



**AMENDED AGENDA
WATAUGA CITY COUNCIL
PRE-COUNCIL & REGULAR MEETING
MONDAY, FEBRUARY 26, 2018
CITY HALL COUNCIL CHAMBER, 7105 WHITLEY ROAD
6:00 PM**

REGULAR MEETING TO COMMENCE IMMEDIATELY AFTER PRE-COUNCIL

PRE-COUNCIL (No official action or vote shall be taken by the Council in the Pre-Council Meeting.

CALL TO ORDER (Council Members, City Staff, Members of the Public - when speaking during the meeting please speak directly into the microphones on the dais or podium)

CITY COUNCIL AGENDA DISCUSSION

This item is provided for the City Council to make any recommendation to changes on the agenda, such as removing items from the agenda or moving items from one area to another on the agenda; or making inquiries on posted items. City Council will address motions regarding agenda items being moved or removed during the Regular Meeting (Discussion and Approval of Meeting Agenda).

1. Discussion and questions regarding consent agenda items for regular meeting
2. Discussion and questions regarding regular agenda items for regular meeting

REGULAR COUNCIL MEETING

INVOCATION

PLEDGE TO THE FLAG

PLEDGE TO THE TEXAS FLAG - "Honor the Texas Flag: I pledge allegiance to Thee, Texas, one state under God, one and indivisible"

DISCUSSION AND APPROVAL OF MEETING AGENDA

1. Discussion and action on approval of meeting agenda

CITIZEN'S OPEN FORUM

Individuals requesting to speak during Citizen's Open Forum will be required to fill out a "REQUEST TO SPEAK FORM" and present it to the City Secretary prior to commencement of the meeting. Speakers are limited to three minutes. The purpose of this item is to allow citizens an opportunity to address the City Council on issues that are not the subject of a public hearing. Items which require a public hearing will allow citizens or visitors to speak at the time that item is introduced on the agenda. No formal action can be taken by the City Council on items that are not posted on the agenda.

PRESENTATIONS

1. Presentation of House Memorial Resolution in honor of Mayor Hector F. Garcia
Stephanie Klick - Texas State Representative
2. Presentation of Proclamation to Mrs. Wendy Garcia posthumously honoring Mayor Hector F. Garcia for his service, time and dedication to the City of Watauga
Patrick Shelbourne - Mayor Pro Tem
3. Presentation of the Comprehensive Annual Financial Report for the Fiscal Year ending September 30, 2017
Sandra Gibson, Director of Finance
Greg Vick, City Manager

CONSENT AGENDA

All of the items on the consent agenda are considered to be self-explanatory by the Council and will be enacted with one motion, one second, and one vote. There will be no separate discussion of these items.

1. Approval of City Council Special Meeting Minutes of December 7, 2017
Zolaina Parker, City Secretary, TRMC
2. Approval of City Council Special Meeting Minutes of December 11, 2017
Zolaina Parker, City Secretary, TRMC
3. Approval of City Council Regular Meeting Minutes of December 18, 2017
Zolaina Parker, City Secretary, TRMC
4. Approval of City Council Special Meeting Minutes of January 15, 2018
Zolaina Parker, City Secretary, TRMC
5. Approval of City Council Workshop Minutes of January 22, 2018
Zolaina Parker, City Secretary, TRMC
6. Approval of City Council Regular Meeting Minutes of January 29, 2018
Zolaina Parker, City Secretary, TRMC
7. Approval of City Council Workshop Minutes of January 31, 2018
Zolaina Parker, City Secretary, TRMC

8. Approval of City Council Special Meeting Minutes of February 12, 2018
Zolaina Parker, City Secretary, TRMC
9. Approval of permit as a Massage Establishment for Niu Niu Massage for Calendar Year 2018 as required by Chapter 22, Article VI, Division 2, Section 22-252 of the City of Watauga Code of Ordinances
Zolaina Parker, City Secretary, TRMC
10. Approval and acceptance of the Comprehensive Annual Financial Report for the Fiscal Year ending September 30, 2017
Sandra Gibson, Director of Finance
Greg Vick, City Manager
11. Approval of Monthly Financial Report - expenses and revenues for all major funds through January 31, 2018
Sandra Gibson, Director of Finance
Greg Vick, City Manager
12. Approval of proposed resolution adopting Written Investment Policies and Standards and approval of the Authorized Broker/Dealer List for the City of Watauga
Sandra Gibson, Director of Finance
Greg Vick, City Manager
13. Approval of recommendation to appoint an Interim Municipal Court Administrator
Sandra Gibson, Director of Finance
Marcia Reyna, Human Resources and Civil Service Director
Greg Vick, City Manager
14. Approval of Watauga Police Department Annual Contact Report
Robert Parker, Chief of Police
Greg Vick, City Manager
15. Approval of resolution agreeing to meet all matching contribution requirements for the expenditures under the Tarrant County Home Investment Partnerships Program (HOME) for Program Year 2018
Paul Hackleman, P.E., CFM, Director of Public Works
Greg Vick, City Manager
16. Approval of recommendation to appoint Randy Barkley, Battalion Chief as Emergency Management Director for the City of Watauga
Shawn Fannan, Fire Chief
Greg Vick, City Manager

NEW BUSINESS

1. Discussion and action on approval of a proposed resolution dedicating a plaque and renaming the Watauga Community and Recreation Center the, Hector F. Garcia Community Center
Hal Gerhardt, City Council Member, Place 1

2. Discussion and action on approval of the 2.0 Million Gallon Elevated Storage Tank Rehabilitation, Bid Project # 18-008 with M.K. Painting Inc. in the amount of \$248,000
Paul Hackleman, P.E., CFM, Director of Public Works
Greg Vick, City Manager
3. Discussion and action on approval of a renewal agreement between the City of Watauga and Advanced Data Processing, Inc., a Subsidiary of Intermedix Corporation, for Ambulance Billing, Collection, and Related Professional Services and Addendum regarding participation in the Texas Ambulance Supplemental Payment Program and Amendment No. 1 to provide for upgraded Tablet Units and related fees
Sandra Gibson, Director of Finance
Shawn Fannan, Fire Chief
Greg Vick, City Manager
4. Discussion and action on proposed ordinance amending the City of Watauga Code of Ordinances, Article VII, Occasional or Garage Sales within Chapter 22 - Licenses, Permits and Business Regulations of the Code of Ordinances, updating Chapter 12 - Fee Schedule, Chapter 111 - Signs, and Chapter 28 - Offenses and Miscellaneous Provisions, Article IV -Special Events allowing for Estate Sales
Paul Hackleman, P.E., CFM, Director of Public Works
Greg Vick, City Manager
5. Discussion and action on proposed resolution approving the 2018-2019 Strategic Plan
Greg Vick, City Manager

EXECUTIVE SESSION

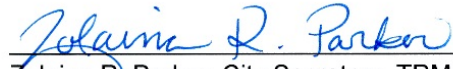
The City Council may announce that it will adjourn the public meeting and convene in Executive Session pursuant to Chapter 551 of the Texas Government Code to discuss any matter as specifically listed on this agenda and/or as permitted by Chapter 551 of the Texas Government Code.

ADJOURNMENT

NOTICE

THIS FACILITY IS WHEELCHAIR ACCESSIBLE AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR ACCOMMODATIONS OR INTERPRETIVE SERVICES MUST BE MADE 48 HOURS PRIOR TO THIS MEETING. PLEASE CONTACT THE CITY SECRETARY'S OFFICE AT (817) 514-5825, OR FAX (817) 514-3625.

I, Zolaina R. Parker, City Secretary for the City of Watauga, hereby certify that this agenda was posted on the bulletin boards at City Hall, 7105 Whitley Road, Watauga, Texas, on Friday, February 23, 2018, before 6:00 p.m., in accordance with Chapter 551 of the Texas Government Code.


Zolaina R. Parker, City Secretary, TRMC





AGENDA MEMORANDUM

DATE: February 6, 2018

TO: Honorable City Council Members

FROM: Sandra Gibson, Director of Finance

THROUGH: Greg Vick, City Manager

SUBJECT: Presentation of the Comprehensive Annual Financial Report for the Fiscal Year ending September 30, 2017

BACKGROUND/INFORMATION:

The City's external audit firm, Whitley Penn, LLP will present the City of Watauga Comprehensive Annual Financial Report for the Fiscal Year ending September 30, 2017. An independent audit is required by the City of Watauga's Home Rule Charter, Section 9.06(c).

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

None

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

None

REVIEWED BY:

Sandra Gibson	Created/Initiated - 02/12/2018
Sandra Gibson	Approved - 02/12/2018
Greg Vick	Approved - 02/14/2018
Zolaina Parker	Final Approval - 02/14/2018



AGENDA MEMORANDUM

DATE: February 20, 2018

TO: Honorable City Council Members

FROM: Zolaina Parker, City Secretary, TRMC

SUBJECT: Approval of City Council Special Meeting Minutes of December 7, 2017

BACKGROUND/INFORMATION:

This item includes City Council Special Meeting Minutes of December 7, 2018.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of meeting minutes.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Minutes Draft

REVIEWED BY:

Zolaina Parker

Zolaina Parker

Created/Initiated - 02/20/2018

Final Approval - 02/20/2018

**MINUTES
WATAUGA CITY COUNCIL
SPECIAL MEETING
MONDAY, DECEMBER 7, 2017
CITY HALL, COUNCIL CHAMBER, 7105 WHITLEY ROAD
5:00 P.M.**

The City Council of the City of Watauga, Texas convened in Special Session at 5:00 p.m., with the following members present:

Hector F. Garcia	Mayor
Patrick Shelbourne	Mayor Pro Tem
Hal Gerhardt	Council Member
Brandon Krausse	Council Member
Melva Clark	Council Member
and	
Greg Vick	City Manager
Zolaina R. Parker	City Secretary
Marcia Reyna	Human Resources/Civil Service Director
Bradley Fraley	Chief Information Officer/PIO

INVOCATION

Mayor Garcia gave the Invocation.

PLEDGE TO THE FLAGS

Mayor Garcia led the Pledge to the Flags.

DISCUSSION AND APPROVAL OF MEETING AGENDA

1. Discussion and action on approval of meeting agenda

Council Member Gerhardt made a motion to approve the agenda as posted.
Council Member Clark seconded the motion, which passed as follows:

AYES:	Gerhardt, Krausse, Clark, Shelbourne
NAYS:	None
ABSENT:	None
ABSTAIN:	Garcia

EXECUTIVE SESSION

The City Council convened in executive session at 5:04 p.m., pursuant to (Texas Open Meetings Act), Chapter 551 of the Texas Government Code, Section 551.074 Personnel Matters, which allows the following:

1. To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or
2. To hear a complaint or charge against an officer or employee.

