenda items 1 and 3 as presented and Council member Gonzales seconded the motion. VOTE: Five voted Aye. Motion passed.

ORDINANCE 2009-14

AN ORDINANCE TO PROHIBIT THE STORAGE, SALE AND USE OF EXPLOSIVES AND FIREWORKS WITHIN THE CITY LIMITS OF TAYLOR, TEXAS, AND WITHIN 5,000 FEET OUTSIDE THE CITY LIMITS; DECLARING THE STORAGE, SALE AND USE OF FIREWORKS TO BE A NUISANCE AND PROVIDING FOR INJUNCTION RELIEF, EXCLUDING, HOWEVER, FROM THE PROVISIONS OF THIS ORDINANCE, THE USE OF FIREWORKS FOR AGRICULTURAL PURPOSES AS HEREINAFTER SET FORTH; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY OF FIVE HUNDRED DOLLARS ($500.00) FOR EACH OFFENSE EXCEPT WHERE A DIFFERENT PENALTY HAS BEEN ESTABLISHED BY STATE LAW FOR ANY OFFENSE WHICH PENALTY SHALL BE THAT FIXED BY STATE LAW, AND FOR ANY OFFENSE WHICH IS A VIOLATION OF ANY PROVISION OF LAW THAT GOVERNS FIRE SAFETY, ZONING, OR PUBLIC HEALTH AND SANITATION, INCLUDING DUMPING OF REFUSE, THE PENALTY SHALL BE A FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS ($2,000.00) FOR EACH OFFENSE AND EACH AND EVERY DAY SAID VIOLATION IS CONTINUED SHALL CONSTITUTE A SEPARATE OFFENSE; AND PROVIDING FOR PUBLICATION.

REGULAR AGENDA - REVIEW/DISCUSS & CONSIDER/ACTION:

2. ORDINANCE 2009-14, FIREWORKS PROHIBITED FROM WITHIN 5000 FEET OF CITY LIMITS.
   Mr. Dunaway reported that Mr. Chester Brown, a fireworks vendor, had submitted a request to Council that, if approved, this Ordinance be effective after this July 4th due to a hardship in relocating the current buildings on such short notice. In addition, Mayor Pro Tem Jez asked to have signs located at each stand stating that a Taylor City Ordinance prohibits the sale, use, or storage, of fireworks within 5,000 ft of the city limits. Chief Watson expressed the ability to enforce the placing of the sign if it falls outside of the city limits and will look into the process further.

   Council Member Hill moved to approve Ordinance 2009-14 with an effective date of midnight July 4th. Mayor Pro Tem Jez seconded the motion. VOTE: Five voted AYE. Motion passed.

4. CONSIDER APPROVING RESOLUTION R09-15 AFFIRMING SUPPORT OF AND ENCOURAGING CITIZENS OF TAYLOR TO PARTICIPATE IN THE 2010 CENSUS.
   Mr. Bob vanTil, Director of Community Development, presented a request to adopt a resolution in support of the 2010 Census program. Ms. Ivonne Simeon, a Census Specialist, provided a short presentation on the program and how the city can help support their efforts through community education.

   Council Member McDonald moved to approve Resolution R09-15 and Council Member Hill seconded the motion. VOTE: Five voted AYE. Motion passed.

5. CONSIDER REQUEST FROM POLICE DEPARTMENT TO USE DONATED FUNDS FOR NATIONAL NIGHT OUT ACTIVITIES.
   Chief Straub presented a request to consider allowing the Police Department to use funds donated and not part of the budget approved for FY 2008/2009 for the National Night program. He stated they have collected $2,130 to date and expect to collect more prior to the actual event on August 4, 2009.

   Mayor Pro Tem Jez moved to approve the use of donated funds for the National Night Out Program and Council Member McDonald seconded the motion. VOTE: Five voted AYE. Motion passed.

6. CONSIDER APPROVING REAPPOINTMENT OF MARY CHAPA TO THE CIVIL SERVICE COMMISSION.
   Mr. Dunaway presented a request to formally approve his reappointment of Ms. Mary Chapa to the Civil Service Commission for a three year term.

   Council Member Hill moved to approve the reappointment of Mary Chapa to the Civil Service Commission and Council Member McDonald seconded the motion. VOTE: Five voted AYE. Motion passed.

7. CONSIDER APPOINTMENTS TO PARKS AND RECREATION ADVISORY BOARD.
Mr. Danny Thomas, Director of Public Works, presented a request to consider approving the Parks Board recommendations for reappointments and one new appointment. Board members for reappointment include Mr. Gary Brock, Mr. Duane Danek, and Ms. Alma Holiday. The Board also recommended that Mr. Gary Gola be appointed as a new member. Council Member Hill expressed a desire to consider allowing each Council Member to recommend two people to the Board in the future. Staff agreed to provide a historical review of appointments and to also consider changing the date and time of these meetings in order to have better attendance.

   Council Member McDonald moved to approve the Board recommendations for Parks and Recreation appointments and reappointments and Mayor Pro Tem Jez seconded the motion. VOTE: Five voted AYE. Motion passed.

8. CONSIDER CREATION OF A MUNICIPAL DRAINAGE UTILITY SYSTEM (MDUS).
Mr. Dunaway presented a follow up to the discussion presented to Council last year regarding the creation of a Municipal Drainage Utility System (MDUS). Staff provided additional updated timelines for the process and council discussed the possibility of creating the system with or without establishing a fee. Mayor Pro Tem Jez encouraged better education for the community and council agreed to move forward with public meetings to provide information to the public and to receive input regarding the program before making a decision on how to proceed. Mr. Casey Sledge, consulting city engineer, will develop a list of draining projects by cost and priority prior to these meetings.

9. CONSIDER AMENDING THE CITY'S POLICY FOR NAMING CITY STREETS AND CITY FACILITIES.
Mr. Dunaway presented a request to consider amending the process and policies related to the naming of city streets and city facilities. Council expressed concern for the lack of citizens on the committee and would like the opportunity to submit one name each plus retain the chairman of the Planning and Zoning Commission and one Council Member. Any decision on street or facility names would be postponed until the new committee has an opportunity to meet.

10. CONSIDER CREATION OF THE EAST WILLIAMSON COUNTY HIGHER EDUCATION CORPORATION.
Mr. Dunaway presented a request to consider creating a corporation regarding the East Williamson Higher Education Center (EWCHEC) to serve as a vehicle through which future bond issues can be handled.

    Council Member McDonald moved to approve the creation of the East Williamson County Higher Education Corporation and Council Member Hill seconded the motion. VOTE: Five voted AYE. Motion passed.

11. EXECUTIVE SESSION I. The Taylor City Council will hold a closed executive meeting pursuant to the provisions of the Open Meetings Law, Chapter 551, Government Code, in accordance with the authority contained in Section 551.087 to discuss or deliberate regarding commercial and/or financial information on a business prospect that the City of Taylor, Texas seeks to have locate, stay, or expand in or near the city of Taylor, Texas and with which the City of Taylor, Texas is conducting economic development negotiations and/or to

deliberate the offer of financial or other incentives to the business prospect.

12. EXECUTIVE SESSION II. The Taylor City Council will conduct a closed executive meeting under Section 551.071 of the Texas Government Code in order to meet with it's City Attorney on a matter in which the duty of the Attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas authorize and allow such a closed meeting and which Rules conflict with the Texas Open Meetings.

    (Council adjourned into Executive Session at 7:40 pm. Council Member McDonald recused himself from Executive Session II and the next agenda item.)

    Council returned to open session at 10:11 p.m. and announced that no action was taken during either Executive Session.

13. CONSIDER APPROVING SETTLEMENT AGREEMENT WITH ELECTRIC RELIABILITY COUNCIL OF TEXAS.
    Council Member Hill moved to approve the settlement agreement with ERCOT and Mayor Pro Tem Jez seconded the motion. VOTE: Four voted AYE. Motion passed.

14. CONSIDER ACTION FROM EXECUTIVE SESSION I OR II.
    No other action was taken on either Executive Session.

ADJOURN

With no further business; Mayor Hortenstine adjourned the meeting at 10:12 p.m.

____
Ella Pumphrey Jez, Mayor Pro Tem

ATTEST:

____
Susan Brock, City Clerk

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: 2

Agenda Title: Proclamation: In honor of Ms. Beola Jones' 100^{th} birthday.

Council Action to be taken: Mayor to present Proclamation to Ms. Jones.

Initiating Department: **City Administration**

Staff Contact: **Susan Brock, City Clerk**

1. INTRODUCTION/PURPOSE

To present a proclamation to Ms. Beola Jones in honor of her 100^{th} birthday to be celebrated on July 25, 2009.

2. DESCRIPTION/ JUSTIFICATION

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

6. REFERENCE FILES

2a Proclamation

PROCLAMATION

WHEREAS, Beola Cornelius Hall Jones was born on July 16, 1909 in Chapel Hill, Texas, the second of six children to the late Woodie and Ella Hall; and

WHEREAS, Beola Jones moved to Taylor, Texas in 1944 and united with the Allen Chapel A.M.E. Church where she is still a member today and was united in marriage with the late Isaac Jones for sixty eight years; and

WHEREAS, with her husband Isaac, she owned the Jones Snack Bar where the young and old gathered everyday for Moon Pies and ice cream. Beola was instrumental in helping young people and helping raise her grandchildren whom she dearly loves; and

WHEREAS, she is blessed with a loving family and friends and lives in Granger, Texas still happy and praising God; and

WHEREAS Beola Jones is marking a memorable occasion with the celebration of her 100th birthday on July 25, 2009; and

NOW, THEREFORE, on behalf of the City Council of the City of Taylor we wish Ms. Jones best wishes for continued good health and happiness and I hereby proclaim July 25, 2009;

BEOLA JONES DAY
in
Taylor, Texas

Rod Hortenstine, Mayor

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: 3

Agenda Title: Consider addendum to IESI solid waste collection and disposal agreement.

Council Action to be taken: Approve, deny or table

Initiating Department: Public Works

Staff Contact: **Danny Thomas, Director of Public Works**

1. INTRODUCTION/PURPOSE

IESI has requested an opportunity to better define specific items and language in the current contract including adding the definition of a "Bag" that pertains to the Service provided.

2. DESCRIPTION/ JUSTIFICATION

Items included for definitions in this addendum are: bag, bundles, brush, and sizes of containers, placement of carts after pickup, volume and weight standards and excess or misplaced municipal solid waste.

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

Staff will act according to your directive in this matter.

6. REFERENCE FILES

3a. IESI- Second Addendum

(4)

SECOND ADDENDUM TO CITY OF TAYLOR SOLID WASTE COLLECTION AND DISPOSAL AGREEMENT

This **ADDENDUM** (the "Addendum") is entered into as of the _____ day of ______________, 2009 to be effective on __________1, 2009 (the "Effective Date") by and between the City of Taylor, Texas, a municipal corporation in Williamson County, Texas (the "City") and IESI TX Corporation, a Texas corporation ("Contractor").

RECITALS:

WHEREAS, the City and Contractor entered into a Contract for Solid Waste Disposal and Collection Services on or about February 1, 2003 (the "Agreement"); and

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and in the Agreement, the City and Contractor hereby agree as follows:

1. Defined Terms. Section 2.0 of the Agreement is hereby modified by adding the following definition:

Bag - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 40 lbs.

2. Service Provided. Section 5.1.2 of the Agreement is hereby amended in the following respect and shall read as follows:

5.1.2 Services Provided

1. The Contractor shall provide curbside collection service for the collection of Municipal Solid Waste, Bulky Waste, Bundles and Brush from Residential Units one (1) time per week, with semi-automated collection system utilizing a sixty-five (65) or ninety-five (95) gallon cart as provided by the Contractor; provided, that (i) such Municipal Solid Waste is placed in Container(s) provided by the Service Provider or Bags, as defined; (ii) Bulky Waste, as defined, meets allowable volume and weight standards; (iii) Bundles and Brush, as defined, does not exceed five (5) cubic yards combined: and (iv) such Container(s) or Bags, Bulky Waste, Bundles and Brush are placed within two (2) feet of the curbside or right of way adjacent to the Residential Unit with the handle toward the curb no later than 7:00 a.m. on the scheduled collection day, but no earlier than the evening before the regularly scheduled collection day. Contractor shall place empty Container(s) in the same curbside location it was placed by the resident for collection with the handle away from the curb and the lid will be closed.

2. Excess or Misplaced Municipal Solid Waste. Notwithstanding anything to the contrary contained herein, the Contractor shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste placed inside the Container(s) provided by the Contractor and up to a maximum of five (5) Bags, as defined. Municipal Solid Waste in excess of the Container(s) and Bag limits, will not be collected by the Contractor. However, such excess or misplaced Municipal Solid Waste and Bags may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Contractor in its sole discretion, such as the annual collection of Christmas Trees. If the excess or misplaced Municipal Solid Waste continues, the City shall require the Residential Unit to utilize an additional Container so that the excess or misplaced Municipal Solid Waste will be regularly contained.

Effect on Contract:

Except as specifically modified by this Second Addendum, all terms and conditions of the Contract, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Second Addendum on the ___ day of ________________, but effective as of ____________ 1, 2009.

IESI TX CORPORATION

By: ______________________
John Gustafson, Vice President

City of Taylor, Texas

By: ______________________
Name: ______________________
Title: ______________________

____
City Secretary

City Council Meeting
July 9th, 2009
Agenda Item Transmittal

Agenda Item #: **4**

Agenda Title: Consider approving contract with Gallagher Construction Services for City Pump Station at the Taylor Regional Park and Sports Complex.

Council Action to be taken: Review bid results and consider awarding bid

Initiating Department: **Public Works**

Staff Contact: **Danny Thomas, Director**
Casey Sledge, Consulting City Engineer

1. INTRODUCTION/PURPOSE

To consider awarding a contract to Gallagher Construction Services for City Pump Station as Project Construction Manager.

2. DESCRIPTION/ JUSTIFICATION

This is a standard Construction Manager at Risk AIA (American Institute of Architect) document of agreement between The City of Taylor and the Construction Manager where the construction Manager is also the Contractor. During the construction phase of the pump station, Gallagher Construction Services will oversee all work of this project and report to staff engineers and also during the installation period of the High Pressure Plain pump station for the west elevated water storage facility.

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

To approve the contract with Gallagher Construction Services for the City Pump Station as Project Construction Manager. Staff concurs with Casey's recommendation.

6. REFERENCE FILES

4a Construction Mgr contract
4b General Conditions
4c Fee Proposal

AIA® Document A121™CMc – 2003 and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

AGREEMENT made as of the 25 day of June in the year 2009
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name and address)

City of Taylor
400 Porter St.
Taylor, TX 75006

and the Construction Manager:
(Name and address)

Gallagher Construction Company, LP dba Gallagher Services
PO Box 941209
Plano, TX 75094-1209

The Project is:
(Name, address and brief description)

City of Taylor Pump Station

The Engineer Engineer is:
(Name and address)

Freese & Nichols
10814 Jollyville Road
Building 4, Suite 100
Austin, Texas 78759-5675

The Owner and Construction Manager agree as set forth below:

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The 1997 Edition of AIA Document A201, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Engineer in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Engineer, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Engineer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Engineer shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Engineer's review and the Owner's approval. The Construction Manager shall obtain the Engineer's approval of the portion of the preliminary Project schedule relating to the performance of the Engineer's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Engineer and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Engineer.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Engineer regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Engineer and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Engineer and approved by the Owner, the Construction Manager shall prepare, for the review of the Engineer and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Engineer and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Engineer and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Engineer and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Engineer and Construction Manager.

§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Engineer.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Engineer for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Engineer will promptly reply in writing to the Construction Manager if the Engineer or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Engineer later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Engineer a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Engineer and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the

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Drawings and Specifications by the Engineer that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- **.1** A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
- **.2** A list of allowances and a statement of their basis.
- **.3** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- **.4** The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
- **.5** The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Engineer to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Engineer to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Engineer and Construction Manager. The Construction Manager shall promptly notify the Engineer and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the
(Paragraphs deleted)
third (3rd) day following actual receipt of a notice to proceed from Owner.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Engineer. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Engineer, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Engineer (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Engineer, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Engineer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Engineer.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Engineer at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS
In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE
The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™–1997, the Engineer does not have such authority.