ITEMS OF EXECUTIVE SESSION DELIBERATION:

1. To deliberate the appointment or employment and compensation of a City Manager by interviewing applicants for the position and to receive input from the City Manager Search Committee

RECONVENE

The City Council returned to open session at 6:37 p.m., in the City Council Chamber for possible discussion and action as a result of the Executive Session as follows:

Discussion and action as a result of the Executive Session deliberating the following:

1. Discussion and action to appoint a person to fill the position of City Manager to include an effective date

Council Member Gerhardt made a motion to take no action. Council Member Krausse seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark, Shelbourne
NAYS: None
ABSENT: None
ABSTAIN: Garcia

ADJOURNMENT

With there being no further business, Mayor Garcia adjourned the meeting at 6:39 p.m.

APPROVED: this 26th day of February, 2018.

SIGNED: this 26th day of February, 2018.

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

Zolaina R. Parker, City Secretary

NOTE: Original Audio and Video Recording of this meeting is preserved and maintained by the City Secretary's Office



AGENDA MEMORANDUM

DATE: February 20, 2018

TO: Honorable City Council Members

FROM: Zolaina Parker, City Secretary, TRMC

SUBJECT: Approval of City Council Special Meeting Minutes of December 11, 2017

BACKGROUND/INFORMATION:

This item includes City Council Special Meeting Minutes of December 11, 2017.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of meeting minutes.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Minutes Draft

REVIEWED BY:

Zolaina Parker

Zolaina Parker

Created/Initiated - 02/20/2018

Final Approval - 02/20/2018

**MINUTES
WATAUGA CITY COUNCIL
SPECIAL MEETING
MONDAY, DECEMBER 11, 2017
CITY HALL, COUNCIL CHAMBER, 7105 WHITLEY ROAD
5:00 P.M.**

The City Council of the City of Watauga, Texas convened in Special Session at 5:00 p.m., with the following members present:

Hector F. Garcia	Mayor
Patrick Shelbourne	Mayor Pro Tem
Hal Gerhardt	Council Member
Brandon Krausse	Council Member
Melva Clark	Council Member
and	
Greg Vick	City Manager
Zolaina R. Parker	City Secretary
Marcia Reyna	Human Resources/Civil Service Director
Bradley Fraley	Chief Information Officer/PIO

INVOCATION

Mayor Pro Tem Shelbourne gave the Invocation.

PLEDGE TO THE FLAGS

Mayor Garcia led the Pledge to the Flags.

DISCUSSION AND APPROVAL OF MEETING AGENDA

1. Discussion and action on approval of meeting agenda

Council Member Gerhardt made a motion to approve the agenda as posted.
Council Member Clark seconded the motion, which passed as follows:

AYES:	Gerhardt, Krausse, Clark, Shelbourne
NAYS:	None
ABSENT:	None
ABSTAIN:	Garcia

EXECUTIVE SESSION

The City Council convened in executive session at 5:03 p.m., pursuant to (Texas Open Meetings Act), Chapter 551 of the Texas Government Code, Section 551.074 Personnel Matters, which allows the following:

1. To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or
2. To hear a complaint or charge against an officer or employee.

ITEMS OF EXECUTIVE SESSION DELIBERATION:

1. To deliberate the appointment or employment and compensation of a City Manager by interviewing applicants for the position and to receive input from the City Manager Search Committee

RECONVENE

The City Council returned to open session at 8:51 p.m., in the City Council Chamber for possible discussion and action as a result of the Executive Session as follows:

Discussion and action as a result of the Executive Session deliberating the following:

1. Discussion and action to appoint a person to fill the position of City Manager to include an effective date

Council Member Krausse made a motion to direct the Human Resources Director to conduct background investigations. Council Member Gerhardt seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark, Shelbourne
NAYS: None
ABSENT: None
ABSTAIN: Garcia

ADJOURNMENT

With there being no further business, Mayor Garcia adjourned the meeting at 8:53 p.m.

APPROVED: this 26th day of February, 2018.

SIGNED: this 26th day of February, 2018.

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

Zolaina R. Parker, City Secretary

NOTE: Original Audio and Video Recording of this meeting is preserved and maintained by the City Secretary's Office



AGENDA MEMORANDUM

DATE: February 20, 2018

TO: Honorable City Council Members

FROM: Zolaina Parker, City Secretary, TRMC

THROUGH:

SUBJECT: Approval of City Council Regular Meeting Minutes of December 18, 2017

BACKGROUND/INFORMATION:

This item includes the City Council Regular Meeting Minutes of December 18, 2017.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of the meeting minutes.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Minutes Draft

REVIEWED BY:

Zolaina Parker

Zolaina Parker

Created/Initiated - 02/20/2018

Final Approval - 02/20/2018

**MINUTES
WATAUGA CITY COUNCIL
PRE-COUNCIL & REGULAR MEETING
MONDAY, DECEMBER 18, 2017
CITY HALL, COUNCIL CHAMBER, 7105 WHITLEY ROAD
6:00 P.M.**

The City Council of the City of Watauga, Texas convened in Pre-Council at 6:00 p.m., with the following members present:

	Hal Gerhardt	Council Member
	Brandon Krausse	Council Member
	Melva Clark	Council Member
and		
	Greg Vick	City Manager
	Mark Daniel	City Attorney
	Zolaina R. Parker	City Secretary
	Robert Parker	Chief of Police
	Shawn Fannan	Fire Chief
	Sandra Gibson	Director of Finance
	Paul Hackleman	Director of Public Works
	Marcia Reyna	Director of Human Resources/Civil Service
	Lana Ewell	Library Director
with	Jacquelyn Reyff	Director of Planning and Economic Development

Mayor Hector Garcia and Mayor Pro Tem Patrick Shelbourne, absent with notice.

DISCUSSION AND PRESENTATIONS ON UPCOMING TOPICS

1. Update on Fire Safety Poster Winners

Brian Hatfield, Fire Marshal presented the Fire Safety Poster Winners with Certificates of Recognition.

2. Update on Watauga 101-Citizens' Academy 2018

Zolaina R. Parker, City Secretary, TRMC, provided an update on Watauga 101-Citizens' Academy 2018.

3. Update on May 2018 General and Special Elections

Zolaina R. Parker, City Secretary, TRMC, provided an update on the May 2018 General and Special Elections.

CITY COUNCIL AGENDA DISCUSSION

1. Discussion and questions regarding consent agenda items for regular meeting
Council did not discuss or have any questions.
2. Discussion and questions regarding regular agenda items for regular meeting
City Council did not discuss or have any questions.

REGULAR COUNCIL MEETING

Regular Meeting commenced at 6:10 p.m.

INVOCATION

Chief of Police, Robert Parker gave the invocation.

PLEDGE TO THE FLAG AND TEXAS FLAG

Council Member Krausse led the pledge to the flags.

DISCUSSION AND APPROVAL OF MEETING AGENDA

1. Discussion and action on approval of meeting agenda

Council Member Gerhardt made a motion to approve the agenda as presented.
Council Member Clark seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia, Shelbourne
ABSTAIN: None

CITIZEN'S OPEN FORUM

None

OATH OF OFFICE

1. Administer Oath of Office to K-9 Kai

Robert Parker, Chief of Police administered the Oath of Office to K-9 Kai.

PRESENTATIONS

1. Presentation of Certificate of Achievement for Planning Excellence to the City of Watauga from Texas Chapter of the American Planning Association

Council Member Krausse presented Jacquelyn Reyff, AICP Director of Planning & Economic Development and Planning and Zoning Commission representatives with a Certificate of Achievement for Planning Excellence from the Texas Chapter of the American Planning Association.

2. Presentation of Life Saving Awards to Lieutenant Steve Caudle, Fire Fighter Aaron Barnett, Fire Fighter Ryan Thomas, Fire Fighter Alan Thomas, and Fire Fighter Clinton Batson

Randy Barkley, Battalion Chief presented Life Saving Awards to Lieutenant Steve Caudle, Fire Fighter Aaron Barnett, Fire Fighter Ryan Thomas, Fire Fighter Alan Thomas, and Fire Fighter Clinton Batson.

REPORTS

1. Update on 2017 Strategic Plan

Greg Vick, City Manager provided an update on the 2017 Strategic Plan.

CONSENT AGENDA

Council Member Clark made a motion to approve the consent agenda as presented. Council Member Gerhardt seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark

NAYS: None

ABSENT: Garcia, Shelbourne

ABSTAIN: None

1. Approval of City Council Regular Meeting Minutes of October 16, 2017
2. Approval of City Council Regular Meeting Minutes of November 13, 2017
3. Approval of Monthly Financial Report – expenses and revenues for all funds from October 1, 2017 through October 31, 2017
4. Approval of the Wrecker Service Contract Renewal Option # 2 with AA Wrecker Service
5. Approval of a proposed resolution adding Policies 13.04 and 13.05 to the City of

Watauga Personnel, Administration and Financial Policies and Procedures Manual [CAPTION]

The resolution as approved carries the following caption:

CITY OF WATAUGA, TEXAS
RESOLUTION NO. 17-12-18-01

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS AMENDING SECTION 13.04 OF THE PERSONNEL, ADMINISTRATION AND FINANCIAL POLICIES AND PROCEDURES MANUAL REGARDING BUDGET ADJUSTMENTS; ADOPTING SECTION 13.05 OF THE PERSONNEL, ADMINISTRATION AND FINANCIAL POLICIES AND PROCEDURES MANUAL REGARDING SURPLUS ASSET DISPOSAL; PROVIDING THAT ALL RESOLUTIONS IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THAT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE

6. Approval of an Interlocal Agreement between the City of Watauga and Tarrant County for roadway striping of Whitley Road from Oakhill Road to Hightower Drive
7. Approval of proposed changes to the Watauga Library Interlibrary Loan Policy
8. Acceptance of Mr. James Wright's resignation from City Council, Place 4

PUBLIC HEARINGS

1. Public Hearing to review the City of Watauga Municipal Drainage Utility System Operations and proposed changes to the schedule of charges for drainage services

a. Open Public Hearing-allow for staff comments

Council Member Krausse recessed the Regular Meeting at 6:41 p.m. and opened the Public Hearing.

b. Public Comments

Sandra Gibson, Director of Finance, CGFO, provided a summary of the proposed changes to the Municipal Drainage Utility System and the schedule of charges. There were no public comments.

c. Close Public Hearing

Council Member Krausse closed the Public Hearing and reconvened the Regular Meeting at 6:52 p.m.

NEW BUSINESS

1. Discussion and action on the review of City of Watauga Municipal Drainage Utility System Operations and approval of proposed ordinance adjusting the charges for drainage services [CAPTION]

Council Member Clark made a motion to approve the review of City of Watauga Municipal Drainage Utility System Operations and approval of proposed ordinance adjusting the charges for drainage services. Council Member Gerhardt seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia, Shelbourne
ABSTAIN: None

The ordinance as approved carries the following caption:

CITY OF WATAUGA, TEXAS
ORDINANCE NO. 1651

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS AMENDING CHAPTER 12, FEE SCHEDULE, SECTION 12-42, UTILITIES, PARAGRAPH (o) OF THE CODE OF ORDINANCES FOR THE CITY OF WATAUGA, TEXAS, PROVIDING THAT ALL ORDINANCES IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AND EFFECTIVE DATE

2. Discussion and action on approval of proposed resolution adopting the 2017 Economic Development Strategic Plan [CAPTION]

Council Member Gerhardt made a motion to approve a proposed resolution adopting the 2017 Economic Development Strategic Plan. Council Member Clark seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia, Shelbourne
ABSTAIN: None

The resolution as approved carries the following caption:

CITY OF WATAUGA, TEXAS
RESOLUTION NO. 17-12-18-02

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS ADOPTING THE ECONOMIC DEVELOPMENT STRATEGIC PLAN 2017-2019; PROVIDING THAT ALL RESOLUTIONS IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THAT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE

3. Discussion and action on approval of amendment to Burgess & Niple contract for design and construction administration of Whitley Road Phase III from Chapman Road to Hightower Drive in an amount not to exceed \$373,100.00

Council Member Gerhardt made a motion to approve amendment to Burgess & Niple contract for design and construction administration of Whitley Road Phase III from Chapman Road to Hightower Drive in an amount not to exceed \$373,100.00. Council Member Clark seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia, Shelbourne
ABSTAIN: None

ADJOURNMENT

With there being no further business, Council Member Krausse adjourned the meeting at 7:08 p.m.

APPROVED: this 26th day of February, 2018.

SIGNED: this 26th day of February, 2018.

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

Zolaina R. Parker, City Secretary

NOTE: Original Audio and Video Recording of this meeting is preserved and maintained by the City Secretary's Office



AGENDA MEMORANDUM

DATE: February 20, 2018

TO: Honorable City Council Members

FROM: Zolaina Parker, City Secretary, TRMC

SUBJECT: Approval of City Council Special Meeting Minutes of January 15, 2018

BACKGROUND/INFORMATION:

This item includes the City Council Special Meeting Minutes of January 15, 2018.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of the meeting minutes.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Minutes Draft

REVIEWED BY:

Zolaina Parker
Zolaina Parker

Created/Initiated - 02/20/2018
Final Approval - 02/20/2018

**MINUTES
WATAUGA CITY COUNCIL
SPECIAL MEETING
MONDAY, JANUARY 15, 2018
CITY HALL, COUNCIL CHAMBER, 7105 WHITLEY ROAD
6:00 P.M.**

The City Council of the City of Watauga, Texas convened in Special Session at 6:00 p.m., with the following members present:

Patrick Shelbourne	Mayor Pro Tem
Hal Gerhardt	Council Member
Brandon Krausse	Council Member
Melva Clark	Council Member

and

Greg Vick	City Manager
Zolaina R. Parker	City Secretary
Marcia Reyna	Human Resources/Civil Service Director
Bradley Fraley	Chief Information Officer/PIO

INVOCATION

Mayor Pro Tem Shelbourne gave the Invocation.

PLEDGE TO THE FLAGS

Mayor Pro Tem Shelbourne led the Pledge to the Flags.

DISCUSSION AND APPROVAL OF MEETING AGENDA

1. Discussion and action on approval of meeting agenda

Council Member Gerhardt made a motion to approve the agenda as posted.
Council Member Krausse seconded the motion, which passed as follows:

AYES:	Gerhardt, Krausse, Clark, Shelbourne
NAYS:	None
ABSENT:	Garcia
ABSTAIN:	None

EXECUTIVE SESSION

The City Council convened in executive session at 6:02 p.m., pursuant to (Texas Open Meetings Act), Chapter 551 of the Texas Government Code, Section 551.074 Personnel Matters, which allows the following:

1. To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

2. To hear a complaint or charge against an officer or employee.

ITEMS OF EXECUTIVE SESSION DELIBERATION:

1. To deliberate the appointment, employment, start date and compensation of a City Manager

RECONVENE

The City Council returned to open session at 6:12 p.m., in the City Council Chamber for possible discussion and action as a result of the Executive Session as follows:

Discussion and action as a result of the Executive Session deliberating the following:

1. Discussion and action to appoint a person to fill the position of City Manager to include an effective date of employment

Council Member Krausse made a motion to appoint Andrea Gardner to fill the position of City Manager effective February 19, 2018. Council Member Gerhardt seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark, Shelbourne
NAYS: None
ABSENT: Garcia
ABSTAIN: None

2. Discussion and action to approve the Employment Agreement between the newly appointed City Manager and the City of Watauga

Council Member Krausse made a motion to approve the Employment Agreement between the City of Watauga, Texas and Andrea Gardner, executed on January 15, 2018, to commence service on February 19, 2018. Council Member Gerhardt seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark, Shelbourne
NAYS: None
ABSENT: Garcia
ABSTAIN: None

ADJOURNMENT

With there being no further business, Mayor Pro Tem Shelbourne adjourned the meeting at 6:17 p.m.

APPROVED: this 26th day of February, 2018.

SIGNED: this 26th day of February, 2018.

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

Zolaina R. Parker, City Secretary

NOTE: Original Audio and Video Recording of this meeting is preserved and maintained by the City Secretary's Office



AGENDA MEMORANDUM

DATE: February 20, 2018
TO: Honorable City Council Members
FROM: Zolaina Parker, City Secretary, TRMC
SUBJECT: Approval of City Council Workshop Minutes of January 22, 2018

BACKGROUND/INFORMATION:

This item consist of City Council Workshop Minutes of January 22, 2018.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of the meeting minutes.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Minutes Draft

REVIEWED BY:

Zolaina Parker
Zolaina Parker

Created/Initiated - 02/20/2018
Final Approval - 02/20/2018

**MINUTES
WATAUGA CITY COUNCIL
WORKSHOP
MONDAY, JANUARY 22, 2018
CITY HALL, COUNCIL CHAMBER, 7105 WHITLEY ROAD
5:30 P.M.**

The City Council of the City of Watauga, Texas convened at 5:34 p.m., for the purpose of conducting a workshop with the following members present:

Patrick Shelbourne	Mayor Pro Tem
Hal Gerhardt	Council Member
Brandon Krausse	Council Member
Melva Clark	Council Member

and

Greg Vick	City Manager
Zolaina R. Parker	City Secretary
Bradley Fraley	Chief Information Officer/PIO

with

Mayor Hector F. Garcia, absent with notice.

Workshop to Train on CivicClerk Agenda Management

City Council met to receive training on CivicClerk Agenda Management.

During the course of discussion, no vote, order, decision, or other action was taken on the information presented.

ADJOURNMENT

Mayor Pro Tem Shelbourne adjourned the workshop at 6:33 p.m.

APPROVED: this 26th day of February, 2018

SIGNED: this 26th day of February, 2018

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

Zolaina R. Parker, City Secretary

NOTE: Original Audio and Video Recording of this meeting is preserved and maintained by the City Secretary's Office



AGENDA MEMORANDUM

DATE: February 20, 2018

TO: Honorable City Council Members

FROM: Zolaina Parker, City Secretary, TRMC

SUBJECT: Approval of City Council Regular Meeting Minutes of January 29, 2018

BACKGROUND/INFORMATION:

This item consists of the City Council Regular Meeting Minutes of January 29, 2018.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of Meeting Minutes.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Minutes Draft

REVIEWED BY:

Zolaina Parker

Zolaina Parker

Created/Initiated - 02/20/2018

Final Approval - 02/20/2018

**MINUTES
WATAUGA CITY COUNCIL
PRE-COUNCIL & REGULAR MEETING
MONDAY, JANUARY 29, 2017
CITY HALL, COUNCIL CHAMBER, 7105 WHITLEY ROAD
6:00 P.M.**

The City Council of the City of Watauga, Texas convened in Pre-Council at 6:00 p.m., with the following members present:

Patrick Shelbourne	Mayor Pro Tem
Hal Gerhardt	Council Member
Brandon Krausse	Council Member
Melva Clark	Council Member

and

Greg Vick	City Manager
Mark Daniel	City Attorney
Zolaina R. Parker	City Secretary
Sandra Gibson	Director of Finance
Robert Parker	Chief of Police
Shawn Fannan	Fire Chief
Paul Hackleman	Director of Public Works
Marcia Reyna	Director of Human Resources/Civil Service
Lana Ewell	Library Director
Jacquelyn Reyff	Director of Planning and Economic Development

and
Mayor Hector F. Garcia, absent with notice.

DISCUSSION AND PRESENTATIONS ON UPCOMING TOPICS

1. Presentation of Certificate of Appreciation to former Council Member James Wright

Mayor Pro Tem Shelbourne presented a Certificate of Appreciation to former Council Member James Wright.

2. What makes Watauga a Great Place to Live?

Jacquelyn Reyff, AICP Director of Planning & Economic Development, presented "What makes Watauga a Great Place to Live?"

CITY COUNCIL AGENDA DISCUSSION

1. Discussion and questions regarding consent agenda items for regular meeting
Council did not discuss or have any questions.

2. Discussion and questions regarding regular agenda items for regular meeting

City Council did not discuss or have any questions.

REGULAR COUNCIL MEETING

Regular Meeting commenced at 6:10 p.m.

INVOCATION

Mayor Pro Tem Shelbourne gave the invocation.

PLEDGE TO THE FLAG AND TEXAS FLAG

Mayor Pro Tem Shelbourne led the Pledge to the Flags.

DISCUSSION AND APPROVAL OF MEETING AGENDA

1. Discussion and action on approval of meeting agenda

Council Member Gerhardt made a motion to approve the agenda as presented.
Council Member Krausse seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

CITIZEN'S OPEN FORUM

Mr. Phillip Jennings, 5716 Main Street, Watauga, Texas addressed the street work which was performed at the 5600 Block of Main Street.

PRESENTATIONS

1. Presentation of Proclamation to Mrs. Roma Bowman for her unrelenting service to the City of Watauga

Mayor Pro Tem Shelbourne presented a Proclamation to Mrs. Roma Bowman for her unrelenting service to the City of Watauga.

REPORTS

1. Finance - Monthly Financial Report - Expenses and Revenues for all funds for period ending December 1, 2017 through December 31, 2017

Sandra Gibson, Director of Finance, CGFO, CGFM, presented the Finance - Monthly Financial Report - Expenses and Revenues for all funds for period ending December 1, 2017 through December 31, 2017.

2. Public Works

a. CIP Quarterly Update - December 2017

Paul Hackleman, Director of Public Works provided the CIP Quarterly Update- December 2017.