§ 3.3 ENGINEER
The Owner shall retain an Engineer to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA® Document B151™–1997, *Abbreviated Standard Form of Agreement Between Owner and Engineer* current as of the date of this Agreement. The Owner shall authorize and cause the Engineer to provide those Additional Services described in B151™–1997, requested by the Construction Manager which must necessarily be provided by the Engineer for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Engineer and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Engineer, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Engineer and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION

§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:
(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

Waived

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond (N/A) days from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS

§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable waived (15) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

0% per annum

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:
(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

Fixed Fee: $85,000

§ 5.2 GUARANTEED MAXIMUM PRICE
§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

GMP to be determined at later date by Construction Manager.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK
§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE
§ 6.1 COSTS TO BE REIMBURSED
§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

Classification	**Name**

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds.
(If charges for self-insurance are to be included, specify the basis of reimbursement.)

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™–1997 or other provisions of the Contract Documents.

.6 Data processing costs related to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

§ 6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1which are incurred by the Construction Manager:

.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™–1997.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of A201™–1997 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

.6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

§ 6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 CONSTRUCTION PHASE PAYMENTS

§ 7.1 PROGRESS PAYMENTS

§ 7.1.1 Based upon Applications for Payment submitted to the Engineer by the Construction Manager and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Pay applications are due to the Owner on the 1st of each month. Payments are due from the Owner to the Construction on or before the 15th of each month. Pay period covers the 15th thru 15th.

§ 7.1.3 Provided an Application for Payment is received by the Engineer not later than the 1st day of a month, the Owner shall make payment to the Construction Manager not later than the 15th day of the same month. If an Application for Payment is received by the Engineer after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Engineer receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™–1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of five (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Engineer has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than ten (10%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Engineer has made exhaustive or continuous on-site inspections or that the Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Engineer; such final payment shall be made by the Owner not more than 30 days after the issuance of the Engineer's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Engineer withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Engineer will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Engineer's reasons for withholding a certificate as provided in Section 9.5.1 of A201™–1997 . The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™–1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Engineer. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Engineer's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Engineer's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law: - Refer to attached Certificate of Insurance for limits.

§ 8.1.1 Workers' Compensation and Employers Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

§ 8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

Each Occurrence
General Aggregate
Personal and Advertising Injury
Products-Completed Operations Aggregate

.1 The policy shall be endorsed to have the General Aggregate apply to this Project only.

.2 Products and Completed Operations insurance shall be maintained for a minimum period of at least ( ) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.

.3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of A201™–1997.

§ 8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:

Each Accident

§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER
During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™–1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:
Deductible Per Occurrence
Aggregate Deductible

§ 8.2.2 Boiler and Machinery insurance with a limit of: .
(If not a blanket policy, list the objects to be insured.)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND
§ 8.3.1 The Construction Manager shall *(insert "shall" or "shall not")* furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one-hundred percent (100%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

ARTICLE 9 MISCELLANEOUS PROVISIONS
§ 9.1 DISPUTE RESOLUTION
§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in A201™–2007 except that, during the Preconstruction Phase, no decision by the Engineer shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS
§ 9.2.1 The terms used in this Agreement shall have the same meaning as those used in A201-2007.

§ 9.2.2 EXTENT OF CONTRACT
This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS
Article 1.6 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW
The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT
The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™–1997, neither party to the Contract shall assign the Contract as a whole without written

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consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™–1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

- **.1** Take the Cost of the Work incurred by the Construction Manager.
- **.2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- **.3** Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™–1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™–1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™–1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™–1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

All references to A201-1997 under this Agreement shall mean and refer to A201-2007 General Conditions of the Contract for Construction, as modified and attached.

This Agreement entered into as of the day and year first written above.

OWNER	**CONSTRUCTION MANAGER**
(Signature)	*(Signature)*
(Printed name and title)	*Von Gallagher, President*
Date	**Date – June 25, 2009**
ATTEST	**ATTEST**

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
City of Taylor Pump Station

THE OWNER:
(Name and address)
City of Taylor
400 Porter St.
Taylor, TX 76005

THE ENGINEER:
(Name and address)
Freese & Nichols
10814 Jollyville Road
Building 4, Suite 100
Austin, Texas 78759-5675

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Engineer or the Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Engineer or the Engineer's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Engineer's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Engineer and the Engineer's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items which are reasonably necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ **1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ **1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Engineers.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ **1.5.1** The Engineer and the Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Engineer's or Engineer's consultants' reserved rights.

§ **1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ **2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Engineer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ **2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ **2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ **2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ **2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ **2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ **2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Engineer. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ **3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ **3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

§ **3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer in the Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Engineer issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ **3.4.2** Except in the case of minor changes in the Work authorized by the Engineer in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Engineer and in accordance with a Change Order or Construction Change Directive.

§ **3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In the event Owner claims that Contractor has breached any warranty, Owner shall give Contractor notice and a reasonable opportunity to cure any alleged breach of any warranty.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ **3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ **3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ **3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ **3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Engineer before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if the Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Engineer's determination or recommendation, that party may proceed as provided in Article 15.

§ **3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Engineer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the name and qualifications of a proposed superintendent. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to the proposed superintendent or (2) that the Engineer requires additional time to review. Failure of the Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Engineer's approval. The Engineer's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Engineer.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Engineer and shall be delivered to the Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Engineer is subject to the limitations of Section 4.2.7. Informational submittals upon which the Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Engineer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Engineer that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Engineer.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and (1) the Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Engineer on previous submittals. In the absence of such written notice, the Engineer's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of Engineerure or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer. The Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE
The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING
§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP
§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK
The Contractor shall provide the Owner and Engineer access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS
The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer.

§ 3.18 INDEMNIFICATION
§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for

whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ENGINEER

(Paragraph deleted)

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an Engineer lawfully licensed to practice Engineerure or an entity lawfully practicing Engineerure in the jurisdiction where the Project is located. That person or entity is identified as the Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Engineer. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Engineer is terminated, the Owner shall employ a successor Engineer as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Engineer.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Engineer issues the final Certificate For Payment. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Engineer, as representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Engineer about matters arising out of or relating to the Contract. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Engineer has authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable, the Engineer will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Engineer will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer's action will be taken in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the work or in the activities of Owner, Contractor or separate contractors while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Engineer agree, the Engineer will provide one or more project representatives to assist in carrying out the Engineer's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Engineer will review and respond to requests for information about the Contract Documents. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to any such proposed person or entity or (2) that the Engineer requires additional time for review. Failure of the Owner or Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Engineer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Engineer makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP
If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Engineer will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL
§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Engineer; a Construction Change Directive requires agreement by the Owner and Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Engineer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS
§ 7.2.1 A Change Order is a written instrument prepared by the Engineer and signed by the Owner, Contractor and Engineer stating their agreement upon all of the following:

- **.1** The change in the Work;
- **.2** The amount of the adjustment, if any, in the Contract Sum; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES
§ 7.3.1 A Construction Change Directive is a written order prepared by the Engineer and signed by the Owner and Engineer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Engineer shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- **.1** Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- **.2** Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- **.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- **.5** Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Engineer will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Engineer determines, in the Engineer's professional judgment, to be reasonably justified. The Engineer's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Engineer will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Engineer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Engineer and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Engineer in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Engineer, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Engineer, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Engineer an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Engineer, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

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compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ **9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ **9.4.1** The Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor and Owner in writing of the Engineer's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ **9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ **9.5.1** The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a separate contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents.

§ **9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ **9.5.3** If the Engineer withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the

Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Engineer and the Engineer will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Engineer.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Engineer and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Engineer or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Engineer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ **9.8.3** Upon receipt of the Contractor's list, the Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer. In such case, the Contractor shall then submit a request for another inspection by the Engineer to determine Substantial Completion.

§ **9.8.4** When the Work or designated portion thereof is substantially complete, the Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ **9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ **9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Engineer as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Engineer.

§ **9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ **9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ **9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ **9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents; or
- **.3** terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ **10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ **10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Engineer.

§ **10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ **10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ **10.3 HAZARDOUS MATERIALS**
§ **10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Engineer in writing.

§ **10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ **10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Engineer, Engineer's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ **10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ **10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ **10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ **11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** Claims for bodily injury or property damage arising out of completed operations; and
- **.8** Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ **11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ **11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ **11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Engineer and the Engineer's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE
The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE
§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Engineer's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE
The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE
The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ **11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ **11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ **11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ **11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ **11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ **11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND
§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK
§ 12.1 UNCOVERING OF WORK
§ 12.1.1 If a portion of the Work is covered contrary to the Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Engineer, be uncovered for the Engineer's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Engineer has not specifically requested to examine prior to its being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK
§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION
The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION
§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ **12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK
If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS
§ 13.1 GOVERNING LAW
The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS
§ **13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ **13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE
Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES
§ **13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ **13.4.2** No action or failure to act by the Owner, Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS
§ **13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Engineer timely notice of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ **13.5.2** If the Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Engineer of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Engineer.

§ 13.5.5 If the Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Engineer will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST
Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS
The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT
§ 14.1 TERMINATION BY THE CONTRACTOR
§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- **.3** Because the Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Engineer, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- **.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ **14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Engineer, if the Engineer is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Engineer will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ **15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ **15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- **.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- **.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ **15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Engineer will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to arbitration and mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Engineer, if the Engineer is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and binding arbitration and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Init.

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User Notes: (3708575261)

GALLAGHER

EST 1968

General Conditions and Fee Proposal
City of Taylor Pump Station

CITY OF TAYLOR ★ FOUNDED 1876 ★

GENERAL CONDITIONS

	Weekly Rate		% Each week on Project		# of Weeks		Total Cost
Project Manager	$ 2,630	x	25%	x	35		$ 23,013
	$0	x	25%	x	9		$0
Project Administrator	$ 1,620	x	25%	x	35		$ 14,175
	$0	x	25%	x	9		$0
Superintendent	$ 2,362	x	100%	x	35		$ 82,670
	$0	x	100%	x	9		$0
Safety Coordinator	$ 2,200	x	15%	x	35		$ 11,550
	$0	x	15%	x	9		$0
Laborer	$ 1,147	x	100%	x	10		$ 11,470
					Onsite Field Office Staff		**$ 142,878**

1. Field Engineering Labor	Included
2. Field Engineering Equipment and Supplies	Included
3. Field Project Office	$ 4,000
4. Temporary Fire Extinguishers and Safety Equipment and Labor	$ 2,000
5. Vehicle Expenses	$ 6,400
6. Office Supplies	$ 1,500
7. Postage/Overnight/Courier Services	$ 1,000
8. Miscellaneous Document Printing	$ 750
9. Copy Machine and Paper	$ 1,250
10. Office Equipment	$ 1,200
11. Telephone and Fax Services	$ 2,000
12. Mobile Phones	$ 2,000
13. Miscellaneous Small Tools and Consumables	$ 2,400
14. Equipment Rentals	$ 5,400
15. Building Permit Fees	by City
16. Independent Testing and Inspection	by City

Total General Conditions w/ Staff	**$ 172,778**	**4.94%**
Contractor Fee (Fixed)	**$ 85,000**	**2.43%**
Total General Conditions's and Fee	**$ 257,778**	**7.37%**
Preconstruction Fee	**Waived**	

City Council Meeting
July 9th 2009
Agenda Item Transmittal

Agenda Item #: 5

Agenda Title: Consider Approving an Amendment to Work Authorization Number 3 for KSA Engineers, Inc. for the East Williamson County Higher Education Center offsite Water and Wastewater Project.

Council Action to be taken: Approve, deny or table

Initiating Department: Public Works

Staff Contact: **Danny Thomas, Director of Public Works**
Casey Sledge, Consulting City Engineer

1. INTRODUCTION/PURPOSE

On April 21, 2008, the Council approved KSA's Work Authorization #3 that engaged KSA to design the water and wastewater services to the EWCHEC site as well as engaging them to provide the plan review of this project since Casey Sledge was selected as the EWCHEC Project Manager. Since that time, the bond election for a new high school was successful and in turn, the T.I.S.D. also hired Casey as the Project Manager for their project. Accordingly, Staff is asking that you engage KSA, via an amendment to WA #3, to perform the same oversight work for this project since they are also doing this same work for the EWCHEC project. Also, a problem has been encountered with the design of the wastewater service to both sites. As you may remember, our intent was to simply relocate and enlarge the existing wastewater lift station located on Rice's Crossing Road to the EWCHEC site and it would, in turn, serve the entire area that encompasses both the EWCHEC site and the new high school site. Preliminary engineering considerations have determined that the force main that serves the existing lift station on Rice's Crossing Road will not be adequate to serve the area as hoped; therefore, requiring the design of another force main to serve the new lift station. The proposed amendment to WA #3 would amend the existing work authorization to include the design oversight of the new high school as well as including the design of a new force main to serve the relocated and enlarged lift station serving the area in general.

2. DESCRIPTION/ JUSTIFICATION

N/A

3. FINANCIAL/BUDGET

The two proposed amendments to WA #3 would add an additional cost of some $34,500 to the project costs. Currently, we are paying for these types of costs from our routine annual engineering budgets; however, debt issuance will be required to construct this project, at which time, we will reimburse ourselves from the debt issuance for all engineering costs relative to this project.

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

Staff recommends approval of Work Authorization number 3 as submitted.

6. REFERENCE FILES

5a. Amended KSA Work Authorization #3

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Amendment To Work Authorization No. 3

Project: City of Taylor - East Williamson County Higher Education Center - Off-Site Water and Wastewater (CIP Project No. 827)

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1. Background Data:

a.	Effective Date of Work Authorization Agreement:	April 21, 2008
b.	Owner:	City of Taylor
c.	Engineer:	KSA Engineers, Inc.
d.	Specific Project:	East Williamson County Higher Education Center - Off-Site Water and Wastewater

2. Nature of Amendment

☒ Additional Services to be performed by Engineer

3. Description of Modifications

a. Engineer shall perform the following Additional Services:

Item 1 – Additional Sewer Line Design

Background:

The original scope of work and design plans signed and sealed by the ENGINEER dated 04/29/09 included design of off-site sewer from the proposed lift station to the existing 4" forcemain which serves the small lift station scheduled for abandonment. The proposed 10" sanitary forcemain was planned along the same route as the existing 4" forcemain with the same point of termination and at the time of the initial task order it was assumed that all work beyond the small lift station for forcemain replacement would be installed by the City. Improvements to the downstream sanitary sewer lines were not included.

Based upon previous analysis, it was recommended that the proposed 10" forcemain be re-routed along Rio Grande Street. The re-route of the proposed 10" forcemain would include a bore under US 79 and continuing north along Rio Grande Street to a newly proposed gravity sewer line then install new gravity sewer along Rio Grande Street to the recently installed interceptor sewer along Mustang Creek (west of the golf course). The bore includes 300 linear feet of 20" steel encasement pipe and requires a TxDOT Utility Installation Permit. The gravity sewer line is assumed as 12" in diameter and is approximately 1,900 linear feet with six manholes required.

For location of proposed sewer line, see Attachment 1, "Project Location Map – Option B Route".

ENGINEER shall provide additional services to design the proposed 10" forcemain and the gravity sewer line including plan and profile of all lines. ENGINEER shall provide recommendation for the sizing of the gravity sewer line size. ENGINEER shall prepare the TxDOT Utility Installation Permit for execution by the City (any permit fees shall be paid directly by the OWNER). Additional bidding and construction phase services are included with this contract amendment with the assumption that one (1) set of plans and specifications shall be used for all original and new proposed design and that one (1) construction contract will result.

Item 2 – Plan Review of High School Site

Background:

The original scope of work included ENGINEER to provide plan review on behalf of the OWNER for the EWCHEC site. The new High School is planned on the west adjacent property to the EWCHEC site.

ENGINEER shall provide plan review on behalf of the OWNER of the new High School site development plans including all water, sewer, and drainage public improvements for the site. This shall include a review of the site plans and plats for ordinance compliance. Modeling of detention is not included in the review.

b. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

Item 1 – Additional Sewer Design	
Design Survey	Not Applicable (By Others)
Preliminary Design Phase	$10,700.00 (Lump Sum)
Final Design Phase	$12,200.00 (Lump Sum)
Bidding Phase	$ 3,000.00 (Lump Sum)
Construction Administration Phase	$ 4,600.00 (Lump Sum)
Printing	$ 1,000.00 (Time and Expense)
Item 2 – Plan Review	
Plan Review of High School	Time & Expense; $3,000.00 estimated.
Estimated Total (with T&E phases)	**$34,500.00**

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is June 23, 2009.

OWNER:		ENGINEER:	
			Mitchell L. Fortner
By:	Jim Dunaway	By:	Mitchell L. Fortner, P.E.
Title:	City Manager	Title:	Vice-President
Date Signed:		Date Signed	6/24/09
Attest:		Attest:	Stephen P. Dorman Stephen P. Dorman, P.E. Division Manager

This is **Attachment 1**, consisting of 1 pages, to Amendment No. 1, dated June 23, 2009; Work Authorization No. 3 ..

Project Location – Option B

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #:	**6**
Agenda Title:	Consider accepting public improvements for Mustang Cove Roadway Improvement Project.
Council Action to be taken:	Approve, deny or table
Initiating Department:	Public Works/TEDC
Staff Contact:	**Danny Thomas, Director of Public Works** **Jason Ford, President TEDC** **Casey Sledge, P.E., Consulting City Engineer**

1. INTRODUCTION/PURPOSE

To formally accept the public improvements for the Taylor Economic Development Corporation's Mustang Cove Roadway Project.

2. DESCRIPTION/ JUSTIFICATION

The TEDC recently constructed a new cul-de-sac street in the Mustang Creek Industrial Park that was named as Mustang Cove. As a result of this construction, several public improvements were made and now need to be officially accepted by the City Council in order to be added to our inventory of City improvements. These improvements included the roadway itself (HVAC pavement with curb and gutter), associated storm drainage facilities and associated water and wastewater mains. The associated maintenance bond period (two years) began on December 1, 2008.

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

Staff recommends formal acceptance of the public improvements associated with the construction of Mustang Cove roadway project.

6. REFERENCE FILES

6a. Final acceptance letter
6b. Project as built documents

TAYLOR
ECONOMIC DEVELOPMENT CORPORATION

P.O. BOX 975
316 NORTH MAIN
TAYLOR, TEXAS 76574

(512) 352-4321
(800) 829-5678
FAX (512) 352-4318

June 10, 2009

Dale Detten
Aaron Concrete Contractors, LP
PO Box 27107
Austin, TX 78755

RE: **TEDC Mustang Cove Roadway Improvements**
FINAL ACCEPTANCE

Dear Mr. Detten:

The public improvements of the **TEDC Mustang Cove Roadway Improvements** project are hereby accepted by the Taylor Economic Development Corporation. The effective date for the start of the 2-year maintenance bond period shall be December 1, 2008.

We appreciate your company's efforts throughout this important project for the TEDC. If you have any questions, I can be reached at (512) 365-1888.

Sincerely,

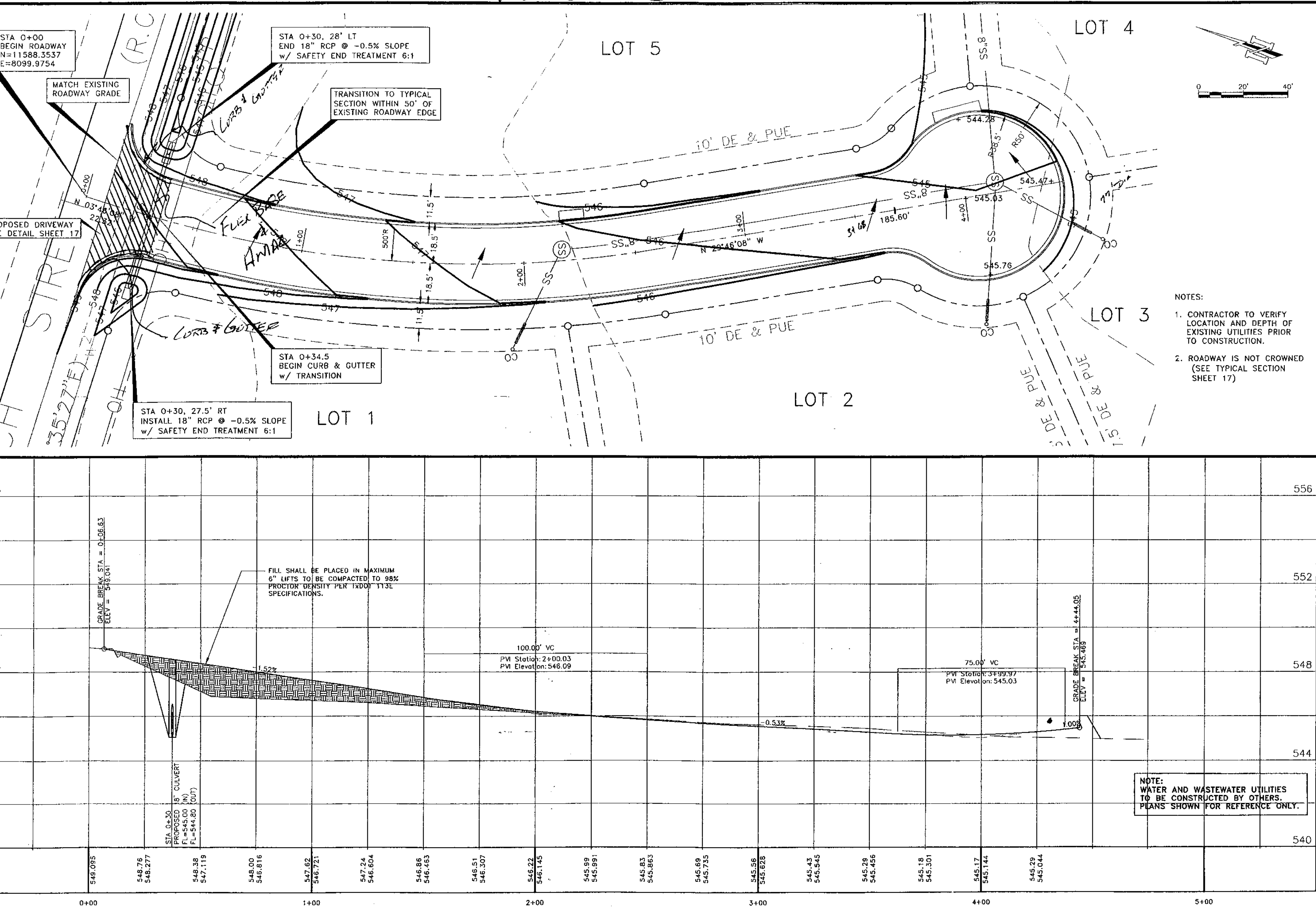
Sledge Engineering, LLC
Casey B. Sledge, P.E., AICP, CFM

cc: Jason Ford, CEO TEDC

481 TUCEK ROAD TAYLOR, TX 76574
PH 512.365.1888
FAX 512.365.1962
www.sledge.biz

sledge ENGINEERING LLC

As Builts



NOTES:

1. CONTRACTOR TO VERIFY LOCATION AND DEPTH OF EXISTING UTILITIES PRIOR TO CONSTRUCTION.
2. ROADWAY IS NOT CROWNED (SEE TYPICAL SECTION SHEET 17)

NOTE:
WATER AND WASTEWATER UTILITIES TO BE CONSTRUCTED BY OTHERS. PLANS SHOWN FOR REFERENCE ONLY.

REVISIONS | DATE | COMMENTS

STATE OF TEXAS
CASEY B. SLEDGE
84818
LICENSED
PROFESSIONAL ENGINEER

TAYLOR E.D.C. MUSTANG COVE
ROADWAY IMPROVEMENTS

NEW ROAD PLAN AND PROFILE

SLG-005

SCALE

DATE
MARCH 2008

sledge ENGINEERING LLC
302 Pintail Lane Taylor, TX 76574
ph 512.365.1888 fx 512.365.1962
www.sledge.biz

16 / 18

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: 7

Agenda Title: Consider requirements of H.B. 2113 requiring the designation of a holiday for firefighters.

Council Action to be taken: Consider designation as required

Initiating Department: City Administration

Staff Contact: **Jim D. Dunaway, City Manager**
Starla A. Hall, Director of Human Resources

1. INTRODUCTION/PURPOSE

The 81st Legislature passed, and the Governor signed into law, H.B. 2113 that requires that all firefighters receive September 11th of each year as an official holiday. A copy of H.B. 2113 is attached for your reference. Very simply put, you have a couple of options in order to meet this requirement by the effective date of September 1, 2009. Currently, the City provides each employee with ten (10) days of holiday leave, one of which is a personal day that is designed to allow the employee a day off whenever they choose. Option one would be to simply designate the personal day for firefighters as the required holiday for September 11th. All other employees would continue to utilize the personal day when they chose to. Option two would be to add September 11th as a holiday for firefighters and give the remainder of the employees another holiday such as Veterans Day. Option two would provide an additional holiday for all employees without showing favoritism to any particular department of the City. Currently, City Holidays are as follows:

New Year's Day
Martin Luther King Birthday
Good Friday (1/2 Day)
Memorial Day
Independence Day
Labor Day
Thanksgiving
The Day after Thanksgiving
Christmas Eve (1/2 Day)
Christmas Day
Personal Day (Anytime of the Year)

2. DESCRIPTION/ JUSTIFICATION

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

6. REFERENCE FILES

7a. H.B. 2113
7b. Survey of other cities' holidays
7c. Additional survey of other cities' holidays
7d. Human Resources Department Request

AN ACT

relating to the holidays for members of fire and police departments in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 142.0013(c), Local Government Code, is amended to read as follows:

(c) A fire fighter [~~and a police officer~~] shall be granted the same number of vacation days and holidays, or days in lieu of vacation days or holidays, granted to other municipal employees, at least one of which shall be designated as September 11th.

SECTION 2. Section 142.0013, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) A police officer shall be granted the same number of vacation days and holidays, or days in lieu of vacation days or holidays, granted to other municipal employees.

SECTION 3. This Act takes effect September 1, 2009.

______________________________ President of the Senate

______________________________ Speaker of the House

I certify that H.B. No. 2113 was passed by the House on April 15, 2009, by the following vote: Yeas 147, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2113 on May 29, 2009, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

______________________________ Chief Clerk of the House

I certify that H.B. No. 2113 was passed by the Senate, with amendments, on May 23, 2009, by the following vote: Yeas 31, Nays 0.

______________________________ Secretary of the Senate

APPROVED: ____________________

Date

____

Governor

Cities	New Year's Day	M.L. King, Jr. Day	Presidents Day	Tx Indep. Day	Good Friday	Memorial Day	Independence Day	Labor Day	Columbus Day	Veterans Day	Thanksgiving	Day after Thanksgiving	Christmas Eve	Christmas Day
[redacted]														
Leander	√	√	√	-	√	√	√	√	√	√	√	√	√	√
Angleton	√	√	√	√	√	√	√	√	-	√	√	√	√	√
Stafford	√		√	-	√	√	√	√	-	-	√	√	√	√
Pflugerville	√	√	√	-	-	√	√	√	-	-	√	√	√	√
Georgetown	√	√	-	-	-	√	√	√	-	-	√	√	√	√
Wilco	√	√	√	-	√	√	√	√	-	√	√	√	√	√
Seguin	√	√	-	-	√	√	√	√	-	√	√	√	√	√
Cedar Park	√	√	√	-	-	√	√	√	-	√	√	√	√	√
Universal City	√	√	√	-	-	√	√	√	√	√	√	√	√	√
Round Rock	√	√	√	-	-	√	√	√	-	√	√	√	√	√

Personal/Floater Holiday
√
√
√ (2 Personal Holiday)
√ (1Floater Day - 3 Personal Holiday)
√ (4 Personal Holiday)
√
√
√
-
-

The City of Taylor

Jan 1	New Years Day
Jan 19	M.L. King, Jr. Day
Apr 10	1/2 Day on Good Friday
May 25	Memorial Day
Jul 3	4th of July
Sept 7	Labor Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	1/2 Day on Christmas Eve
Dec 25	Christmas Day

Personal Day (Accrued on October 1st of each fiscal year except new hires shall accrue after six months of employment.

The City of Angleton

14 days for Holidays

Jan 1	New Years Day
Jan 19	M.L. King, Jr. Day
Feb 16	Presidents Day
Mar 2	Tx Independence Day
Apr 10	Good Friday
May 25	Memorial Day
Jul 3	Independence Day
Sept 7	Labor Day
Nov 11	Veterans Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day

Employees also get Birthday (8Hrs) day, must use 30 days prior or after your b-day date.

The City of Pflugerville

14 days for Holidays

Jan 1	New Years Day
Jan 19	M. L. King, Jr. Day
Feb 16	Presidents Day
May 25	Memorial Day
Jul 3	4th of July
Sept 7	Labor Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day
Dec 31	Floater Holiday

Personal Holiday (3) Floating
Upon approval of supervisor

The City of Leander

14 days for Holidays

Jan 1	New Years Day
Jan 19	M.L. King, Jr. Day
Feb 16	Presidents Day
Apr 10	Good Friday
May 25	Memorial Day
Jul 3	4th of July
Sept 7	Labor Day
Oct 12	Columbus Day
Nov 11	Veterans Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day
Dec 31	Floater Holiday

The City of Stafford

12 days for Holidays

Jan 1	New Years Day
Feb 16	Presidents Day
April 10	Good Friday
May 25	Memorial Day
Jul 3	4th of July
Sept 7	Labor Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day

Personal Holiday (2) Floating
Employees will have the choice of taking two personal holidays of their choice with the approval of their department head and/or supervisor.

The City of Georgetown

13 days for Holidays

Jan 1	New Years Day
Jan 19	M. L. King, Jr. Day
May 25	Memorial Day
Jul 3	4th of July
Sept 7	Labor Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day

Personal Holiday (4) to be selected by employee
Such other holiday as the City Council may declare.

Wilco
13 days for Holidays

Jan 1	New Years Day
Jan 19	M.L. King, Jr. Day
Feb 16	Presidents Day
Apr 10	Good Friday
May 25	Memorial Day
Jul 3	Independence Day
Sept 7	Labor Day
Nov 11	Veterans Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day
?	Holiday

The City of Seguin
12 days for Holidays

Jan 1	New Years Day
Jan 19	M.L. King Day
Apr 10	Good Friday
May 25	Memorial Day
Jul 3	Independence Day
Sept 7	Labor Day
Nov 11	Veterans Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day

Employees also get one floating holiday per year

The City of Cedar Park
12 days for Holidays

Jan 1	New Years Day
Jan 19	M.L. King, Jr. Day
Feb 16	President's Day
May 25	Memorial Day
Jul 3	Independence Day
Sept 7	Labor Day
Nov 11	Veterans Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day

Employees also get Personal Holiday

The City of Universal City
12 days for Holidays

Jan 1	New Years Day
Jan 19	M.L. King, Jr. Day
Feb 16	President's Day
May 25	Memorial Day
Jul 3	Independence Day
Sept 7	Labor Day
Oct 12	Columbus Day
Nov 11	Veterans Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day

The City of Round Rock
11 days for Holidays

Jan 1	New Years Day
Jan 19	M.L. King, Jr. Day
Feb 16	President's Day
May 25	Memorial Day
Jul 3	Independence Day
Sept 7	Labor Day
Nov 11	Veterans Day
Nov 26	Thanksgiving Day
Nov 27	Day after Thanksgiving
Dec 24	Christmas Eve
Dec 25	Christmas Day

Memorandum

City of Taylor

To: Jim Dunaway, City Manager

CC: Mayor and Members of the City Council

From: Starla Hall, Human Resources Director

Date: April 20, 2009

Re: Holiday Request

Mr. Dunaway, Human Resources conducted a survey with Williamson County and 9 Cities including Pflugerville, Georgetown, Cedar Park and Round Rock to compare the number of holidays that each City/County observes. Attached you will find the spreadsheet showing the holidays that each City and County observe. The City of Taylor is below all those listed in the survey. The City of Leander, Angleton and Pflugerville observe the most holidays (14) with the City of Taylor observing the lowest at 11 days. Even though the City of Round Rock shows 11 holidays like the City of Taylor they are closed the entire day on every holiday and two of our holidays we only close for half a day. The total average number of holidays observed by the 10 surveyed is 12.8 days.