CONSENT AGENDA

Council Member Gerhardt made a motion to approve the consent agenda as presented. Council Member Clark seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark, Shelbourne

NAYS: None

ABSENT: Garcia

ABSTAIN: None

1. Approval of Quarterly Investment Report for the period ending December 31, 2017
2. Approval of a proposed resolution amending Policy 6.04 and adding Policy 17.01 to the City of Watauga Personnel, Administration and Financial Policies and Procedures Manual [CAPTION]

The resolution as approved carried the following caption:

CITY OF WATAUGA, TEXAS
RESOLUTION NO. 18-01-29-01

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS AMENDING SECTION 6.04 OF THE PERSONNEL, ADMINISTRATION AND FINANCIAL POLICIES AND PROCEDURES MANUAL REGARDING THE CLASSIFICATION AND COMPENSATION PLAN; AMENDING SECTION 17.01 OF THE PERSONNEL, ADMINISTRATION AND FINANCIAL POLICIES AND PROCEDURES MANUAL REGARDING VOLUNTEERS; PROVIDING THAT ALL RESOLUTIONS IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THAT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE

3. Approval of the continuation of permit as a Massage Establishment for Hightower Salons for Calendar Year 2018 as required by Chapter 22, Article VI, Division 2, Section 22-252 of the City of Watauga Code of Ordinances
4. Approval of a permit for a Massage Establishment for YY Foot Massage for Calendar Year 2018 as required by Chapter 22, Article VI, Division 2, Section 22-252 of the City of Watauga Code of Ordinances
5. Approval of a permit for a Massage Establishment for Magic Massage for Calendar Year 2018 as required by Chapter 22, Article VI, Division 2, Section 22-252 of the City of Watauga Code of Ordinances

NEW BUSINESS

1. Discussion and action on approval of a proposed resolution calling for a General Election for Council Member Places 1, 2, 6 and 7 to be held on Saturday, May 5, 2018 at Watauga City Hall, 7105 Whitley Road, Watauga, Texas, 76148, including days and hours of Early Voting and continuing joint election services through Tarrant County [CAPTION]

Council Member Krausse made a motion to approve a proposed resolution calling for a General Election for Council Member Places 1, 2, 6 and 7 to be held on Saturday, May 5, 2018 at Watauga City Hall, 7105 Whitley Road, Watauga, Texas, 76148, including days and hours of Early Voting and continuing joint election services through Tarrant County. Council Member Clark seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

The resolution as approved carried the following caption:

CITY OF WATAUGA, TEXAS
RESOLUTION NO. 18-01-29-02

A RESOLUTION AND ELECTION ORDER BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS CALLING AN ELECTION TO BE HELD IN SAID CITY ON THE 5TH DAY OF MAY 2018 FOR THE GENERAL ELECTION OF CITY COUNCIL MEMBER PLACE 1, CITY COUNCIL MEMBER PLACE 2, CITY COUNCIL MEMBER PLACE 6 AND CITY COUNCIL MEMBER PLACE 7; PROVIDING FOR A JOINT ELECTION AGREEMENT WITH TARRANT COUNTY; SETTING THE DATE, PLACE AND TIME OF SAID ELECTION; AND OTHER PROVISIONS OTHERWISE INCIDENTAL TO SUCH RESOLUTION IN ACCORDANCE

WITH THE TEXAS ELECTION LAWS AND ARTICLES III AND IV OF THE CITY OF WATAUGA HOME RULE CHARTER; PROVIDING THAT ALL RESOLUTIONS IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THAT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE

2. Discussion and action on approval of a proposed resolution calling for a Special Election for the unexpired terms of Council Member Places 3 and 4 to be held on Saturday, May 5, 2018 at Watauga City Hall, 7105 Whitley Road, Watauga, Texas, 76148, including days and hours of Early Voting and continuing joint election services through Tarrant County [CAPTION]

Council Member Clark made a motion to approve a proposed resolution calling for a Special Election for the unexpired terms of Council Member Places 3 and 4 to be held on Saturday, May 5, 2018 at Watauga City Hall, 7105 Whitley Road, Watauga, Texas, 76148, including days and hours of Early Voting and continuing joint election services through Tarrant County. Council Member Gerhardt seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

The resolution as approved carried the following caption:

CITY OF WATAUGA; TEXAS
RESOLUTION NO. 18-01-29-03

A RESOLUTION AND ELECTION ORDER BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS CALLING A SPECIAL ELECTION TO BE HELD IN SAID CITY ON THE 5TH DAY OF MAY 2018 FOR THE ELECTION TO FILL A VACANCY THAT EXISTS IN THE UNEXPIRED TERM OF CITY COUNCIL MEMBER PLACE 3 AND CITY COUNCIL MEMBER PLACE 4, PROVIDING FOR A JOINT ELECTION AGREEMENT WITH TARRANT COUNTY; SETTING THE DATE, PLACE AND TIME OF SAID ELECTION; AND OTHER PROVISIONS OTHERWISE INCIDENTAL TO SUCH RESOLUTION IN ACCORDANCE WITH THE TEXAS ELECTION LAWS AND ARTICLES III AND IV OF THE CITY OF WATAUGA HOME RULE CHARTER; PROVIDING THAT ALL RESOLUTIONS IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THAT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE

3. Discussion and action on approval of an amendment to the Meet and Confer Agreement between the City of Watauga and the Watauga Police Officers' Association

Council Member Krausse made a motion to approve an amendment to the Meet and Confer Agreement between the City of Watauga and the Watauga Police Officers' Association. Council Member Gerhardt seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

4. Approval of a proposed resolution amending the Fiscal Year 2017-18 Classification Plan for Civil Service Employees [CAPTION]

Council Member Clark made a motion to approve a resolution amending the Fiscal Year 2017-18 Classification Plan for Civil Service Employees. Council Member Krausse seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

The resolution as approved carried the following caption:

CITY OF WATAUGA; TEXAS
RESOLUTION NO. 18-01-29-04

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS AMENDING THE CLASSIFICATION PLAN AND PAY SCHEDULE FOR CIVIL SERVICE EMPLOYEES FOR THE 2017 - 2018 FISCAL YEAR; PROVIDING FOR A ONE PERCENT INCREASE TO THE SALARIES OF POLICE OFFICERS AND FIREFIGHTERS; PROVIDING THAT ALL RESOLUTIONS IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THAT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE

5. Discussion and action on approval of the purchase of police vehicles and equipment in an amount not to exceed \$295,008.05

Council Member Gerhardt made a motion to approve the purchase of police vehicles and equipment in an amount not to exceed \$295,008.05. Council Member Clark seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

6. Discussion and action on approval of the purchase of a 2018 Ford F-150 vehicle from Sam Pack's Five Star Ford in an amount not to exceed \$27,384

Council Member Gerhardt made a motion to approve the purchase of a 2018 Ford F-150 vehicle from Sam Pack's Five Star Ford in an amount not to exceed \$27,384. Council Member Clark seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

7. Discussion and action on approval of an ambulance medic unit from Fraizer Ltd. and Stryker Medical in an amount not to exceed \$231,000

Council Member Clark made a motion to approve an ambulance medic unit from Fraizer Ltd. and Stryker Medical in an amount not to exceed \$231,000. Council Member Krausse seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

8. Discussion and action on approval of an amendment to Burgess & Niple contract for design and construction administration of Meadowlark East Water and Sewer Design from Heather Drive to west of Pebblebrook Drive in an amount not to exceed \$162,700.00

Council Member Gerhardt made a motion to approve an amendment to Burgess & Niple contract for design and construction administration of Meadowlark East Water and Sewer Design from Heather Drive to west of Pebblebrook Drive in an amount not to exceed \$162,700.00. Council Member Clark seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

9. Discussion and action on approval of an Interlocal Agreement with Tarrant County for rehabilitation and resurface of Birchill Drive, Lamar Street, Carousel Drive, Valley View Drive, Cedarhill Road and Hillcrest Drive in an amount not to exceed \$535,732.76

Council Member Gerhardt made a motion to approve an Interlocal Agreement with Tarrant County for rehabilitation and resurface of Birchill Drive, Lamar Street, Carousel Drive, Valley View Drive, Cedarhill Road and Hillcrest Drive in an amount not to exceed \$535,732.76. Council Member Krausse seconded the motion, which passed as follows:

AYES: Shelbourne, Gerhardt, Krausse, Clark
NAYS: None
ABSENT: Garcia
ABSTAIN: None

ADJOURNMENT

With there being no further business, Mayor Pro Tem Shelbourne adjourned the meeting at 7:32 p.m.

APPROVED: this 26th day of February, 2018.

SIGNED: this 26th day of February, 2018.

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

Zolaina R. Parker, City Secretary

NOTE: Original Audio and Video Recording of this meeting is preserved and maintained by the City Secretary's Office



AGENDA MEMORANDUM

DATE: February 21, 2018
TO: Honorable City Council Members
FROM: Zolaina Parker, City Secretary, TRMC
SUBJECT: Approval of City Council Workshop Minutes of January 31, 2018

BACKGROUND/INFORMATION:

This item includes City Council Workshop Minutes of January 31, 2018.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of meeting minutes.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Minutes Draft

REVIEWED BY:

Zolaina Parker
Zolaina Parker

Created/Initiated - 02/21/2018
Final Approval - 02/21/2018

**MINUTES
WATAUGA CITY COUNCIL
WORKSHOP
WEDNESDAY, JANUARY 31, 2018
WATAUGA COMMUNITY CENTER, 7901 INDIAN SPRINGS RD
5:30 P.M.**

The City Council of the City of Watauga, Texas convened at 5:31 p.m., for the purpose of conducting a workshop with the following members present:

Patrick Shelbourne	Mayor Pro Tem
Hal Gerhardt	Council Member
Brandon Krausse	Council Member
Melva Clark	Council Member

and

Greg Vick	City Manager
Zolaina R. Parker	City Secretary
Sandra Gibson	Director of Finance
Robert Parker	Chief of Police
Shawn Fannan	Fire Chief
Paul Hackleman	Director of Public Works
Marcia Reyna	Human Resources & Civil Service Director
Brian TenEyck	Recreation Superintendent
Lana Ewell	Library Director
Bradley Fraley	Chief Information Officer/PIO
Jacquelyn Reyff	Director of Planning/ Economic Development

Workshop to discuss Strategic Planning

City Council met and discussed various issues concerning strategic planning, vision statement, goals, objectives and issues relevant to City business.

During the course of discussion, no vote, order, decision, or other action was taken on the information presented.

ADJOURNMENT

Mayor Pro Tem Shelbourne adjourned the workshop at 7:37 p.m.

APPROVED: this 26th day of February, 2018

SIGNED: this 26th day of February, 2018

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

Zolaina R. Parker, City Secretary

NOTE: Original Audio and Video Recording of this meeting is preserved and maintained by the City Secretary's Office



AGENDA MEMORANDUM

DATE: February 20, 2018

TO: Honorable City Council Members

FROM: Zolaina Parker, City Secretary, TRMC

SUBJECT: Approval of City Council Special Meeting Minutes of February 12, 2018

BACKGROUND/INFORMATION:

This item includes City Council Special Meeting Minutes of February 12, 2018.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of meeting minutes.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Minutes Draft

REVIEWED BY:

Zolaina Parker
Zolaina Parker

Created/Initiated - 02/20/2018
Final Approval - 02/20/2018

**MINUTES
WATAUGA CITY COUNCIL
SPECIAL MEETING
MONDAY, FEBRUARY 12, 2018
CITY HALL, COUNCIL CHAMBER, 7105 WHITLEY ROAD
6:00 P.M.**

The City Council of the City of Watauga, Texas convened in Special Session at 6:00 p.m., with the following members present:

Patrick Shelbourne	Mayor Pro Tem
Hal Gerhardt	Council Member
Brandon Krausse	Council Member
Melva Clark	Council Member
and	
Greg Vick	City Manager
Zolaina R. Parker	City Secretary
Bradley Fraley	Chief Information Officer/PIO

INVOCATION

Mayor Pro Tem Shelbourne gave the Invocation.

PLEDGE TO THE FLAGS

Mayor Pro Tem Shelbourne led the Pledge to the Flags.

DISCUSSION AND APPROVAL OF MEETING AGENDA

1. Discussion and action on approval of meeting agenda

Council Member Clark made a motion to approve the agenda as posted. Council Member Gerhardt seconded the motion, which passed as follows:

AYES:	Gerhardt, Krausse, Clark, Shelbourne
NAYS:	None
ABSENT:	None
ABSTAIN:	None

NEW BUSINESS

1. Discussion and action on approval of a proposed resolution calling for a Special Election for the unexpired term of Mayor to be held on Saturday, May 5, 2018 at Watauga City Hall, 7105 Whitley Road, Watauga, Texas, 76148, including days and hours of Early Voting and continuing joint election services through Tarrant County [CAPTION]

Council Member Gerhardt made a motion to approve a proposed resolution calling for a Special Election for the unexpired term of Mayor to be held on Saturday, May 5, 2018 at Watauga City Hall, 7105 Whitley Road, Watauga, Texas, 76148, including days and hours of Early Voting and continuing joint election services through Tarrant County. Council Member Clark seconded the motion, which passed as follows:

AYES: Gerhardt, Krausse, Clark, Shelbourne
NAYS: None
ABSENT: None
ABSTAIN: None

The resolution as approved carries the following caption:

CITY OF WATAUGA, TEXAS
RESOLUTION NO. 18-02-12-01

A RESOLUTION AND ELECTION ORDER BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS CALLING A SPECIAL ELECTION TO BE HELD IN SAID CITY ON THE 5TH DAY OF MAY 2018 FOR THE ELECTION TO FILL A VACANCY THAT EXISTS IN THE UNEXPIRED TERM OF MAYOR, PROVIDING FOR A JOINT ELECTION AGREEMENT WITH TARRANT COUNTY; SETTING THE DATE, PLACE AND TIME OF SAID ELECTION; AND OTHER PROVISIONS OTHERWISE INCIDENTAL TO SUCH RESOLUTION IN ACCORDANCE WITH THE TEXAS ELECTION LAWS AND ARTICLES III AND IV OF THE CITY OF WATAUGA HOME RULE CHARTER; PROVIDING THAT ALL RESOLUTIONS IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THAT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE

ADJOURNMENT

With there being no further business, Mayor Pro Tem Shelbourne adjourned the meeting at 6:04 p.m.

APPROVED: this 26th day of February, 2018.

SIGNED: this 26th day of February, 2018.

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

Zolaina R. Parker, City Secretary

NOTE: Original Audio and Video Recording of this meeting is preserved and maintained by the City Secretary's Office



AGENDA MEMORANDUM

DATE: February 7, 2018

TO: Honorable City Council Members

FROM: Zolaina Parker, City Secretary, TRMC

SUBJECT: Approval of permit as a Massage Establishment for Niu Niu Massage for Calendar Year 2018 as required by Chapter 22, Article VI, Division 2, Section 22-252 of the City of Watauga Code of Ordinances

BACKGROUND/INFORMATION:

Niu Niu Massage located at 6801 Rufe Snow Drive Suite 404, is seeking approval for a massage permit for calendar year 2018 as required by Chapter 22, Article VI, Division 2, Section 22-252 of the Watauga Code of Ordinances. Niu Niu Massage has completed all zoning requirements. Staff has received a letter of application, as well as the required fee.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of the 2018 Massage Permit for Niu Niu Massage.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

None

REVIEWED BY:

Zolaina Parker

Zolaina Parker

Created/Initiated - 02/12/2018

Final Approval - 02/12/2018



AGENDA MEMORANDUM

DATE: February 10, 2018

TO: Honorable City Council Members

FROM: Sandra Gibson, Director of Finance

THROUGH: Greg Vick, City Manager

SUBJECT: Approval and acceptance of the Comprehensive Annual Financial Report for the Fiscal Year ending September 30, 2017

BACKGROUND/INFORMATION:

During the Presentation section of the agenda, Whitley Penn, LLP will present the City of Watauga Comprehensive Annual Financial Report for the Fiscal Year ending September 30, 2017. An independent audit is required by the City of Watauga's Home Rule Charter, Section 9.06(c).

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Acceptance of the Comprehensive Annual Financial Report for the Fiscal Year ending September 30, 2017

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

None

REVIEWED BY:

Sandra Gibson	Created/Initiated - 02/12/2018
Sandra Gibson	Approved - 02/12/2018
Greg Vick	Approved - 02/14/2018
Zolaina Parker	Final Approval - 02/14/2018



AGENDA MEMORANDUM

DATE: February 10, 2018

TO: Honorable City Council Members

FROM: Sandra Gibson, Director of Finance

THROUGH: Greg Vick, City Manager

SUBJECT: Approval of Monthly Financial Report - expenses and revenues for all major funds through January 31, 2018

BACKGROUND/INFORMATION:

The monthly financial report for the period through January 31, 2018 and fund details are attached.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Approval of the Monthly Financial Report for the period ending January 31, 2018

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Council Report - 201802
2. Fund Details January 2018

REVIEWED BY:

Sandra Gibson	Created/Initiated - 02/14/2018
Sandra Gibson	Approved - 02/14/2018
Greg Vick	Approved - 02/14/2018
Zolaina Parker	Final Approval - 02/14/2018



Monthly Financial Report

January, 2018

Sales Tax

The City's sales tax receipts from the State Comptroller received in the month of February, 2018 (reflecting December sales receipts) increased by 2.48%, or \$11,694 from the same time last year. The Crime Control Prevention District's February sales tax receipts increased by 2.5%. Year-to-date sales tax receipts for the City are down .25% (for October through December sales receipts) in comparison to last year. The State Comptroller's office reports that City sales tax receipts are up 6.54% in comparison with prior year.

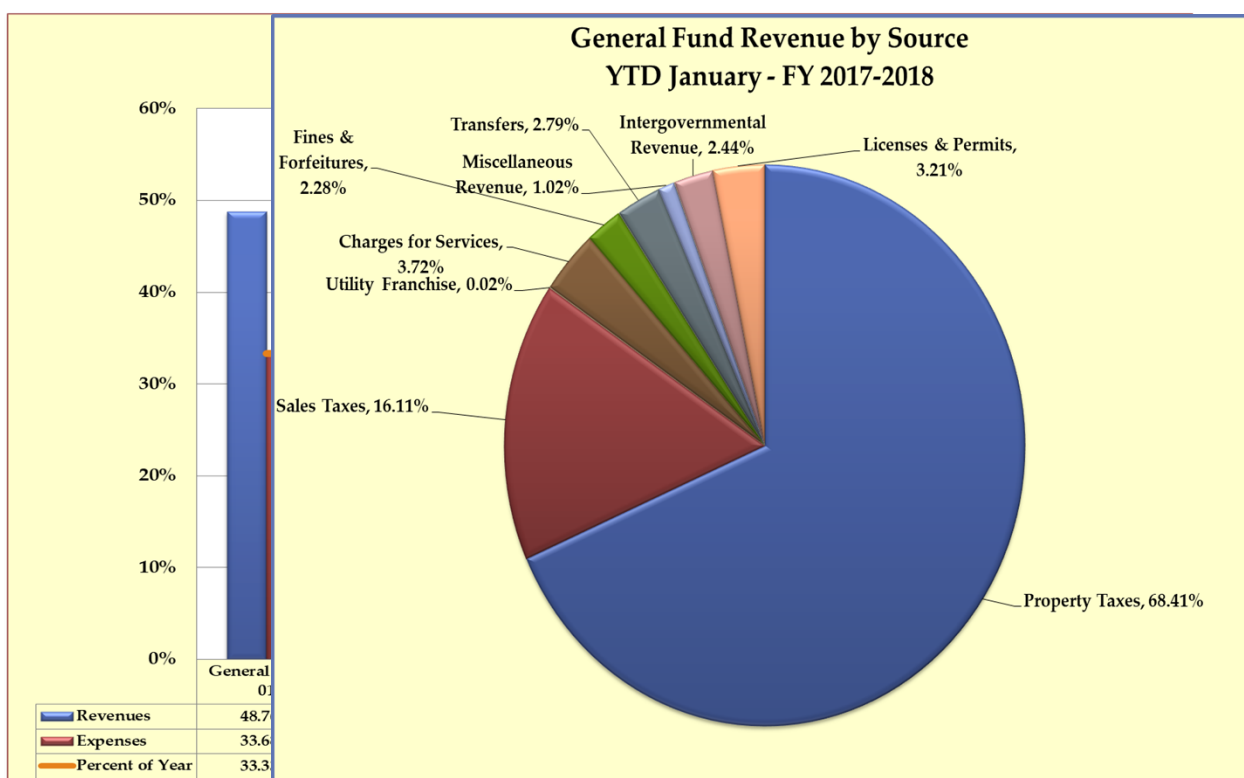
SALES TAX RECEIPTS COMPARISONS DECEMBER 2016 vs. DECEMBER 2017 RECEIVED FROM COMPTROLLER - FEBRUARY FISCAL YEAR 2017-18

Sales Tax Receipts for the Month:					
City	DECEMBER 2017 Sales	DECEMBER 2016 Sales	\$ Change	% Change	
Richland Hills	\$ 320,036.18	\$ 264,811.06	\$ 55,225.12	20.85%	
Southlake	\$ 3,291,856.98	\$ 2,937,239.26	\$ 354,617.72	12.07%	
Haltom City	\$ 1,155,159.80	\$ 1,039,118.97	\$ 116,040.83	11.17%	
Fort Worth	\$ 15,934,317.74	\$ 14,910,614.10	\$ 1,023,703.64	6.87%	
Keller	\$ 1,091,284.76	\$ 1,061,461.60	\$ 29,823.16	2.81%	
Watauga	\$ 483,251.53	\$ 471,557.07	\$ 11,694.46	2.48%	
Bedford	\$ 1,091,668.45	\$ 1,071,461.90	\$ 20,206.55	1.89%	
Hurst	\$ 2,012,967.95	\$ 2,010,314.85	\$ 2,653.10	0.13%	
N. Richland Hills	\$ 1,620,626.90	\$ 1,626,516.62	\$ (5,889.72)	-0.36%	
Colleyville	\$ 616,278.92	\$ 627,338.52	\$ (11,059.60)	-1.76%	
Grapevine	\$ 4,351,818.02	\$ 4,629,407.72	\$ (277,589.70)	-6.00%	
Roanoke	\$ 1,260,656.88	\$ 1,406,458.20	\$ (145,801.32)	-10.37%	
Saginaw	\$ 487,305.12	\$ 552,458.23	\$ (65,153.11)	-11.79%	
Euless	\$ 1,670,737.86	\$ 1,932,093.81	\$ (261,355.95)	-13.53%	

Source: Texas State Comptroller

Financial Highlights

Through January, 2018, the City is 33% through the fiscal year. All revenue and expenses are reflected in the chart below and details of each fund's revenues and expenditures are attached.