I would like to propose that we add Veteran's Day to the City of Taylor holiday observances to honor those service men and women who have served this Country and those who currently serve in the military. Because of the recent military involvements, the public perceives the City as being disrespectful by being open and not observing this holiday. Out of the 10 surveyed all but three observe Veteran's Day. Please let me know if you have any questions or concerns regarding this matter. Your consideration of this request would be most appreciated.

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: 8

Agenda Title: Consider Resolution R09-16 renewing and revise the City's Investment Policy.

Council Action to be taken: Approve renewed and updated investment policy

Initiating Department: Finance Department

Staff Contact: **Rosemarie Dennis, Finance Director**

1. INTRODUCTION/PURPOSE

The purpose of Resolution R09-16 is to have the Council approve renewing and updating the City's Investment Policy.

2. DESCRIPTION/ JUSTIFICATION

The Investment Policy is presented to Council for consideration as a revision to the City's current Investment Policy which will include a broker/dealers list. With the approval from Council, this action will allow staff to diversify its investments with the approved brokers and actively seek higher yields and at the same time stay within the guidelines of the Public Investment Funds Act and the City's Investment Policy.

The firms for your consideration as brokers/dealers are Duncan Williams, Morgan Keegan, Edward Jones and JP Morgan Securities. These firms are licensed and in good standing with the Texas Department of Securities, the Securities Exchange Commission and the National Association of Securities Dealers.

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

Staff recommends approving the revised City of Taylor's Investment Policy.

6. REFERENCE FILES

8a. Resolution R09-16
8b. "Exhibit A"- Investment Policy with Attachment A

RESOLUTION NO. R09-16

A RESOLUTION OF THE CITY OF TAYLOR, TEXAS, RENEW ITS INVESTMENT POLICY

WHEREAS, House Bill 2459 passed by the Seventy-Fourth Legislature requires that the City renew its Investment Policy on an annual basis.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF TAYLOR:

SECTION 1.0 In order to comply with House Bill 2459 adopted by the Seventy-Fourth Legislature of the State of Texas, the City of Taylor does hereby renew its Investment Policy as set out and contained in the instrument bearing such title, a copy of which is attached as Exhibit A and was presented to and considered at the meeting at which this resolution is adopted.

SECTION 2.0 The Director of Finance as Chief Financial Officer of the City is hereby authorized and directed to carry out the provisions of such Investment Policy as the Investment Officer.

INTRODUCED, PASSED AND APPROVED by the City Council of the City of Taylor, Texas, on the 9th day of July, 2009.

____

Ella Pumphrey Jez, Mayor Pro Tem

ATTEST:

____

Susan Brock, City Clerk

CERTIFICATE

THE STATE OF TEXAS

COUNTY OF WILLIAMSON

I, Susan Brock, being the current City Clerk of the City of Taylor, Texas, do hereby certify that the attached is a true and correct copy of Resolution No. R09-16, passed and approved by the City Council of the City of Taylor, Texas, on the 9th day of July, 2009, and such Resolution was duly passed and approved at a meeting open to the public and notices of the meeting, giving the dates, place, and subject matter thereof, were posted as prescribed by Government Code Section 551.043.

Witness my hand and seal of office this 9th day of July, 2009.

____

Susan Brock
City Clerk

EXHIBIT A

INVESTMENT POLICY
THE CITY OF TAYLOR TEXAS

July 9, 2009

INVESTMENT POLICY OF THE CITY OF TAYLOR TEXAS

October 21, 2008

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Page No.

INVESTMENT POLICY OF THE CITY OF TAYLOR TEXAS

October 21, 2008

I. PURPOSE

A. Formal Adoption

This investment policy, when reviewed and adopted by the City Council of Taylor, on October 21, 2008, will replace the adopted Investment Policy dated the 9th of October, 2007. This investment policy satisfies the statutory requirements of the Public Funds investment Act (Chapter 2256, Texas Government Code).

B. Scope

This Investment Policy applies to all investment activities of the City and to all assets of all funds of the City of Taylor at the present time and any funds received in the future, *excluding the Employee Retirement Trust and the deferred compensation plan.* Any funds held in custody by the City of Taylor shall be administered in accordance with the provisions of these policies unless expressly prohibited by law or unless it is in contravention of any depository contract between the City and depository bank. This Policy establishes guidelines for those who can invest City funds, for how City funds will be invested, and for when and how a periodic review of investments will be made. In addition to this Policy, bond funds (as defined by the Internal Revenue Service) shall be managed by their governing resolution and all applicable State and Federal Law.

II. INVESTMENT OBJECTIVES

A. Safety of Principal

The primary objective of all investment activity is the preservation of capital and the safety of principal in the overall portfolio. Each investment transaction shall seek to ensure first that capital losses are avoided, whether they are from securities defaults or erosion of market value.

B. Maintenance of Adequate Liquidity

The investment portfolio will remain sufficiently liquid to meet the cash flow requirements that might be reasonably anticipated. Liquidity shall be achieved by matching investment maturities with forecasted cash flow requirements; investing in securities with active secondary markets; and maintaining appropriate portfolio diversification.

C. Diversification

The policy of the City of Taylor, except when investing with the Depository Bank or Investment Pools will be to diversify its portfolio. This will be done to eliminate the risk of loss resulting from one concentration of assets in a specific maturity, a specific issuer or a specific class of investments. Investments of the City shall always be selected that provide for stability of income and reasonable liquidity.

D. Yield

Consistent with federal and state law and the City's depository contract, it will be the objective of the Investment Officer to earn the maximum interest rate allowed within the constraints of safety and liquidity.

E. Maturity

Portfolio maturities will be staggered, if market conditions are favorable, in a way to achieve the highest return of interest but at the same time provide for the necessary liquidity to meet the City's cash needs. The maximum allowable stated final maturity of any individual investment owned by the City will be ten years. [Sec. 2256.005 (b) (4) (B)]

F. Sale of Securities before Maturity

The City Investment Officer may sell securities before maturity if:

- Market conditions present an opportunity for the City to benefit from sale;
- funds are urgently needed to meet unforeseen expenses, even if there is a loss of interest and/or principal due to the sale; and
- a security has lost its minimum required rating as an authorized investment. [Sec. 2256.02]

G. Quality and Capability of Investment Management

It is the City's policy to provide training required by the Public Funds Investment Act, Sec. 2256.008 and periodic training in investments for the Investment Officer through courses and seminars offered by professional organizations and associations in order to insure the quality and capability of the City's Investment Officer in making investment decisions.

III. INVESTMENT STRATEGY

A. General

In conjunction with the annual Policy review, the City Council shall review the investment strategy for each of the City's funds. The investment strategy must describe the investment objectives for each particular fund according to the following priorities:

- investment suitability,
- preservation and safety of principal,
- liquidity,
- marketability prior to maturity of each investment,
- diversification, and
- yield

In order to minimize risk of loss due to interest rate fluctuations, investment maturities will not exceed the anticipated cash flow requirements of the funds.

B. Investment Guidelines by Fund Type

Investment guidelines by fund-type are as follows:

1. Current Operating Funds

Current operating funds require the greatest short-term liquidity of any of the fund types. Therefore, diversified investment maturities shall provide monthly cash flow based on the anticipated operating needs of the City. Short-term investment pools and money market mutual funds shall provide daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investment. Additionally, securities with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement.

According to City Policy, the weighted average days to maturity for the current operating fund portfolio shall be less than 200 days and the maximum allowable maturity shall be two years. The Investment Officers will monitor the average days to maturity level and make changes as appropriate.

2. Bond Proceeds

Bond proceeds used for construction programs have reasonably predictable draw down schedules. Therefore investment maturities shall generally follow the anticipated cash flow requirements. Because of the potential for variance from the anticipated draw down schedule and actual expenditures most investment securities shall have active and efficient secondary markets. Investment pools and money market mutual funds shall provide readily available funds generally equal to one month's anticipated cash flow needs, or a competitive yield alternative for short term fixed maturity investments. A singular repurchase agreement may be utilized if disbursements are allowed in the amount necessary to satisfy any expenditure request, this investment structure is commonly referred to as a flexible repurchase agreement.

Market conditions and the arbitrage regulations may influence the attractiveness of locking in fixed rate investments for bond proceeds. Generally if investment rates exceed the applicable arbitrage yield for a specific bond issue, the City is best served by locking in most investments. If the arbitrage yield can not be exceeded, then concurrent market conditions will determine the attractiveness of locking in maturities or investing shorter. At no time shall the anticipated expenditure schedule be exceeded in an attempt to bolster yield.

3. Repair and Replacement Funds

The investment maturity of repair and replacement funds shall generally be limited to the anticipated cash flow requirement according to any budgeted project schedule. Market conditions and the anticipated spending schedule shall determine the maximum investment periods. Investment securities shall be diversified as to maturity and type with a portion of the securities highly marketable or liquid to cover the unpredictability of emergency repairs. The Investment Policy restricts the maximum maturity to three years and the maximum average life of the fund to one year.

4. **Debt Service Funds**

Debt service funds shall be invested to ensure adequate funding for each consecutive debt service payment. The Investment Officer shall invest in such a manner as not to exceed an "un-funded" debt service date with the maturity of any investment security. The predictability of each payment reduces the need for security diversification, marketability and fund liquidity. Therefore, market conditions shall determine the attractiveness of the eligible investments.

5. **Bond Reserve Funds**

Bond reserve funds have no anticipated expenditures. The funds are deposited to provide annual debt service payment protection to the City's bondholders. The funds are "returned" to the City at the final debt service payment. Market conditions and arbitrage regulation compliance determine the advantage of security diversification and maturity selection. Generally if investment rates exceed the applicable arbitrage yield for a specific bond issue, the City is best served by locking in most investments. If the arbitrage yield cannot be exceeded, then concurrent market conditions will determine the attractiveness of locking in maturities or investing shorter and anticipating future increased yields. Maturities shall generally not exceed the call provisions of the bond issue to reduce the investment's market risk if the City's bonds are called and the reserve fund liquidated. No investment maturity shall exceed the final maturity of the bond issue.

Bond resolution constraints and insurance company restrictions create issue-specific considerations in addition to the Investment Policy. Annual mark-to-market requirements or specific maturity and average life limitations will influence the attractiveness of market risk and reduce the opportunity for maturity extension.

6. **Operating Reserve Funds**

The operating reserve funds are essentially City savings. Reductions are generally not anticipated. Therefore, the predictability of the cash requirements of other City funds will govern the appropriate maturity mix. Market conditions, City financial condition and risk/return analysis may adjust the strategy to the maximum maturity of ten years and the weighted average life of five years.

7. **Fiduciary Funds**

Fiduciary Funds are used to report assets held in a trustee or agency capacity for others. The funds principal therefore cannot be used to support the government's own programs. Since the purpose of these funds is for investment purposes only, market conditions and risk/return analysis may adjust the strategy to the maximum maturity of ten years.

IV. INVESTMENT POLICIES

A. Eligible Investments

Investments described below are authorized by Chapter 2256, Texas Government Code as eligible securities for the City. The purchase of specific issues may at times be restricted or prohibited by the Investment Officers. City funds governed by this Policy may be invested in:

1. Obligations of the United States or its agencies and instrumentalities, excluding principal-only and interest-only mortgage backed securities, collateralized mortgage obligations and real estate mortgage investment conduits.

2. Direct obligations of the State of Texas, or its agencies and instrumentalities.

3. Other obligations, the principal and interest on which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the State of Texas or the United States or their respective agencies and instrumentalities.

4. Obligations of states, agencies, counties, cities, and other political subdivisions of any State having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less that "A" or its equivalent.

5. Fully collateralized repurchase agreements having a defined termination date, placed through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in Texas, and secured by obligations described by 1-4, above which are eligible investments under the Public Funds Investment Act, pledged with a third party selected or approved by the City, and having a market value of not less than the principal amount of the funds disbursed. The term includes direct security repurchase agreements entered into by the City and reverse repurchase agreements only obtained in connection with investment by the City in an Eligible Investment Pool or Money Market Mutual Fund. A signed Master Repurchase Agreement as described in B.4 shall govern All City repurchase agreement transactions of this section.

6. Certificates of deposit issued by State and national banks and savings and loan associations domiciled in Texas that are:

   a. guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor, or, secured by obligations that are described by 1-4 above, which are intended to include all direct Federal agency or instrumentality issued mortgage backed securities, but excluding those mortgage backed securities of the nature described in Section 2256.009(b) of the Texas Government Code, that have a market value of not less than the principal amount of the certificates or in any other manner and amount provided by law for deposits of the City;

   b. governed by a Depository Contract, as described in B.4 of this section, that complies with Federal and State regulation to properly secure a pledged security interest, and,

   c. solicited for bid verbally, in writing, electronically, or any combination of those methods.

7. Money market mutual funds regulated by the Securities & Exchange Commission, with a dollar weighted average portfolio maturity of 90 days or less; that fully invests dollar-for-dollar all City funds without sales commissions or loads; and, whose investment objectives include seeking to maintain a stable net asset value of $1 per share. The City may not invest funds under its control in an amount that exceeds 10% of the total assets of individual money market mutual fund or exceeds 80% of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service in money market mutual

funds. Government Code 2256.014(c).

8. Eligible Investment Pools as defined in Section 2256.016 of the Texas Government Code provided that (a) investment in the particular pool has been authorized by the City Commission; (b) the pool shall have furnished the Investment Officers or other authorized representatives of the City an offering circular containing the information required by Section 2256.016(b) of the Government Code; (c) the pool shall furnish to the Investment Officers or other authorized representatives of the City Investment transaction confirmations with respect to all investments made with it; (d) the pool shall furnish to the Investment Officers or other authorized representatives of the City, monthly reports that contain the information required by Section 2256.016 (c) of the Government Code; (e) the pool shall be a public funds investment pool created to function as a Money Market mutual fund maintaining a $1 net asset value (f) the pool's assets shall consist exclusively of the obligations that are described by 1-7 above; (g) and whose investment philosophy and strategy are consistent with this Policy and the City's ongoing investment strategy.

9. Commercial paper that has a stated maturity of 270 days or fewer from the date of issuance and is rated not less than A1-1 or P-1 or an equivalent rating by at least two nationally recognized credit rating agencies or by one nationally recognized credit rating agency provided the commercial paper is fully secured by an irrevocable letter of credit issued by a bank organized and existing under U. S. law or the law of any state. Gov't Code 2256.013

B. Protection of Principal

The City shall seek to control the risk of loss due to the failure of a security issuer or grantor. Such risk shall be controlled by investing only in the safest types of securities as defined in the Policy; by qualifying the broker, dealer and financial institution with whom the City will transact, by collateralization as required by law; and through portfolio diversification by maturity and type.

The purchase of individual securities shall be executed "delivery versus payment" through the City's Safekeeping Agent. By so doing, City funds are not released until the City has received, through the Safekeeping Agent, the securities purchased.

1. Diversification by Investment Type

The City's Portfolio shall be diversified to eliminate the risk of loss resulting from one concentration of assets in a specific maturity, a specific issuer or a specific class of investments. Investments of the City shall always be selected that provide for stability of income and reasonable liquidity.

The policy of the City of Taylor, except when investing with the Depository Bank, Investment Pools, U.S. Treasury Bills, Bonds and Notes or in U.S. Agencies, will be to diversify its portfolio when investing in the following:

a. Certificates of Deposit of other banks, savings banks and state or federal credit unions domiciled in Texas;
b. Repurchase Agreements;
c. Commercial Paper; or
d. Other investment instruments provided by law

Bond proceeds may be invested in a single security or investment if the Investment Officer determines that such an investment is necessary to comply with Federal arbitrage restrictions or to facilitate arbitrage record keeping and calculation.