General Fund

Year-to-date revenues are 3.4% higher in comparison to last year at this time, representing 48.8% of budget collected. General fund expenses in total are in line with budget expectations at 33.7%.

Property Tax - Year-to-date, the City has received 81% of budgeted property taxes. The majority of the City's ad valorem tax receipts are received in the months of December and January.

Utility Franchise Revenue - The majority of franchise receipts are received on a quarterly basis. The City has not received any significant franchise fee revenues through January, 2018. Franchise receipts received through January 2018 are at .1% of budget collected.

Licenses and Permits - License and permit fees are at 48.5% of budget collected due to an increase in building permits this fiscal year.

Charges for Services - Charges for Services revenues are at 30.2% of budget collected. Charges for services include recreation fees, ambulance services, garbage collection fees and animal adoption fees.

Fines and Forfeitures - Fines and Forfeitures are at 18.6% of budget which is \$87,544, or 38.6% lower than last year's collections. The City continues to experience a decline in overall citations due to vacancies in the Police Department.

Miscellaneous Revenue - Miscellaneous revenue receipts total \$62,358 which is 20.7% of budgeted revenues.

Intergovernmental Revenue and Transfers - Intergovernmental Revenue is 29.6% of budget and Transfers are at 30% of budget.

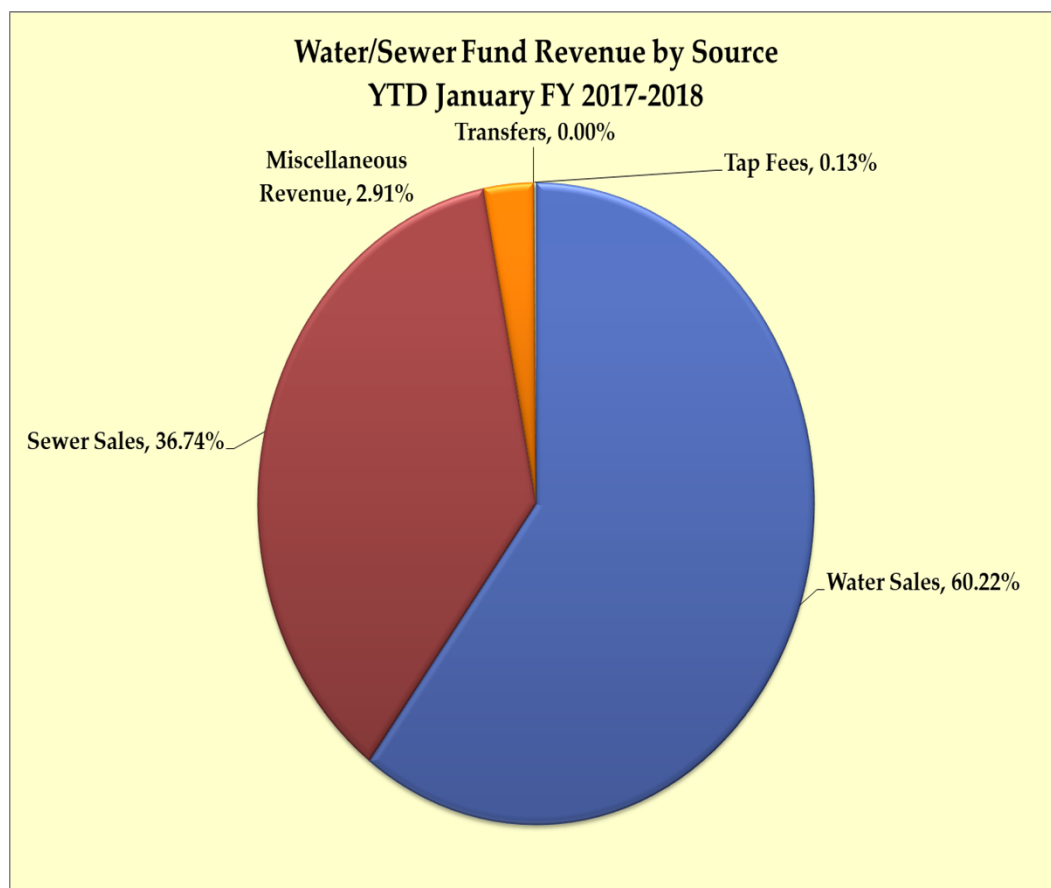
Water and Sewer Fund

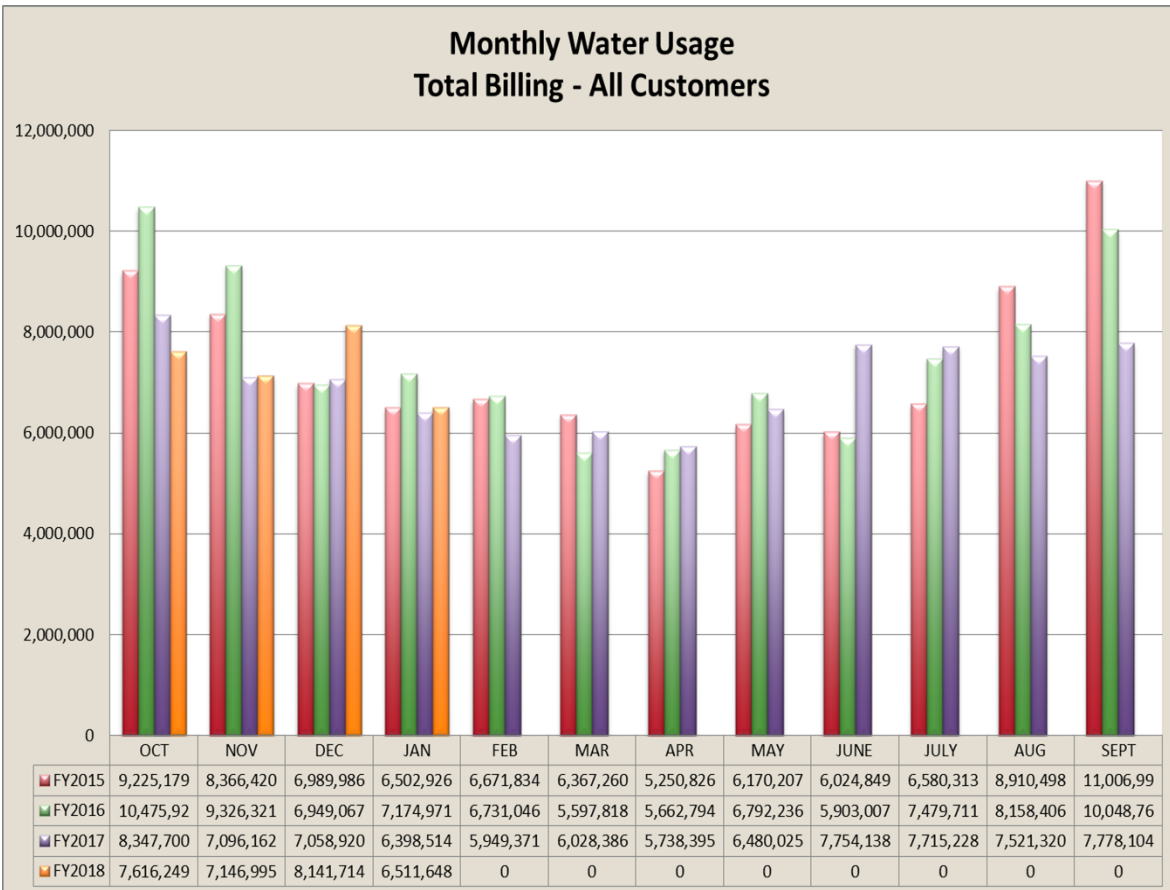
Water and sewer revenues are currently at 28.2% of budgeted revenues. Water sales are slightly up from last year receipts due to water consumption increase of 1.77% over prior year consumption.

At this time, sewer revenues are down \$226,586 in comparison to last year due to a sewer billing rate table error that occurred in the City's billing system. The error has been located and corrected in the system and will be back billed beginning in March, 2018. The City will bill the adjustment over a period of six (6) months to help mitigate the effect on

customers' accounts. If needed, the City will allow extensions for customers that need more time to pay the adjustment. Year-to-date expenses in the Water/Sewer fund are currently at 34%.

On the following graph, the water usage monthly trends for the years 2015-2018 are shown:





Miscellaneous Sales - Miscellaneous sales include penalty revenue, EPA revenue, service charges, returned check fees, and damaged/tampering fees. This category of revenue is at 33.8% of budget collected.

Storm Drain Fund – Revenues have increased 2.3% when compared with FY2017 and are on target with budget expectations at 34.2%. Expenses are at 9.7% of budget in this fund through January 2018.

Special Revenue Funds - In the Street Maintenance Fund, revenues are on target with 33.5% of budget collected. Expenses are at 6.7% of budget. The Crime Control and Prevention District has collected 32.1% of budgeted sales tax revenues and is at 30.7% of budget expended. The Parks Development Corporation Fund has collected 33.2% of sales tax revenues and is at 28.5% of budget expended through January, 2018. The Traffic Safety Fund (Red Light ticket program) has collected \$306,703 of fines or 38.3% of budget year-to-date and expenditures are at 11.5% of budget at this time.

CITY OF WATAUGA
BUDGET TO ACTUAL COMPARISON
FISCAL YEAR 2018
For the period ending January 31, 2018 (2nd Qtr.)

GENERAL FUND - 01

	<u>CURRENT BUDGET</u>	<u>1/31/2018 YTD ACTUAL</u>	<u>% USED</u>	<u>% REMAINING</u>	<u>1/31/2017 YTD ACTUAL</u>	<u>\$ CHG 18 vs 17</u>	<u>% CHG 18 vs 17</u>
REVENUE:							
TAXES							
AD VALOREM	5,143,936	4,168,771	81.04%	18.96%	3,927,899	240,872	6.13%
Delinquent	27,000	7,378	27.33%	72.67%	10,521	(3,143)	-29.87%
Penalty & Interest	27,000	4,012	14.86%	85.14%	5,413	(1,400)	-25.87%
SALES TAX	2,969,000	981,446	33.06%	66.94%	990,008	(8,562)	-0.86%
UTILITY FRANCHISE	1,086,000	1,169	0.11%	99.89%	10,598	(9,429)	-0.09%
LICENSES & PERMITS	404,000	195,771	48.46%	51.54%	147,397	48,374	32.82%
INTERGOVERNMENTAL REVENUE	501,000	148,452	29.63%	70.37%	158,823	(10,371)	-6.53%
CHARGES FOR SERVICES	750,500	226,908	30.23%	69.77%	207,006	19,901	9.61%
FINES & FORFEITURES	745,700	139,021	18.64%	81.36%	226,564	(87,544)	-38.64%
MISCELLANEOUS INCOME	301,100	62,358	20.71%	79.29%	41,272	21,086	51.09%
OPERATING TRANSFERS IN	567,000	170,147	30.01%	69.99%	180,379	(10,232)	-5.67%
TOTAL REVENUE	\$12,522,236	\$6,105,433	48.76%	51.24%	\$5,905,881	\$199,552	3.38%
TOTAL EXPENDITURES	\$12,867,380	\$4,333,148	33.68%	66.32%	\$4,563,296	(\$230,149)	-5.04%
EXCESS REVENUE OVER (UNDER) EXPENDITURES	(\$345,144)	\$1,772,285			\$1,342,584	\$429,701.04	

CITY OF WATAUGA
BUDGET TO ACTUAL COMPARISON
FISCAL YEAR 2018
For the period ending January 31, 2018 (2nd Qtr.)

DEBT SERVICE FUND - 03

	<u>CURRENT BUDGET</u>	<u>1/31/2018 YTD ACTUAL</u>	<u>% USED</u>	<u>% REMAINING</u>	<u>1/31/2017 YTD ACTUAL</u>	<u>\$ CHG 18 vs 17</u>	<u>% CHG 18 vs 17</u>
REVENUE:							
TAXES							
AD VALOREM	2,102,000	1,925,580	91.61%	8.39%	1,814,320	\$111,260	6.13%
Delinquent	12,000	2,993	24.94%	75.06%	4,267	(\$1,274)	-29.87%
Penalty & Interest	10,000	1,273	12.73%	87.28%	1,822	(\$549)	-30.15%
INTEREST EARNINGS	800	3,463	432.84%	-332.84%	1,117	\$2,346	-
OTHER FINANCING SOURCES	-	0	-	-	0	\$0	-
OPERATING TRANSFERS IN	-	0	-	-	0	\$0	-
TOTAL REVENUE	\$2,124,800	\$1,933,308	90.99%	9.01%	\$1,821,526	\$111,782	6.14%
TOTAL EXPENDITURES	\$2,096,438	1,563,946	74.60%	25.40%	1,557,972	\$5,974	-
EXCESS REVENUE OVER (UNDER) EXPENDITURES	\$28,362.00	\$369,361			\$263,554	\$105,807	

100.00%

CITY OF WATAUGA
BUDGET TO ACTUAL COMPARISON
FISCAL YEAR 2018
For the period ending January 31, 2018 (2nd Qtr.)

PARKS DEVELOPMENT FUND - 04

	<u>CURRENT BUDGET</u>	<u>1/31/2018 YTD ACTUAL</u>	<u>% USED</u>	<u>% REMAINING</u>	<u>1/31/2017 YTD ACTUAL</u>	<u>\$ CHG 18 vs 17</u>	<u>% CHG 18 vs 17</u>
REVENUE:							
SALES TAX	735,000	242,974	33.06%	66.94%	245,005	(2,031)	-0.83%
INTEREST EARNINGS	1,000	1,736	173.59%	-73.59%	395	1,341	-
INTEREST/ESCROW	-	-	-	-	-	-	-
CONTRIBUTIONS/OTHER	-	-	-	-	-	-	-
TOTAL REVENUE	\$736,000	\$244,710	33.25%	66.75%	\$245,400	(690)	-0.28%
 TOTAL EXPENDITURES	 <u>757,850</u>	 <u>215,995</u>	 28.50%	 71.50%	 <u>\$ 207,600</u>	 <u>8,394</u>	 <u>4.04%</u>
 EXCESS REVENUE OVER (UNDER) EXPENDITURES	 (\$21,850)	 \$28,715			 \$37,800	 -\$9,085	

100.00%

CITY OF WATAUGA
BUDGET TO ACTUAL COMPARISON
FISCAL YEAR 2018
For the period ending January 31, 2018 (2nd Qtr.)

Strategic Initiative Fund - 13

	<u>CURRENT BUDGET</u>	<u>1/31/2018 YTD ACTUAL</u>	<u>% USED</u>	<u>% REMAINING</u>	<u>1/31/2017 YTD ACTUAL</u>	<u>\$ CHG 18 vs 17</u>	<u>% CHG 18 vs 17</u>
REVENUE:							
	-						
INTEREST EARNINGS	1,000	1,493	149.26%	-49.26%	449	1,044	-
INTEREST/ESCROW	-	-	-	-	-	-	-
TRANSFERS	<u>75,000</u>	<u>25,000</u>	<u>-</u>	<u>-</u>	<u>50,000</u>	<u>(25,000)</u>	<u>-</u>
TOTAL REVENUE	\$76,000	\$26,493	34.86%	65.14%	\$50,449	(23,956)	0.00%
TOTAL EXPENDITURES	<u>225,000</u>	<u>27,367</u>	12.16%	87.84%	<u>\$ 25,000</u>	<u>2,367</u>	<u>9.47%</u>
EXCESS REVENUE OVER (UNDER) EXPENDITURES	(\$149,000)	(\$875)			\$25,449	-\$26,324	

100.00%

CITY OF WATAUGA
BUDGET TO ACTUAL COMPARISON
FISCAL YEAR 2018
For the period ending January 31, 2018 (2nd Qtr.)

STREET MAINTENANCE FUND - 14

	<u>CURRENT BUDGET</u>	<u>1/31/2018 YTD ACTUAL</u>	<u>% USED</u>	<u>% REMAINING</u>	<u>1/31/2017 YTD ACTUAL</u>	<u>\$ CHG 18 vs 17</u>	<u>% CHG 18 vs 17</u>
REVENUE:							
SALES TAX	723,000	240,464	33.26%	66.74%	242,382	(1,919)	(0.01)
INTEREST EARNINGS	1,000	1,953	-	-	568	1,385	-
INTEREST/ESCROW	-	-	-	-	-	0	-
CONTRIBUTIONS/OTHER	-	-	-	-	-	0	-
TOTAL REVENUE	\$ 724,000	\$242,416	33.26%	66.74%	242,950	(\$534)	-0.22%
TOTAL EXPENDITURES	710,000	47,724	6.72%	93.28%	16,571	\$31,153	
EXCESS REVENUE OVER (UNDER) EXPENDITURES	\$14,000	\$194,692			\$226,379	(\$31,687)	

100.00%

**CITY OF WATAUGA
BUDGET TO ACTUAL COMPARISON
FISCAL YEAR 2018
For the period ending January 31, 2018 (2nd Qtr.)**

STORM DRAIN FUND - 15

	CURRENT BUDGET	1/31/2018 YTD ACTUAL	% USED	% REMAINING	1/31/2017 YTD ACTUAL	\$ CHG 18 vs 17	% CHG 18 vs 17
REVENUE:							
USERS FEE	1,415,000	477,862	33.77%	66.23%	472,725	5,137	1.09%
OTHER REVENUE	-	-	-	-	-	-	-
INTEREST INCOME	3,500	7,841	224.04%	-124.04%	2,184	5,657	-
						-	-
TOTAL REVENUE	\$1,418,500	\$485,704	34.24%	65.76%	\$474,909	\$10,794	2.27%
TOTAL EXPENDITURES	\$2,974,955	\$289,449	9.73%	90.27%	\$388,887	(\$99,437)	-25.57%
EXCESS REVENUE OVER (UNDER) EXPENDITURES	(\$1,556,455)	\$196,254			\$86,023	\$110,232	

100.00%

**CITY OF WATAUGA
BUDGET TO ACTUAL COMPARISON
FISCAL YEAR 2018
For the period ending January 31, 2018 (2nd Qtr.)**

CRIME CONTROL DISTRICT - 18

REVENUE:	<u>CURRENT BUDGET</u>	<u>1/31/2018 YTD ACTUAL</u>	<u>% USED</u>	<u>% REMAINING</u>	<u>1/31/2017 YTD ACTUAL</u>	<u>\$ CHG 18 vs 17</u>	<u>% CHG 18 vs 17</u>
SALES TAX	1,450,000	477,359	32.92%	67.08%	485,702	(8,343)	-1.72%
INTEREST EARNING/OTHER	51,500	4,702	9.13%	90.87%	23,174	(18,472)	-79.71%
MIS GRANT PROCEEDS	-	-	0.00%	100.00%	-	-	-
			-	-		-	-
TOTAL REVENUE	\$1,501,500	\$482,061	32.11%	67.89%	\$508,876	(\$26,815)	-5.27%
TOTAL EXPENDITURES	<u>2,065,786</u>	<u>633,893</u>	<u>30.69%</u>	<u>69.31%</u>	<u>\$513,976</u>	<u>\$119,917</u>	<u>23.33%</u>
EXCESS REVENUE OVER (UNDER) EXPENDITURES	(\$564,286)	(\$151,832)			-\$5,100	(\$146,732)	

100.00%

**CITY OF WATAUGA
BUDGET TO ACTUAL COMPARISON
FISCAL YEAR 2018
For the period ending January 31, 2018 (2nd Qtr.)**

Traffic Safety - 28

	<u>CURRENT BUDGET</u>	<u>1/31/2018 YTD ACTUAL</u>	<u>% USED</u>	<u>% REMAINING</u>	<u>1/31/2017 YTD ACTUAL</u>	<u>\$ CHG 18 vs 17</u>	<u>% CHG 18 vs 17</u>
REVENUE:							
FINES & FORFEITURES	800,000	306,385	38.30%	61.70%	314,159	(7,774)	-2.47%
MISC GRANT PROCEEDS	-	319	-	-	-	319	-
		<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL REVENUE	800,000	306,703	38.34%	61.70%	314,159	(7,456)	-2.37%
TOTAL EXPENDITURES	818,760	94,111	11.49%	88.51%	117,975	(23,864)	-20.23%
EXCESS REVENUE OVER (UNDER) EXPENDITURES	(\$18,760)	\$212,592			\$196,184	\$16,408	

100.00%

CITY OF WATAUGA
BUDGET TO ACTUAL COMPARISON
FISCAL YEAR 2018
For the period ending January 31, 2018 (2nd Qtr.)