2. Diversification by Investment Maturity

In order to minimize risk of loss due to interest rate fluctuations, investment maturities will not exceed the anticipated cash flow requirements of the funds. Maturity guidelines by fund are as follows:

a. Current Operating Funds

The weighted average days to maturity for the operating fund portfolio shall be less than 200 days and the maximum allowable maturity shall be two years.

b. Bond Proceeds

The investment maturity of bond proceeds (excluding reserve and debt service funds) shall generally be limited to the anticipated cash flow requirement or the "temporary period," as defined by Federal tax law. During the temporary period bond proceeds may be invested at an unrestricted yield. After the expiration of the temporary period, bond proceeds subject to yield restriction shall be invested considering the anticipated cash flow requirements of the funds and market conditions to achieve compliance with the applicable regulations.

c. Repair and Replacement Funds

The investment maturity of repair and replacement funds shall generally be limited to the anticipated cash flow requirement according to the budgeted project schedule. The maximum maturity shall not exceed three years and the maximum average life of the fund shall not exceed one year.

d. Debt Service Funds

Debt Service Funds shall be invested to ensure adequate funding for each consecutive debt service payment. The Investment Officers shall invest in such a manner as not to exceed an "unfunded" debt service date with the maturity of any investment. An unfunded debt service date is defined as a coupon or principal payment date that does not have cash or investment securities available to satisfy said payment.

e. Bond Reserve Funds

Market conditions, Bond Resolution constraints and Arbitrage regulation compliance will be considered when formulating Reserve Fund strategy. Maturity limitation shall generally not exceed the call provisions of the Bond Resolution and shall not exceed the final maturity of the bond issue.

f. Operating Reserve Funds

The anticipated cash requirements of other City funds will govern the appropriate maturity mix. Appropriate portfolio strategy shall be determined based on market conditions, Policy compliance, City financial condition, and risk/return constraints. Maximum maturity shall not exceed ten years and each fund's weighted average life shall not exceed five years.

g. Fiduciary Funds

Since the purpose of these funds is for investment purposes only, market conditions and risk/return analysis may allow maximum maturity of ten years.

3. Ensuring Liquidity

Liquidity shall be achieved by anticipating cash flow requirements, by investing in securities with active secondary markets and by investing in eligible money market mutual funds and local government investment pools.

A security may be liquidated to meet unanticipated cash requirements, to re-deploy cash into other investments expected to outperform current holdings, or otherwise to adjust the portfolio.

4. Collateralization

Consistent with the requirements of State law, the City requires all bank and savings and loan association deposits to be federally insured or collateralized with eligible securities. Financial institutions serving as City Depositories will be required to sign a Depository Agreement with the City and the City's safekeeping agent. The safekeeping portion of the Agreement shall define the City's rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations, including:

- Agreement must be in writing;
- Agreement has to be executed by the Depository and the City contemporaneously with the acquisition of the asset;
- Agreement must be approved by the Board of Directors or the loan committee of the Depository and a copy of the meeting minutes must be delivered to the City;
- Agreement must be part of the Depository's "official record" continuously since its execution.

Repurchase agreements must also be secured in accordance with State law. Each counter party to a repurchase transaction is required to sign a copy of the Public Securities Association Master Repurchase Agreement as approve by the City. An executed copy of this Agreement must be on file before the City will enter into any transactions with a counter party. All Master Repurchase Agreements must be approved by the Administrative Policy Committee.

a. Allowable Collateral

(1) Certificates of Deposit

Eligible securities for collateralization of deposits are defined by the Public Funds Collateral Act, as amended and meet the constraints of this Policy.

(2) Repurchase Agreements

Securities underlying repurchase agreements are limited to U. S. Government, Agencies and Instrumentalities obligations, which are eligible fore wire transfer (i.e., book entry) to the City's designated safekeeping agent through the Federal Reserve System and meet the constraints of this Policy.

b. Collateral Levels

(1) Certificates of Deposit

The market value of the principal portion of collateral pledged for certificates of deposit must at all times be equal to or greater than the par value of the certificate of deposit plus accrued interest, less the applicable level of FDIC insurance.

(2) Repurchase Agreements

A repurchase agreement's security value shall be the par value plus accrued interest, and the security's market value must be maintained at the following minimum levels:

<u>Agreement Maturities Greater Than One Business Day</u>

U. S. Treasury Securities 102%
U. S. Agency & Instrumentalities. 102%
Mortgage Backed Securities. 105%

<u>Agreement Maturities of One Business Day</u>

All Securities. 100%

c. Monitoring Collateral Adequacy

(1) Certificates of Deposit

The City shall require monthly reports with market values of pledged securities from all financial institutions with which the City has certificates of deposit. The Investment Officers will monitor adequacy of collateralization levels to verify market values and total collateral positions.

(2) Repurchase Agreements

Weekly monitoring by the Investment Officers of market values of all underlying securities purchased for City repurchase transactions is required. More frequent monitoring may be necessary during periods of market volatility.

d. Additional Collateral and Securities

(1) Certificates of Deposit

If the collateral pledged for a certificate of deposit falls below the par value of the deposit, plus accrued interest less FDIC insurance, the institution issuing the CD's will be notified by the Investment Officers and will be required to pledge additional securities no later than the end of the next succeeding business day.

(2) **Repurchase Agreements**

If the value of the securities underlying a repurchase agreement falls below the margin maintenance levels specified above, the Investment Officers will request additional securities. If the repurchase agreement is scheduled to mature within five business days and the amount is deemed to be immaterial, then the request is not necessary.

e. **Collateral Substitution**

Collateralized certificates of deposit and repurchase agreements often require substitution of collateral. Any broker, dealer or financial institution requesting substitution must contact the Investment Officers for approval and settlement. The substituted security's value will be calculated and substitution approved if its value is equal to or greater than the required security level. The Investment Officers, or a designee, must provide written notification of the decision to the bank or the safekeeping agent holding the security prior to any security release. Substitution is allowable for all transactions, but should be limited, if possible, to minimize potential administrative problems and transfer expense. The Investment Officers may limit substitution and assess appropriate fees if substitution becomes excessive or abusive.

5. **Safekeeping**

a. **Safekeeping Agreement**

The City shall contract with a bank or banks for the safekeeping of securities either owned by the City as a part of its investment portfolio or as part of its depository and repurchase agreements.

b. **Safekeeping of Certificate of Deposit Collateral**

All collateral securing bank and savings and loan deposits must be held by a third party banking institution acceptable to and under contract with the City, or by the Federal Reserve Bank.

c. **Safekeeping of Repurchase Agreement Securities**

The securities purchased under repurchase agreements must be delivered to a third party custodian with whom the City has established a safekeeping agreement.

C. Investment Advisors and Broker/Dealers

Investment selection for all funds shall be based on legality, appropriateness, liquidity, and risk/return considerations. All City investment portfolios shall be actively managed to enhance overall interest income. Investment Advisors shall adhere to the spirit, philosophy and specific term of this Policy and shall invest within the same "Standard of Care." Investment Broker/Dealers shall adhere to the spirit, philosophy and specific term of this Policy and shall avoid recommending or suggesting transactions outside that "Standard of Care."

Selection of Brokers/Dealers must be licensed and in good standing with the Texas Department of Securities, the Securities Exchange Commission, the National Association of Securities Dealers or other applicable self-regulatory organization.

Selection of Investment Advisors and Broker/Dealers will be performed by the Investment Officer. The Investment Officer will establish criteria to evaluate Investment Advisors and Broker/Dealers, including:

1. Adherence to the City's policies and strategies;
2. Investment performance and transaction pricing within accepted risk constraints;
3. Responsiveness to the City's request for services, information and open communication;
4. Understanding of the inherent fiduciary responsibility of investing public funds;
5. Similarity in philosophy and strategy with the City's objectives

Selected Investment Advisors and Broker/Dealers shall provide timely transaction confirmations and monthly portfolio reports.

Broker/Dealers eligible to transact investment business with the City shall be presented a written copy of this Investment Policy. Additionally the registered principal of the business organization seeking to transact investment business shall execute a written instrument substantially to the effect that the registered principal has:

- received and reviewed this Investment Policy, and
- acknowledged that the organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the City.

The City shall not enter into an investment transaction with a Broker/Dealer prior to receiving the written instrument described above.

D. Responsibility and Controls

1. Authority to Invest

The Director of Finance is the "Investment Officer" of the City. As Investment Officer he/she is authorized to deposit, withdraw (by check executed over two signatures as outlined in this Policy), invest, transfer, execute documentation, and otherwise manage City funds according to the rules governing the investment of City funds provided in this Policy. In his/her absence, the Accountant, Assistant City Manager and/or City Manager may serve as Investment Officer in his place and are subject to the same training requirements and must adhere to the policies set forth in this Policy Statement.

The Director of Finance as Investment Officer shall attend at least one training session, within twelve months of assuming these duties, that addresses investment controls, security risks, strategy risk, market risks, and compliance with the Public Funds Investment Act.

2. Investment Officer Required Training

The City's Investment Officer shall:

a. attend at least one training session from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in this policy and containing a least 10 hours of instruction relating to the Investment Officer's responsibilities, within 12 months after taking office or assuming duties; and

b. attend an investment training session not less than once in a two-year period and receive not less than 10 hours of instruction relating to investment responsibilities from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government.

3. Prudent Investment Management

The designated Investment Officer shall perform their duties in accordance with the adopted Investment Policy and internal procedures. The Investment Officer acting in good faith and in accordance with these policies and procedures shall be relieved of personal liability.

4. Standard of Care

The standard of care used by the City shall be the "prudent investor rule" and shall be applied in the context of managing the overall portfolio within the applicable legal constraints. The Public Funds Investment Act states:

"Investments shall be made with judgment and care, under circumstances then prevailing, that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived."

5. Liability of City Investment Officer

The City Investment Officer is not responsible for any loss of City funds through the failure or negligence of a depository. Sec. 113.005 Local Government Code does not release the Investment Officer from responsibility for a loss resulting from the official misconduct or negligence of the Investment Officer, including misappropriation of funds, or from responsibility for funds until a depository is selected and the funds are deposited.

6. Personnel Authorized to Transact Fiscal Affairs

All vouchers, checks, drafts, certificates of deposit, orders for the release or exchange of securities held as collateral for City's funds on deposit with its depository banks and any other instruments necessary in the transaction of City's financial affairs shall bear the signature of any two of the following (except that at least one of the signatures must be that of either the City Manager or the Director of Finance):

a. Mayor
b. City Manager
c. Assistant City Manager
d. Director of Finance
e. Accountant

7. Standards of Ethics

The designated Investment Officer shall adhere to City's Code of Conduct. Additionally, the Investment Officer shall file with the Texas Ethics Commission and the City Council a statement disclosing any personal business relationship with an entity seeking to sell investments to the City or any relationship within the second degree by affinity or consanguinity to an individual seeking to sell investments to the City.

8. Establishment of Internal Controls

The Director of Finance will oversee the maintenance of a system of internal controls over the investment activities of the city.

9. Reporting

a. Quarterly Report

Investment performance will be monitored and evaluated by the Investment Officer. The Investment Officer will provide either quarterly or at more frequent intervals a comprehensive report that shall be certified by the Investment Officer and submitted to the City Council along with a periodic Financial Report. The investment report shall:

1. describe in detail the investment position of the City,
2. state the reporting period beginning market value; additions or changes to the market value during the period and ending market value for the period of each pooled fund group,
3. state the maturity date of each investment security,
4. state the fund for which each investment security was purchased, and
5. state the compliance of the investment portfolio with the City's Investment Policy and the Public Funds Investment Act.

b. Annual Report and Audit

The City, in conjunction with its annual financial audit, shall perform a compliance audit of management controls on investments and adherence to the City's Investment Policy and strategies.

V. REVIEW AND AMENDMENT

The City of Taylor City Council shall review its investments policy and investment strategies on an annual basis. It shall be the duty of the Investment Officer to notify the City Council of any significant changes proposed in investment methods or procedures prior to their implementation. The Investment Policy, including a section on Investment Strategies shall be adopted annually by the City Council.

CITY OF TAYLOR INVESTMENT POLICY
Attachment "A"
Approved Broker/Dealer List
July, 2009

Duncan-Williams

Edward Jones

Morgan Keegan

JP Morgan Chase Securities

The brokers meet City investment policy requirements of:

1) Providing a signed certification that the entity has received and reviewed the City's investment policy; and
2) The firm is licensed and in good standing with the Securities and Exchange Commission.

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: 9

Agenda Title: Consider entering into an Interlocal Agreement authorizing the City of Taylor to participate in a Joint and Cooperative Purchasing Program.

Council Action to be taken: Approve, deny or table

Initiating Department: Finance

Staff Contact: **Rosemarie Dennis, Finance Director**
Alice Benjiman, Accountant

1. INTRODUCTION/PURPOSE

To considering participating in an interlocal agreement with the Cities of Georgetown, Round Rock, Leander, Cedar Park, Hutto and Brushy Creek Regional Utility Authority, Inc. for the purpose of participating in a Joint and Cooperative Purchasing Program.

2. DESCRIPTION/ JUSTIFICATION

Over the last year, each entity had a representative that met on a regular basis in the attempt to form a Purchasing Cooperative (Central Texas Purchasing Alliance). The City of Taylor has the general legal authority granted by the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code to access the contracts of other government agencies available through local, regional and state cooperative purchasing programs.

The purpose of this agreement is to authorize the City of Taylor to participate in a joint and cooperative purchasing agreement with the Cities of Georgetown, Round Rock, Leander, Cedar Park, Hutto and Brushy Creek Regional Utility Authority, Inc. Participation in this cooperative program with other Williamson County municipalities and government entities will be highly beneficial to the taxpayers of the participating parties through savings. All participants in this agreement offer services and commodities that have been established through competitive bidding as prescribed by the laws of the State of Texas.

3. FINANCIAL/BUDGET

There is no cost to participate in this program.

4. TIMELINE CONSIDERATIONS

N/A

5. RECOMMENDATION

Staff recommends approval of this Interlocal Agreement for Joint and Cooperative Purchasing. Staff believes that participating in this program will produce cost and administrative savings.

6. REFERENCE FILES

9a. Interlocal Agreement for Joint and Cooperative Purchasing.

INTERLOCAL AGREEMENT
FOR JOINT AND COOPERATIVE PURCHASING
BETWEEN THE CITIES OF ROUND ROCK, CEDAR PARK, HUTTO,
LEANDER, GEORGETOWN, AND TAYLOR, TEXAS AND
THE BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.

This Interlocal Agreement (hereinafter referred to as the "Agreement") is entered into by and between the undersigned Local Governments of the State of Texas, namely the City of Round Rock, Texas, the City of Cedar Park, Texas, the City of Hutto, Texas, the City of Leander, Texas, the City of Georgetown, Texas, the City of Taylor, Texas, and the Brushy Creek Regional Utility Authority, Inc. (hereinafter referred to as the "Local Governments"), acting by and through their respective signature authorities, pursuant to and under authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, for the purpose of participating in joint and cooperative purchasing. The undersigned Local Governments may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271 of the Texas Local Government Code; and

WHEREAS, the Parties are all local governments as that term is defined in Section 271.101(2) of the Texas Local Government Code and in V.T.C.A., Government Code, Section 791.003(4)(B); and

WHEREAS, Section 271.102 of the Texas Local Government Code authorizes local governments to participate in a cooperative purchasing program with another local government or local cooperative organization; and

WHEREAS, a local government that purchases materials, supplies, goods, services or equipment pursuant to a cooperative purchasing program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods or services; and

WHEREAS, local governments in the State of Texas have the ability to realize substantial savings and economies of scale by jointly procuring materials, supplies, goods, services or equipment; and

WHEREAS, the Parties desire to enter into a cooperative purchasing program which will allow Parties to purchase materials, supplies, goods, services or equipment pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code.

WHEREAS, each of the Parties finds that its payments for services performed pursuant to this Agreement may be made from current revenues that are readily available only for payments that are due this fiscal year; and

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WHEREAS, the Parties find that the amount paid for the services performed under this Agreement fairly compensates the performing party; and

WHEREAS, the Parties, acting by and through their respective signature authorities, do hereby adopt and find the foregoing premises as findings of said governing bodies; and

NOW THEREFORE, in consideration of the mutual promises, inducements, covenants, agreements, conditions and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I
PURPOSE

1. The purpose of this Agreement is to establish a cooperative purchasing program between the Parties, which will allow the Parties to realize savings when purchasing materials, supplies, goods, services or equipment, and which will facilitate the Parties' ability to satisfy state laws requiring the Parties to seek competitive bids for the purchase of goods and services.

ARTICLE II
TERM

2. The term of this Agreement shall commence on the date on which all Parties hereto have executed this Agreement ("Effective Date"). This Agreement shall automatically renew for successive periods of one (1) year under the terms and conditions stated herein, unless superseded by a supplemental agreement or terminated as provided in this Agreement.

ARTICLE III
TERMINATION

3. A Party may withdraw its participation from this Agreement by providing thirty (30) days prior written notice to the other Parties. Withdrawal of one Party to this Agreement does not affect the validity of this Agreement as to the remaining Parties.

ARTICLE IV
PURCHASING

4. Each Party shall designate a person to act under the direction of, and on behalf of, said Party in all matters relating to the cooperative purchasing program. Each Party shall make payments directly to vendors under its respective contracts with vendors made under Chapter 271, Subchapter F, Texas Local Government Code. Each Party shall be responsible for the vendors' compliance with provisions relating to the quality of items and terms of delivery as to any items purchased by said Party under this Agreement.

ARTICLE V
CURRENT REVENUE

5. The Parties hereby warrant that all payments, expenditures, contributions, fees, costs, and disbursements, if any, required of each party hereunder or required by any other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment, addendum or associated document, shall be paid from current revenues available to the paying Party. The Parties hereby warrant that no debt is created by this Agreement.

ARTICLE VI
FISCAL FUNDING

6. The obligations of the Parties pursuant to this Agreement are contingent upon the availability and appropriation of sufficient funding. Any Party may withdraw from this Agreement without penalty in the event funds are not available or appropriated. However, no Party will be entitled to a refund of amounts previously contributed in the event of withdrawal for lack of funding.

ARTICLE VII
MISCELLANEOUS

7A. **Relationship of Parties**: This Agreement is not intended to create, nor should it be construed as creating, a partnership, association, joint venture or trust.

7B. **Notice**: Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, or by hand-delivery or facsimile transmission addressed to the respective Party at the address set forth opposite the signature of the Party.

7C. **Amendment**: This Agreement may be amended by the mutual written agreement of the Parties.

7D. **Severability**: In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

7E. **Governing Law**: The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws and court decisions of the State of Texas; and venue for any action concerning this Agreement shall lie in Williamson County, Texas.

7F. **Entire Agreement**: This Agreement represents the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

7G. **Recitals**: The recitals to this Agreement are incorporated herein.

7H. **Counterparts**: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original constituting one and the same instrument.

EXECUTED this _____ day of ________________, 2009.

CITY OF ROUND ROCK, TEXAS

By: ______________________________
Name: ____________________________
Title: _____________________________
Date Signed: _______________________

Address for Notice:

____
____
____

ATTEST:

By: ______________________________
City Secretary

FOR CITY, APPROVED AS TO FORM:

By: ______________________________
City Attorney

EXECUTED this _____ day of _________________, 2009.

CITY OF CEDAR PARK, TEXAS

By: ________________________________
Name: ______________________________
Title: _______________________________
Date Signed: _________________________

Address for Notice:
____
____
____

ATTEST:

By: ______________________________
City Secretary

FOR CITY, APPROVED AS TO FORM:

By: ______________________________
City Attorney

EXECUTED this _____ day of _________________, 2009.

CITY OF HUTTO, TEXAS

By: ____________________________________
Name: _________________________________
Title: _________________________________
Date Signed: ____________________________

Address for Notice:

____
____
____

ATTEST:

By: ______________________________
City Secretary

FOR CITY, APPROVED AS TO FORM:

By: ______________________________
City Attorney

EXECUTED this _____ day of ________________, 2009.

CITY OF LEANDER, TEXAS

By: ________________________________
Name: ______________________________
Title: ______________________________
Date Signed: _________________________

Address for Notice:

____
____
____

ATTEST:

By: ______________________________
City Secretary

FOR CITY, APPROVED AS TO FORM:

By: ______________________________
City Attorney

EXECUTED this _____ day of ________________, 2009.

CITY OF GEORGETOWN, TEXAS

By: ________________________________
Name: ______________________________
Title: ______________________________
Date Signed: _________________________

Address for Notice:
____
____
____

ATTEST:

By: ______________________________
City Secretary

FOR CITY, APPROVED AS TO FORM:

By: ______________________________
City Attorney

EXECUTED this _____ day of _________________, 2009.

CITY OF TAYLOR, TEXAS

By: ____________________________________
Name: __________________________________
Title: __________________________________
Date Signed: ____________________________

Address for Notice:
____
____
____

ATTEST:

By: _______________________________
City Secretary

FOR CITY, APPROVED AS TO FORM:

By: _______________________________
City Attorney

EXECUTED this _____ day of _________________, 2009.

BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC. (BCRUA)

By: ___________________________________
Name: ________________________________
Title: _________________________________
Date Signed: ___________________________

Address for Notice:

____
____
____

ATTEST:

By: ______________________________
Board Secretary

FOR BCRUA, APPROVED AS TO FORM:

By: ______________________________
Board Attorney

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #:	**10**
Agenda Title:	Consider amending the City's Policy for Naming City Streets and City Facilities and appoint additional members to the committee.
Council Action to be taken:	Consider changes and appoint new committee members
Initiating Department:	Community Development
Staff Contact:	**John Elsden, AICP, City Planner**

1. INTRODUCTION/PURPOSE

During our last Council meeting, the Council discussed changing the Street and facility naming Committee structure. Attached is a copy of the City's policy with proposed changes.

2. DESCRIPTION/ JUSTIFICATION

Under Section III, the current committee is composed of one (1) member of the City Council, one (1) member of the Planning & Zoning Commission and five (5) members of the Development Review Committee. All members serve three (3) year terms.

The proposed changes will make the Development Review Committee (DRC) support staff for the Committee, five members will be appointed from the public by City Council, these five will replace the DRC members, and the Council will also appoint a council member in addition to a member of the Planning and Zoning Commission for a total of seven members.

Following consideration of the proposed policy changes, the City Council may appoint new members to the committee at this time, if they have persons that they wish to appoint. One application has been received from Mr. Jose Orta for your consideration and is attached.

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

Staff recommends that the Council approve the amended policy and also consider appointing a member each for the Committee.

6. REFERENCE FILES

10a. Taylor Street and Facility Naming Policy with proposed changes
10b. Jose Orta application

City of Taylor, Texas

Policy for Naming City Streets and City Facilities

I. PURPOSE

The purpose is to establish a systematic, fair, and consistent policy and process for naming and renaming public streets and public facilities. The policy provides for citizen input, recommendations from a diverse committee, and City Council approval to adopt all names, with the exception of subdivisions, which may be approved by the Taylor Planning and Zoning Commission.

II. INTENT

The success and vitality of the City depends on the contribution and support from citizens, volunteers, financial donors, community leaders and officials. Honorees may include individuals, groups, companies or corporations. The City welcomes the opportunity to honor those who have demonstrated outstanding service and have worked to enhance our community. A fair and impartial policy is necessary to assure that naming or dedicating a street or facility based on an individual, group or corporation is reserved for those most deserving and appropriate, and to recognize substantial gifts benefiting the City. Further, naming decisions should not be influenced by personal prejudice, favoritism, political pressure or temporary popularity.

III. COMMITTEE COMPOSITION AND APPOINTMENTS

The Street and Facility Naming Committee shall consist of seven members. <u>One member from the Council shall be appointed by the Council</u> <u>and one member shall be appointed by the Council from</u> the Planning and Zoning Commission. <u>Five members shall be appointed from the general public by the Council, all of whom shall be residents of Taylor.</u> The Development Review Committee <u>shall act as staff support for the Committee</u>. The Committee Members shall be appointed <u>for three year terms</u> by the City Council with reappointments during January.

IV. OBJECTIVES

The naming process of public streets and facilities should:

1. Advance the reputation of the City, as well as increase the understanding and public support for its programs.

2. Ensure ready identification or geographical association by the public.

3. Encourage public participation in the naming, renaming and dedication of City streets and facilities.

4. Encourage naming of City streets and facilities in accordance with the geologic, geographical, cultural, historical, botanical, horticultural, scientific, or ecological features indigenous to the site and the community.

5. Encourage the dedication of lands, facilities, or donations by individuals and groups.

V. CRITERIA

A. GENERAL CRITERIA

The naming of public streets and public facilities may be based upon the following:

1. A significant monetary, grant, donation or bequest to the City toward the acquisition or development of a public street or public facility;

2. A substantial community service that has had a major impact or benefit to a large sector of the City from an individual who:

   a. demonstrates dedication to service in ways that brings special credit to the City, or

   b. volunteers and give extraordinary help to individuals, families, groups, or community services;

3. Naming a public street or facility after a living person or organization is not recommended. However, there are times when the community believes it to be the proper and necessary thing to do. The person should have made a major contribution to the City of Taylor in either deed or monetary contribution. The organization also should have made a major contribution to the City of Taylor in either deed or monetary contribution. Honoring a living individual or an organization, will be subject to the most careful examination.

   a. Some criteria considerations could include, but not limited to:

      i. A significant monetary contribution toward acquisition or development of a public street;

      ii. When eighty percent (80%) or more of the value of the property is donated by the person or organization;

iii. When eighty (80%) or more of the cost of development is donated by the person or organization to the enhancement of the quality of life in the community;

iv. When a major contribution has been made by the person or organization to the enhancement of the quality of life in the community;

v. Outstanding accomplishments by an individual for the good of the community. Quality of the contribution should be considered along with the length of service by the individual.

b. Implicit to the naming process is the intent of permanent recognition. Therefore, the process shall be careful and deliberate and, as much as possible, involve the evaluation criteria as follows:

i. Fine moral character;

ii. Demonstrated leadership qualities;

iii. Nature of the contributions compliment and support the mission of the City of Taylor;

iv. Substantial contribution, whether consisting of volunteer service, the provision of land or monetary donation.

v. Initiative and/or involvement relating to a specific program or project of exceptional merit, which has extensively and directly benefited the public.

4. If the public street or facility is to be named after an individual, it is recommended that it be after the person has been deceased for a minimum of two years. Some criteria considerations can include:

a. Same guidelines for living people or organization shall apply;

b. Proposed names commemorating a deceased person(s) shall be considered only if the living next of kin have approved the request; and

5. Honoring elected public officials who may be considered after the public service has concluded for a minimum of two years.

6. If the public street or facility is named for geographical, geologic, historical, botanical, horticultural, scientific, or ecological features indigenous to the site or to the immediate vicinity of the site, it is recommended that street or facility be named after City of Taylor historic sites, descriptive names, places or features (such as streets, schools, or natural resources). Names should be chosen after a feature that is associated with a real characteristic of the site and easy to remember. That feature should be relatively timeless so that the name does not diminish in appropriateness with time. Some criteria considerations can include:

a. Use of names should be controlled to avoid duplication confusion.

b. For street naming, if named after a geographic location, it should be associated with the street immediately adjacent to the location.

B. **PUBLIC STREETS AND FACILITIES**
This policy only applies to streets and facilities after they have been dedicated as public.

1. As a general policy, public streets and facilities shall be named in accordance with the general criteria outlined in Section IV, subsection A.

2. A public street shall not be renamed unless the owners of two-thirds of the linear feet of the abutting property agree to change the name of the street, unless the change is required for emergency provider's purposes. Individuals and groups submitting the request shall be required to provide a notarized list of the concurring property owners' agreement.

3. The name of a street that is located within a designated historical district shall not be changed unless there are compelling reasons for the change.

C. **NEW SUBDIVISIONS**
Streets located within new subdivisions shall be named subject to Sec. 2.8.11 of the Subdivision Ordinance.

V. PROCEDURES

A. SUBMISSIONS OF REQUESTS

Requests for the naming or the renaming of public streets or public facilities shall be submitted in writing to the Office of the City Manager. The person(s) submitting the request shall provide background information regarding the rationale behind the request, including biographical information if the proposal is to name the property for an individual. Any letters from appropriate organizations and individuals which provide evidence of substantial local support for the proposal shall be submitted at that time.

B. SUBMISSION TO COMMITTEE

The City Manager shall submit the request to a committee appointed by the City Council. Said committee shall research, review, and study the recommendations and all its supporting documentation. A Public Meeting will be conducted regarding the request and thereafter allow thirty (30) days after the Public Meeting for public comment.

C. SUBMISSION TO THE CITY COUNCIL

The committee shall submit its recommendation regarding the request to the City Council. The City Council will review the street naming and/or name change requests or naming of public facilities, and shall be the final authority for all such decisions.

City of Taylor
Boards and Committee
Application

PLEASE TYPE OR PRINT CLEARLY:

Name Jose T. Orta

Address (Residence and Mailing)

1320 Howard

Taylor, TX 76574

How long at this residence? 18 Years

Phone (Home) 512-365-2143

Cell Phone 512-818-9802

Fax N/A

Email Orta_jose@hotmail.com

Occupation PAP Monitor

Employer Taylor CNET

Address 410 West 7th Street

City Taylor, TX 76574

Work Phone 512-352-7099

Business owner? ☐ Yes ☒ No

Additional information? N/A

A list of Boards and Commissions and their meeting dates and times is included on the back of this form. Please consider attending a committee meeting of interest to you prior to submitting your application. Check the website at http://www.ci.taylor.tx.us for a complete roster of committee appointees.

List the Board or Commission you are applying for: Street Naming Committee, Zoning Board of Adjustments

List experience, training, skills or interests which you believe you could bring to this position. (Attach resume or additional pages if needed.) See Attached

APPLICANTS FOR ZONING BOARD OF ADJUSTMENTS, PLANNING AND ZONING, BUILDING AND STANDARDS COMMISSION, AND PARKS AND RECREATION BOARD MUST BE A LEGAL RESIDENT OF THE UNITED STATES AND A VOTING RESIDENT WHO LIVES AND RESIDES* IN THE CITY OF TAYLOR. *(*Effective 12/16/08. Residency requirement does not apply to the Moody Museum Board, Library Board, Main Street Advisory Board, Airport Board, or the TEDC. Change in residency status during term can result in termination of appointment.)*

I hereby swear and affirm that the information provided above is true and correct

Signature ______________________ Date 7.1.09

Jose T. Orta | **(512) 365-2143 Home**
1320 Howard | **(512) 818-9802 Cell**
Taylor, TX 76574 | **Orta_jose@hotmail.com**

Educational Background	**Master of Science in International Relations** **Troy State University** **Troy, AL 36082**	**Awarded 1989**
	Bachelor of Science in Business and Management **University of Maryland** **College Park, MD 20742**	**Awarded 1987**

March 2005 - Present | **Taylor CNET** | **(512) 352-7099**
1410 West 7th Street
Part-Time | **Taylor, TX 76574**

Public Access Point Technician (PAP) - Responsible for 7 computer public access points in Taylor Texas with primary focus at the CNET site at Our Lady of Guadalupe Church Taylor. Provide on site monitoring for public access including providing computer training, research and assistance. Tutored, trained and instructed adults, teenagers and children as needed. Maintain record of computer use and activity. Other duties as directed by CNET Manager.

January 1997 - Present | **Orta Enterprises** | **(512) 365-2143**
1320 Howard
Taylor, TX 76574

Work and volunteer for various non-profit organizations, grassroots organizations, and governmental agencies writing grants, writing health related articles, reading/scoring grant proposals, serving on Request for Funding Committees, organizing various trainings, workshops, tutoring, community organizing, tax preparation, health seminars and conferences with the sole purpose of bringing attention to health, political, minority and empowerment issues from a rural, disabled, elderly and Hispanic perspective.

October 1993 - December 1996 | **Informe-SIDA** | **Closed - No longer in existence.**
1715 E. 6th Street, Ste. 112
Austin, TX 78702

Project Director - HIV/AIDS Prevention Project Director whose primary duties included strategic planning, budgeting, public relations, grant writing, supervision of staff, fundraising and program development. Ensured that the organization met the core mission of providing HIV prevention education and early intervention services to people of color with HIV and participated fully with other HIV service organizations in a contiguous continuum of care. Conducted various trainings, workshops and conferences on the topic of HIV infection, prevention and educational, treatment strategies many of which were approved for Social Work continuing educational units (CEU's).

June 1992 - October 1993 | **Taylor Mental Health Center** | **Closed - No**

612 North Main Street — longer in
Taylor, TX 76574 — existence.

Assistant Director - Professional social work services providing community mental health assistance to clients of all ages within Eastern Williamson County. Duties include direct care services; psychiatric crises management, client advocacy, coordinating and utilizing community resources and services to assist clients remain in the least restrictive environment possible.

April 1990 - May 1992	Texas Dept. Of Human Services 115 West 6th Street Taylor, TX 76574	(512) 352-3611

Medical Eligibility Specialist - Screen and determine eligibility for the Medical Services for the aged, blind and disabled. Interview families and clients and verify and investigate financial, income, medical and other eligibility requirements. Act as a community liaison between DHS and three nursing facilities, a mental retardation facility and the public at large.

November 1982 - January 1990	United States Air Force 215 South San Saba St. San Antonio, TX 78202

Fuels Specialist - As a fuels accountant, document, process, and report all accountable fuel transactions to the Defense Supply Center account and the Air Force Stock Funds Account. Performed and coordinated detailed fuel war capability and analysis in support of military exercises.

Memberships & Civic Organizations:

League of United Latin American Citizens (LULAC)
Williamson County Democratic Party
East Williamson County Democratic Club
Texans United for Families (TUFF)
Stonewall Democratic Club
Habitat For Humanity
Keep Taylor Beautiful (KTB)
Taylor Housing Authority Board Member
American Association or Retired Persons (AARP)
Former T. H. Johnson's Campus Improvement Committee
Volunteer Income Tax Assistance (VITA) Program
Mentoring a Pasemaan Student (MAPS)
Helping One Student to Succeed (HOSTS)
Williamson County HIV Awareness Coalition
Air Force Sergeant's Association
Austin Area Comprehensive HIV Planning Council
KOOP Radio Programmer
Literacy Council of Williamson County

Bilingual (Spanish). Passed the US Air Force Spanish Language Proficiency Exam in 1988.

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: **11**

Agenda Title: Consider accepting donation of fire equipment from Williamson County to the City of Taylor Fire Department.

Council Action to be taken: Formally accept or reject

Initiating Department: Fire Department

Staff Contact: **Chief Bruce Watson**

1. INTRODUCTION/PURPOSE

In 2002, the Taylor Volunteers received a donated ambulance from Williamson County for the purpose of making a Mobile Radio Communications and Command vehicle for the city and area to use for emergencies. During our recent research of vehicle ownership, it was discovered that the donated ambulance's title had remained in the name of Williamson County. After I notified the County's EMS Director and Fleet Services Manager, they immediately requested a copy of the title for this ambulance from DPS and asked if the city would now accept the ambulance as a donation to clear up the records.

2. DESCRIPTION/ JUSTIFICATION

The 1997 Ford F350, with 100,820 miles on it, has been insured by the City of Taylor since it's donation in November, 2002. This ambulance has been used for Emergency Communications and a Command Post at times during this period of 11/2002 to present. During my first six months with the City, I realized this vehicle could serve additional purposes, such as, Swiftwater and High Angle rope rescues, as well as communications and command. I currently do not have a vehicle in my fleet that will serve the multiple functions as this ambulance. The current radio call sign for this ambulance is Technical Rescue One or TR1.

3. FINANCIAL/BUDGET

No financial impact, only preventive maintenance and fuel that the City has already been covering in the past.

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

Staff recommends formal acceptance of this donation. Our staff will greatly appreciate the continued use of this vehicle.

6. REFERENCE FILES

11a. Documents from Williamson County re: donated vehicle
-Minutes, November 19, 2002 approving donation (Agenda item no. 16)
-County Auditor memo re: official transfer of vehicle

MINUTES

of the

WILLIAMSON COUNTY COMMISSIONERS' COURT MEETING

November 19, 2002

THE STATE OF TEXAS)(

COUNTY OF WILLIAMSON)(

BE IT REMEMBERED that at 9:40 a.m. on November 19, 2002, a SPECIAL SESSION of the Commissioners' Court of Williamson County, Texas, was held with the following being present, to-wit:

JOHN C. DOERFLER, County Judge
ABSENT MICHAEL L. HEILIGENSTEIN, Commissioner, Precinct 1
GREGORY W. BOATRIGHT, Commissioner, Precinct 2
DAVID HAYS, Commissioner, Precinct 3
FRANKIE LIMMER, Commissioner, Precinct 4
EUGENE D. TAYLOR, County Attorney
NANCY E. RISTER, County Clerk

AGENDA ITEM 1

Hear any interested person and consider forming the next agenda or adding items to today's agenda.

Williamson County Capital Metro Representative David Harper gave his monthly report and discussed the possibility of low-cost rental to Williamson County by Capital Metro of a passenger van for use as a shuttle service for the Justice Center while it is under construction.

Red Moehring of Granger asked the court to set a policy on private shooting ranges regarding safety standards. He expressed concern about a private shooting range run by STI, Inc. He said that there have been incidents of stray bullets being found at nearby businesses. He stated that the incidents had been reported to the Sheriff's Office. Sheriff Maspero said that the matter had been turned over to the District Attorney's office to determine if criminal charges should be filed. County Attorney Gene Taylor asked Mr. Moehring to provide his office with the information he has collected regarding a proposed ordinance.

Gerry Cheney of the Brushy Bend Homeowners Association, Lisa Birkman of Brushy Creek, Joanie Risinger of Cat Hollow, Julie Bassett of Oak Brook Subdivision, and Jennifer Barfield, representing the Breakaway Park and Whippoorwill Acres Neighborhood Association, addressed the court in opposition to a proposed amphitheater project on Brushy Creek Road. They cited traffic, noise and safety concerns, as well as misuse of tax dollars as reasons for their opposition to the project. Commissioner Boatright read a letter from Commissioner Heiligenstein stating that no final plans have been made for the site, and that he would be like to form a citizens' advisory committee to research issues regarding the site. Ms. Bassett brought a petition opposing the project with over 200 signatures, and stated that the neighborhood had just started collecting signatures. Ms. Barfield brought a petition with over 700 signatures of neighborhood residents who oppose the amphitheater project. Commissioner Boatright stated that Commissioner Heiligenstein told him that the project would be on hold until he had conducted neighborhood meetings to discuss the issue. Commissioner Boatright stated that no action would be taken on the project without some input from the surrounding communities. Commissioner Hays and Commissioner Limmer stated that if their constituents did not want or support the project that they would not support it.

AGENDA ITEM 2

Read and approve the minutes of the last meeting.

Moved: Commissioner Hays
Seconded: Judge Doerfler
Motion: To approve the minutes of the November 12, 2002 meeting.
Vote: 4 - 0

✱ **AGENDA ITEM 16**

Consider donating a 1997 Ford F-350 Ambulance, VIN #1FDKF37F8VEB92762, to the Taylor Fire Department for use as an Emergency Communications Vehicle.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To approve donation of a 1997 Ford F-350 Ambulance, VIN #1FDKF37F8VEB92762, to the Taylor Fire Department for use as an Emergency Communications Vehicle.
Vote: 4 - 0

< Attachment >

Wendy Coco

From:	John Sneed
Sent:	Thursday, November 07, 2002 8:55 AM
To:	Jane Tablerlou
Cc:	Wendy Coco
Subject:	Commissioner's Court Agenda Item

11/19/02

Dear Jane or Wendy:

Would you please add the following to the Commissioner's Court Agenda.

> Consider donating a 1997 Ford F-350 Ambulance, VIN # 1FDKF37F8VEB92762, to the Taylor Fire Department for use as an Emergency Communications Vehicle.

Sincerely,

John

approved 11-19-02
John C. Doerfler

5 years old surely ain't too old!!
O.K. by me.
Thanks.
JJ

Williamson County

Office of the County Auditor

MEMORANDUM

Date: May 26, 2009

To: John Sneed

From: Lisa Moore

Re: Taylor Ambulance

John,

Attached are the following:

- Certified copy of the title to the ambulance donated to the Taylor Fire Department
- Form 130-U, *Application for Texas Certificate of Title*
- Form VTR-346, *Texas Motor Vehicle Transfer Notification*
- Title Release Form (with a copy of the title photocopied on the top portion of the form)
- Copy of the Commissioners' Court minutes of November 19, 2002; the vehicle donation is given in agenda item #16

If you could do the following, it would be appreciated:

- Assign the back of the title to the Taylor FD (this is the first section on the back of the title entitled "Assignment of Title;" as the forms are to be backdated to 2002, a best-guess estimate of the odometer reading at the time of the transfer will suffice; you indicated you would sign as the seller, and a rep from Taylor FD should sign as the buyer).
- On the 130-U, you would complete #6 (odometer reading), #18 (name of seller and odometer reading again), and #22 as seller, and date the form; the purchaser would complete #23 (signature of purchaser and date).
- On form VTR-346, you would indicate the date of sale (under Transfer Details towards the bottom), sign and date it, and the purchaser would also sign and date this form.
- On the Title Release Form, you would print, sign and date the form.
- We will need the license plates back as soon as is possible. As the vehicle is registered in the County's name, the plates belong to us. The Taylor FD will receive new plates once they register the vehicle in the city's name. Current County policy states that no title is released without plates having been surrendered first, but on a vehicle transfer effected seven years ago, we have a bit of latitude.
- Ideally, I should receive the following:
    - A photocopy of the back of the title after assignment is completed
    - A photocopy of the completed and signed 130-U form
    - The original VTR-346 once it is completed and signed; if the purchaser would like a photocopy, that is at your discretion
    - The original Title Release Form, indicating you received the title
    - The license plates

If you have any questions or need additional information, please do not hesitate to contact me. Thank you for your patience on this matter.

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: **12**

Agenda Title: Consider approving Resolution R09-17 to execute the Advance Funding Agreement for the Surface Transportation Program-Metropolitan Mobility (STP-MM) grant award from the Texas Department of Transportation for a bicycle/pedestrian corridor on State Highway 95.

Council Action to be taken: Approve, deny or table

Initiating Department: Public Works/Engineering

Staff Contact: **Danny Thomas, Director of Public Works**
Casey Sledge, Sledge Engineering

1. INTRODUCTION/PURPOSE

To approve, by resolution, an Advance Funding Agreement with TxDOT for the pedestrian corridor on SH 95.

2. DESCRIPTION/ JUSTIFICATION

As part of the application process to CAMPO for this project, it is time to consider an Advance Funding Agreement (AFA) with TxDOT. This agreement is, in essence, our contract with TxDOT for the project. The agreement stipulates how the City of Taylor must handle the project, as well as specifying the finances of the project. Of major concern; however, is the funding of this project. From the beginning of the application process for this project, Staff has advised you that the City's matching share of this project would be approximately $366,758. That figure has now been increased to cover the State's **estimated** administrative costs by approximately $44,011, bringing the City's total estimated share to some $410,769.

In March, 2009, Casey met with TxDOT representatives on the AFA and discovered that the City's share (the $366,758) could only be applied to construction and construction engineering costs only. Since that meeting we have been diligently working with the State to add "Design and Construction" into the description of the project to eliminate the additional costs to the city for design of the project. This change was just received last week.

3. FINANCIAL/BUDGET

Please see the attached budget in the AFA.

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

To approve Resolution R09-17 executing the Advanced Funding Agreement with TxDOT for the bicycle and pedestrian corridor on SH 95

6. REFERENCE FILES

12a. TxDOT letter of notification
12b. Advanced Funding Agreement (revised)
12c. Resolution R09-17
12d. Map of Project

Rec'd 4-1-09

Texas Department of Transportation

P.O. DRAWER 15426 • AUSTIN, TEXAS 78761-5426 • (512) 832-7000

March 27, 2009

Williamson County
CSJ: 0320-03-089
SH 95: N of TH Johnson Street
to Rio Grande Street

Bob Vantil
Director of Community Development
400 Porter Street
Taylor, Texas 76574

Dear Mr. Vantil:

Enclosed are two original Advance Funding Agreements for the project referenced above. The project consists of the construction of a bicycle pedestrian corridor on SH 95. These Agreements are duplicates of the Agreements sent under cover letter dated August 8, 2008.

A resolution (designated as Attachment A) by the City Council approving entering into this Agreement is required for execution of this Agreement. In addition, please include a Location Map (to be designated as Attachment B) with each signed and dated Agreement.

Please return both partially executed Agreements to this office for further processing. An executed copy will be returned for your records. Upon execution, a check made payable to the Texas Department of Transportation Trust Fund in the amount of $29,341.00 will be due to activate the project and before any review work by the State.

If you have any questions, please contact me at (512) 832-7050.

Sincerely,

Patricia L. Crews-Weight, P.E.
Director of Design - AUS

Attachments

CSJ #0320-03-089
District # 14
Code Chart 64 #41900
SH 95: N of TH Johnson St to
Rio Grande St.
CFDA # 20.205

STATE OF TEXAS §

COUNTY OF TRAVIS §

ORIGINAL

LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For A
STP Metropolitan Mobility Project
On-System

THIS AGREEMENT (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the "State", and the City of Taylor, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and

WHEREAS, the Texas Transportation Commission passed Minute Order 110753, authorizing the State to undertake and complete a highway improvement generally described as corridor study for hike and bike; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated ____________________ which is attached hereto and made a part hereof as Attachment A for construction of a hike/bike facility along SH 95 in the city of Taylor at the location shown on the Map in Attachment B hereinafter referred to as the Project.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

CSJ #0320-03-089
District # 14
Code Chart 64 #41900
SH 95: N of TH Johnson St to
Rio Grande St.
CFDA # 20.205

AGREEMENT

1. **Period of the Agreement**
This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. **Scope of Work**
The scope of work is the construction of a hike and bike facility along SH 95 in Taylor as shown on Attachment B.

3. **Local Project Sources and Uses of Funds**
   a. The total estimated cost of the Project is shown in the Project Budget - Attachment C which is attached hereto and made a part hereof. The expected cash contributions from the federal or State government, the Local Governments, or other parties is shown in Attachment C. The State will pay for only those project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.
   b. This project cost estimate shows how necessary resources for completing the project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
   c. The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
   d. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.
   e. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
   f. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.

g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
h. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
i. The State will not pay interest on any funds provided by the Local Government.
j. If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local project, unless this Agreement is terminated at the request of the Local Government prior to completion of the project.
k. If the project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the amount of the fixed price or the incremental payment schedule.
l. If the Local government is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
m. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

The State will not execute the contract for the construction of the project until the required funding has been made available by the Local Government in accordance with this Agreement.

4. Termination of this Agreement

This Agreement shall remain in effect until the project is completed and accepted by all parties, unless:

a. the Agreement is terminated in writing with the mutual consent of the parties;
b. the Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
c. the Local Government elects not to provide funding after the completion of preliminary engineering, specifications and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project.

5. Amendments
Amendments to this Agreement due to changes in the character of the work or terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

6. Remedies
This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

7. Utilities
The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

8. Environmental Assessment and Mitigation
Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

a. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
b. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.
c. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
d. The Local Government is responsible for the preparation of the NEPA documents required for the environmental clearance of this project. Preparation and coordination of the environmental documentation shall be through the TxDOT Austin District Environmental Coordinator at (512) 832-7168.
e. The Local Government shall provide the State with written documentation from appropriate regulatory agency(ies) that identified environmental clearances have been obtained prior to advertisement for bids.

9. Compliance with Texas Accessibility Standards and ADA
All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes

minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

The Local Government has responsibility for the performance of architectural and engineering services.

The design shall conform to the AASHTO *Guide for the Development of Bicycle Facilities*, and the current edition of the State's *Roadway Design Manual* and the engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges,* and the special specifications and special provisions related thereto.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases.

Professional services contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.

11. Construction Responsibilities

a. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
b. The Local Government will use its approved contract letting and award procedures to let and award the construction contract.
c. Prior to their execution, the Local Government will be given the opportunity to review contract change orders that will result in an increase in cost to the Local Government.
d. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
e. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

12. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

13. Right of Way and Real Property
The Local Government is responsible for the provision and acquisition of any needed right of way or real property.

14. Notices
All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

Local Government:	State:
Mayor 400 Porter Street Taylor, Texas 76574	Austin District Engineer P.O. Drawer 15426 Austin, Texas 78761-5426

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party.
Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

15. Legal Construction
If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

16. Responsibilities of the Parties
The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

17. Ownership of Documents
Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

18. Compliance with Laws
The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies

or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

19. Sole Agreement
This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

20. Cost Principles
In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

21. Procurement and Property Management Standards
The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

22. Inspection of Books and Records
The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

23. Office of Management and Budget (OMB) Audit Requirements
The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

24. Civil Rights Compliance
The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

25. Disadvantaged Business Enterprise Program Requirements
The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

26. Debarment Certifications
The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the [Contractor, Local Government, Engineer, or whatever] certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

27. Lobbying Certification
In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this Agreement, the parties affirm this lobbying certification with respect to the individual projects and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

28. Insurance
If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate

of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

29. Signatory Warranty
The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE LOCAL GOVERNMENT

____
Name

____
Printed Name and Title

____
Date

THE STATE OF TEXAS
Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

____
Janice Mullenix
Director of Contract Services
Texas Department of Transportation

____
Date

CSJ #0320-03-089
District # 14
Code Chart 64 #41900
SH 95: N of TH Johnson St to
Rio Grande St.
CFDA # 20.205

ATTACHMENT A

Resolution or Ordinance

RESOLUTION R09 -17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TAYLOR, TEXAS AUTHORIZING THE EXECUTION OF AN ADVANCE FUNDING AGREEMENT (AFA) FOR A SURFACE TRANSPORTATION PROGRAM METROPOLITAN MOBILITY (STPMM) GRANT AWARD THROUGH THE CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION PROVIDED FOR BY THE DISTRIBUTION OF FEDERAL TRANSPORTATION FUNDS TO METROPOLITAN PLANNING ORGANIZATIONS WITH POPULATIONS OVER 200,000 AND AUTHORIZING THE CITY MANAGER TO ACT AS THE CITY'S CHIEF EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE PROGRAM.

WHEREAS, it is necessary and in the best interest of the city of Taylor to approve an Advanced Funding Agreement (AFA) for funding under the Surface Transportation Program – Metropolitan Mobility;

NOW, THEREFORE, BE IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF TAYLOR, TEXAS:

1. The City Council approves the Advance Funding Agreement for a Surface Transportation Program Metropolitan Mobility (STP MM) award through the Capital Area Metropolitan Planning Organization, and

2. That the award is for the design and construction of a bicycle and pedestrian corridor on SH 95 and that the award is for seventy five percent of reimbursement funds from the STP MM with a commitment of 25 percent match of the total budget for the project from the city of Taylor, and

3. That the City Council directs and designates the City Manager as the City's Chief Executive Officer and Authorized Representative to act in matters in connection with this application and the City's participation in the Program.

PASSED AND APPROVED this 9th day of July 2009.

Ella Pumphrey Jez, Mayor Pro Tem
City of Taylor, Texas

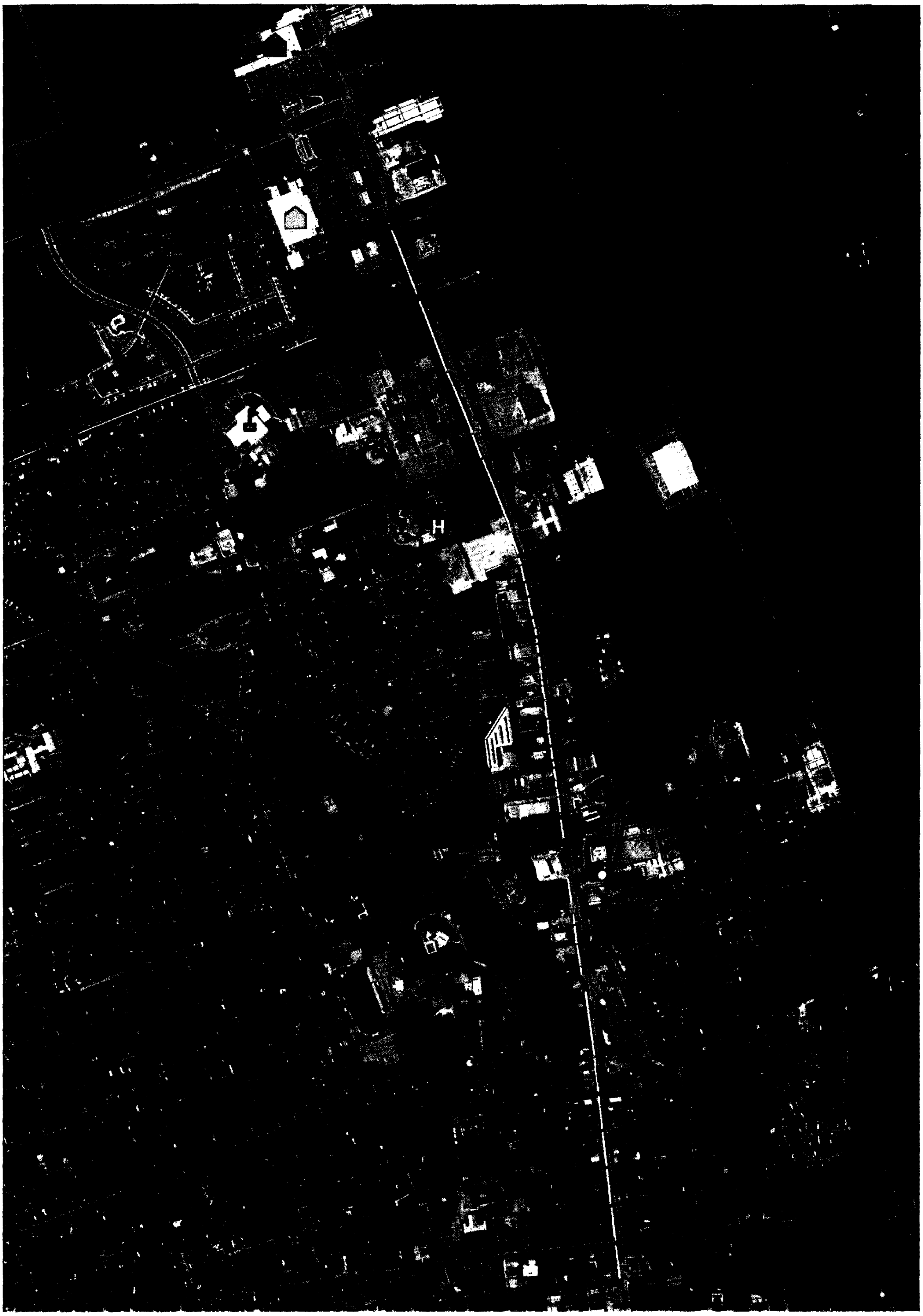
Attest:

Susan Brock, City Clerk

CSJ #0320-03-089
District # 14
Code Chart 64 #41900
SH 95: N of TH Johnson St to
Rio Grande St.
CFDA # 20.205

ATTACHMENT B

Location Map Showing Project


H

CSJ #0320-03-089
District # 14
Code Chart 64 #41900
SH 95: N of TH Johnson St to
Rio Grande St.
CFDA # 20.205

ATTACHMENT C

Project Budget

The Local Government will participate in the cost of the construction of a hike and bike facility along SH 95 in Taylor, which is an on-system location. Based on the funding Category 4A and the Local Government's overmatch participation, the Local Government's participation is 25% of the total estimated cost of this particular improvement and the other 75% will be paid for with federal funds. Reimbursement will be made on an 80% Federal/20% Local cost share to the maximum reimbursable amount of $1,100,272. The Local Government's estimated participation of this additional work is $410,769, including preliminary engineering, construction items, construction engineering and inspection, and Direct Costs. The State has estimated the project to be as follows:

Description	Total Estimate Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
CONSTRUCTION COSTS							
Design and Construction of hike/bike facility	$1,467,030	75%	$1,100,272	0%	$0	25%	$366,758
Subtotal	$1,467,030		$1,100,272		$0		$366,758
Direct State Costs (including plan and environmental review, inspection and oversight) 3% of Est Const Costs	$44,011	0%	$0	0%	$0	100%	$44,011
Indirect State Costs (no local participation required except for service projects)	$0	0%	$0	0%	$0	0%	$0
TOTAL	$1,511,041		$1,100,272		$0		$410,769

Direct State Cost will be based on actual charges.

Local Government's Participation is (25%) = $366,758 plus Direct Costs (100%) = $44,011

It is further understood that the State will include only those items for the improvements as requested and required by the Local Government. This is an estimate only; final participation amounts will be based on actual charges to the project.

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: 13

Agenda Title: Consider immediate funding needs for the Taylor Regional Park and Sports Complex.

Council Action to be taken: Consider funding needs or pass on item

Initiating Department: City Administration

Staff Contact: **Jim D. Dunaway, City Manager**
Casey Sledge, P.E., Consulting City Engineer

1. INTRODUCTION/PURPOSE

Staff would like to discuss the funding of both the shade structures and the additional (3rd) restroom/concession building at the Regional Park. Timing is becoming critical on both of these items as the park construction begins to wind down. Casey will be present to discuss both of these items and the costs associated with both of these items.

2. DESCRIPTION/ JUSTIFICATION

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

6. REFERENCE FILES

Taylor Regional Park & Sports Complex

TOTAL CONSTRUCTION COST:	$ 7,605,796.25
TOTAL SOFT COST:	$ 614,106.50
TOTAL PROJECT COST:	$ 8,219,902.75

FUNDING:

SOURCE		Possible Amount	Amount Considered
Park Land $750,000 less soft cost	$	750,000	$ 750,000.00
TPWD Grants	$	900,000	$ 900,000.00
2007 Bond Proceeds Gen Fund	$	2,979,000	$ 2,979,000.00
2007 Bond Interest Earned	$	76,926	$ 76,926.00
2008 Bond Proceeds Gen Fund	$	2,975,000	$ 2,975,000.00
2007 Bond Future Interest	$	50,000	$ 50,000.00
2007-08 Bond Proceeds Util Fund - Util Bid	$	340,382	$ 340,382.00
2007-08 Bond Proceeds Util Fund - Pump Sta Fill			$ 18,819.00
2007-08 Bond Proceeds Util Fund - Pump Sta Elect			$ 5,978.00
WILCO Funding	$	500,000	$ 500,000.00
TxU possible funds	$	82,187	$ 70,990.39
CVS Donation - signage	$	10,000	$ -
Available Park Land Sale Allocation	$	81,000	$ -
Park Land Dedication Fees	$	-	$ -
TOTAL FUNDING:	*$*	*8,744,495*	**$ 8,667,095.39**
BALANCE REMAINING:			**$ 447,192.64**

Shade Structures - HIP (8) Flex Fields - full option	$	443,076
Shade Structures - HIP (2) Champ Fields - full option	$	144,945
BALANCE AFTER BALLFIELD SHADES:		**(140,828.36)**

OTHER COSTS:

Enhanced Signage - design, installation	$	60,000.00
3rd restroom/concession - as designed and bid	$	250,000.00
Pre-Fab Restroom/concession - masonry	$	140,000.00
P/A system; 10 fields	$	44,000.00
Football Shade Structure	$	100,000.00
Playscape Shade Structures	$	50,000.00
Basketball Shade Structure	$	10,000.00
Batting Cage - lighted	$	102,072.00

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: 14

Agenda Title: **Executive Session.** The Taylor City Council will conduct a closed executive meeting pursuant to the provisions of the Open Meetings Law, Chapter 551, Government Code, in accordance with the authority contained in Section 551.087 to discuss or deliberate regarding commercial and/or financial information on a business prospect that the City of Taylor, Texas, seeks to have locate, stay, or expand in or near the City of Taylor, Texas, and with which the City of Taylor, Texas, is conducting economic development negotiations and/or deliberate the offer of financial or other incentives to the business prospect.

Council Action to be taken: Adjourn into Closed session.

Initiating Department: City Administration

Staff Contact: **Jim D. Dunaway, City Manager**

1. INTRODUCTION/PURPOSE

2. DESCRIPTION/ JUSTIFICATION

The Taylor City Council will conduct a closed meeting under Section 551.087 of the Texas Government Code which allows such a closed meeting and which Rules conflict with the Texas Open Meetings Act.

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

6. REFERENCE FILES

14a. Executive Session form 551.087

TAYLOR CITY COUNCIL
CERTIFIED AGENDA - EXECUTIVE SESSION

1. OPEN MEETING ANNOUNCEMENT

THE CITY OF TAYLOR CITY COUNCIL BEING CONVENED IN OPEN SESSION AND DECLARING A QUORUM, ON THIS DATE July 9, 2009 AFTER POSTING AN OFFICIAL AGENDA INDICATING THE NEED FOR AN EXECUTIVE SESSION AND PURSUANT TO SECTION 551.087, TEXAS GOVERNMENT CODE, THE COUNCIL WILL ADJOURN INTO EXECUTIVE SESSION TO DISCUSS OR DELIBERATE REGARDING COMMERCIAL AND/OR FINANCIAL INFORMATION ON A BUSINESS PROSPECT THAT THE CITY OF TAYLOR, TEXAS, SEEKS TO HAVE LOCATE, STAY, OR EXPAND IN OR NEAR THE CITY OF TAYLOR, TEXAS, AND WITH WHICH THE CITY OF TAYLOR, TEXAS IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS AND/OR TO DELIBERATE THE OFFER OF FINANCIAL OR OTHER INCENTIVES TO THE BUSINESS PROSPECT.

ANY ACTION RESULTING FROM THIS EXECUTIVE SESSION WILL BE TAKEN IN OPEN SESSION IMMEDIATELY FOLLOWING THE EXECUTIVE SESSION.

2. BACK TO OPEN SESSION

THE TIME IS _______ P.M. AND WE WILL NOW RESUME THE OPEN SESSION OF THE COUNCIL MEETING. NO ACTION OR VOTE WAS TAKEN ON ANY MATTER DISCUSSED IN EXECUTIVE SESSION.

CERTIFICATION

I, Ella Jez, Mayor Pro Tem of the City of Taylor, do hereby certify that this Agenda of an Executive Session of the City Council is a true and correct record of the proceedings.

WITNESS my hand this the 9th day of July, 2009.

____
Ella Pumphrey Jez, Mayor Pro Tem

City Council Meeting
July 9, 2009
Agenda Item Transmittal

Agenda Item #: **15**

Agenda Title: Executive Session II.

Council Action to be taken: Consider Presiding Judge position

Initiating Department: Municipal Court

Staff Contact: **Jim D. Dunaway, City Manager**

1. INTRODUCTION/PURPOSE

This Executive Session is to consider the position of Presiding Judge.

2. DESCRIPTION/ JUSTIFICATION

The Taylor City Council will conduct a closed meeting under Section 551.074 of the Texas Government Code in order to meet with its City Attorney on a matter in which the duty of the Attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas authorize and allow such a closed meeting and which Rules conflict with the Texas Open Meetings Act.

3. FINANCIAL/BUDGET

4. TIMELINE CONSIDERATIONS

5. RECOMMENDATION

6. REFERENCE FILES

15a. Executive session form

TAYLOR CITY COUNCIL
CERTIFIED AGENDA - EXECUTIVE SESSION

1. <u>OPEN MEETING ANNOUNCEMENT</u>

THE CITY OF TAYLOR CITY COUNCIL BEING CONVENED IN OPEN SESSION AND DECLARING A QUORUM, ON THIS DATE July 9, 2009 AFTER POSTING AN OFFICIAL AGENDA INDICATING THE NEED FOR AN EXECUTIVE SESSION AND PURSUANT TO THE OPEN MEETINGS LAW, SECTION 551.074 TEXAS GOVERNMENT CODE REGARDING THE Presiding Municipal Judge POSITION, THE COUNCIL WILL ADJOURN INTO EXECUTIVE SESSION.

ANY ACTION RESULTING FROM THE EXECUTIVE SESSION WILL BE TAKEN IN OPEN SESSION IMMEDIATELY FOLLOWING THE EXECUTIVE SESSION.

2. <u>BACK TO OPEN SESSION</u>

THE TIME IS _______ P.M. AND WE WILL NOW RESUME THE OPEN SESSION OF THE COUNCIL MEETING. NO ACTION OR VOTE WAS TAKEN ON ANY MATTER DISCUSSED IN EXECUTIVE SESSION.

CERTIFICATION

I, Ella Pumphrey Jez, Mayor Pro Tem of the City of Taylor, do hereby certify that this Agenda of an Executive Session of the City Council is a true and correct record of the proceedings.

WITNESS my hand this the 9th day of July, 2009.

____
Ella Pumphrey Jez, Mayor Pro Tem