WATER & SEWER - 40

	<u>CURRENT BUDGET</u>	<u>1/31/2018 YTD ACTUAL</u>	<u>% USED</u>	<u>% REMAINING</u>	<u>1/31/2017 YTD ACTUAL</u>	<u>\$ CHG 18 vs 17</u>	<u>% CHG 18 vs 17</u>
REVENUE:							
WATER SALES	4,750,000	1,464,533	30.83%	69.17%	1,445,152	19,381	1.34%
SEWER SALES	3,700,000	893,607	24.15%	75.85%	1,120,194	(226,586)	-20.23%
MISCELLANEOUS	209,000	70,717	33.84%	66.16%	70,981	(264)	-0.37%
PENALTY	205,000	62,269	30.37%	69.63%	69,769	(7,500)	-10.75%
INTEREST	5,000	4,485	89.70%	10.30%	1,566	2,919	-
TRANSFERS	-	-	-	-	2,976	(2,976)	-
TAP FEES	-	3,150	-	-	550	2,600	-
SALE OF ASSETS	-	-	-	-	-	-	-
TOTAL REVENUE	\$8,869,000	\$2,498,761	28.17%	71.83%	\$2,711,189	(\$212,428)	-7.84%
TOTAL EXPENDITURES	\$8,634,638	\$2,933,903	33.98%	66.02%	\$3,017,793	(\$83,891)	-2.78%
EXCESS REVENUE OVER (UNDER) EXPENDITURES	\$234,362	(\$435,141)			(\$306,605)	(\$128,537)	

100.00%



AGENDA MEMORANDUM

DATE: February 10, 2018

TO: Honorable City Council Members

FROM: Sandra Gibson, Director of Finance

THROUGH: Greg Vick, City Manager

SUBJECT: Approval of proposed resolution adopting Written Investment Policies and Standards and approval of the Authorized Broker/Dealer List for the City of Watauga

BACKGROUND/INFORMATION:

An annual review of the City's Investment Policy and strategy must be documented by formal action of the City Council. The Policy was last reviewed and approved by the City Council on February 27, 2017. A summary of the changes this year are below:

1. Formatting changes were made throughout document and repetitive language was deleted.
2. Some changes were made for clarification in relation to changes made in the 2017 Texas Public Funds Investment Act - 85th Legislative Session update.

A listing of Broker/Dealers is also attached. There were not any additions/deletions to this listing, but this list updated to reflected only the names of firms, not individual contact information.

The City of Watauga Investment policy was acknowledged in March, 2016 by the Government Treasurers' Organization of Texas with the Investment Policy of Distinction. This Certificate is awarded for two years and then is eligible for renewal upon renewal. The City will be submitting an application for this certification in March, 2018. Our Policy meets all of the requirements set by the Public Funds Investment Act adopted by the Texas Legislature.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Approval of the proposed Resolution adopting the City of Watauga Investment Policy as Exhibit "A" and the Broker/Dealer List as Exhibit "B".



AGENDA MEMORANDUM

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Letter of approval from City Attorney and Resolution
2. 2018 Proposed Investment Policy

REVIEWED BY:

Sandra Gibson

Sandra Gibson

Greg Vick

Zolaina Parker

Created/Initiated - 02/12/2018

Approved - 02/12/2018

Approved - 02/14/2018

Final Approval - 02/14/2018

LAW OFFICES
EVANS, DANIEL, MOORE, EVANS, BIGGS & DECKER
(NOT A PARTNERSHIP)

MARK G. DANIEL

BOARD CERTIFIED - CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

CRIMINAL TRIAL SPECIALIST-BOARD CERTIFIED
NATIONAL BOARD OF TRIAL ADVOCACY

SUNDANCE SQUARE
115 WEST SECOND STREET, SUITE 202
FORT WORTH, TEXAS 76102

(817) 332-3822
FACSIMILE (817) 332-2763

OF COUNSEL:
TIM EVANS
TIM MOORE
LANCE T. EVANS
WILLIAM R. BIGGS
ANDREW J. DECKER

February 6, 2018

Ms. Sandra Gibson
Director of Finance and Administration
City of Watauga
7105 Whitley Road
Watauga, Texas 76148

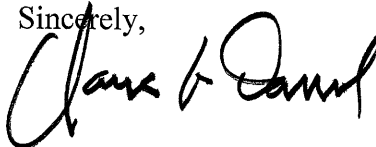
Re: Resolution re Written Investment Policies and Practices

Dear Ms. Gibson:

I am in receipt of the proposed Resolution by the City of Watauga adopting written investment policies and standards governing the City's investment practices and amending authorized broker/dealer list for 2018. I have reviewed the Resolution including Exhibits "A" and "B" attached to the Resolution. I approve of the Resolution and Exhibits and would recommend that these be presented at the next City Council meeting for consideration.

Thank you for your attention to the above and the opportunity to be of assistance. Please do not hesitate to contact me should you have any questions.

Sincerely,



MARK G. DANIEL

MGD:tp

cc: Mayor Pro tem Pat Shelbourne
Mr. Greg Vick, City Manager
Ms. Zolaina R. Parker, City Secretary

CITY OF WATAUGA, TEXAS
RESOLUTION NO. _____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF
WATAUGA, TEXAS ADOPTING WRITTEN INVESTMENT
POLICIES AND STANDARDS GOVERNING THE CITY'S
INVESTMENT PRACTICES; AMENDING AUTHORIZED
BROKER/DEALERS LIST IN THE CITY OF WATAUGA;
REPEALING CONFLICTING RESOLUTIONS; AND PROVIDING AN
EFFECTIVE DATE

WHEREAS, the Public Funds Investment Act (the "Act") as amended effective September 1, 2001, requires that an investment of public funds shall be made in accordance with written policies approved by the governing body and that such policies must address liquidity, diversification, safety or principal, yield, maturity, and quality and capability of investment management, with primary emphasis on safety and liquidity; and

WHEREAS, the Act and Article 2256.005, V.T.C.S., requires Texas cities to adopt rules governing investment practices, including designation of investment officers, definition of the authority of the investment officers, authorized and unauthorized investments, and provisions for quarterly reports to the governing body describing investment transactions and market value; and

WHEREAS, it is the desire of the City Council to establish and maintain an investments and cash management program to ensure protection of the City's funds, availability of cash to meet current City obligations, and maximization of interest earning through the investment of idle funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS:

SECTION 1. That the City hereby adopts the Investment Policy of the City of Watauga dated February 26, 2018, and reviewed February 26, 2018, attached hereto as Exhibit "A" which replaces the rules and policy adopted by Resolution No. 17-02-27-01.

SECTION 2. That the City hereby adopts the Approved Broker/Dealer List dated February 26, 2018 and attached hereto as Exhibit "B".

SECTION 3. That any and all resolutions, rules, regulations, policies or provisions in conflict with the provisions of this Resolution are hereby repealed and rescinded to the extent of the conflict herewith.

SECTION 4. This Resolution shall take effect immediately from and after its adoption and it is so resolved.

PASSED AND ADOPTED by the City Council of the City of Watauga, Texas on this the 26th day of February 2018.

APPROVED:

PATRICK SHELBOURNE, MAYOR PRO-TEM

ATTEST:

ZOLAINA R. PARKER, City Secretary

APPROVED AS TO FORM & LEGALITY:



MARK G. DANIEL, City Attorney

CITY OF WATAUGA, TEXAS

INVESTMENT POLICY

Reviewed February 26, 2018

POLICY

It is the policy of the City of Watauga (City) after allowing for the anticipated cash flow requirements in its bank accounts to meet daily needs and after giving due consideration to the safety and risk of investments, providing protection for both principal and liquidity, to invest public funds in a manner which will provide the highest investment return while conforming to all state and local statutes governing the investment of public funds. This Investment Policy is authorized by the City Council in accordance with Texas Government Code, Chapter 2256- Public Funds Investment, also cited as the Public Funds Investment Act (Act), to satisfy the statutory requirements to define, adopt, and review a written Investment Policy regarding the investment of its funds and funds under its control. The City Council shall review and adopt by resolution, its investment strategies and policy not less than annually. This is required even if there are no changes within the policy. Such an Investment Policy must be written, emphasize safety, address investment management and include types of authorized investments, maximum allowable stated maturity, maximum dollar-weighted average maturity, method to monitor the market price and credit ratings of investments , and requirements for settlement of transactions. The resolution shall state that the Policy has been reviewed and include record of changes made to either the Investment Policy or strategy.

SCOPE

This Policy applies to all funds or financial resources available for investment under the City's financial control and accounted for in the City of Watauga, Texas Comprehensive Annual Financial Report which includes the General Fund, Watauga Parks Development Corporation Sales Tax Fund, Crime Control and Prevention District Fund, Street Maintenance Fund, Library Donation Fund, Municipal Court Security Fund, Municipal Court Technology Fund, Juvenile Case Manager Fund, Traffic Safety Fund, Park Vista Fund, General Obligation Bond Debt Service Fund, Watauga Parks Development Corporation Revenue Bond Debt Service Fund, General Obligation Capital Project Fund, Watauga Parks Development Corporation Capital Projects Fund, Bunker Hill Capital Projects Fund, Water and Sewer Enterprise Fund, Drainage Utility Enterprise Fund, Utility Construction Fund and will include any new fund created by the City Council unless specifically exempt. These policies do not, however, govern funds that are managed under separate investment programs or trust agreements, such as retirement funds, pension funds, deferred compensation funds, and certain private donations that are maintained as required by Federal and State laws, other local policies, or donor stipulations. In addition to this Policy, bond funds (as defined by the Internal Revenue Service) shall be managed by their governing ordinances and all applicable State and Federal laws.

The City will consolidate cash balances from all applicable funds to optimize investment earnings. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles. Such earnings from investments will be used in a manner that best serves the public trust and interests of the City as deemed in the annual budget.

INVESTMENT OBJECTIVES

All investments shall be designed and managed in a manner responsive to the public trust and in compliance with all Federal, State and other legal requirements, including but not limited to the Act. The City shall manage and invest its available resources with four objectives, listed in order of priority: Safety, Liquidity, Public Trust, and Yield.

Safety

Safety of principal and the City's assets is the foremost objective of the investment program. Investments of the City shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To increase investment safety, the City strives to decrease or minimize credit and interest rate risk. Minimization of credit risk or the risk of loss due to the failure of an investment issuer or guarantor shall be done by the City by limiting investments to safe types, pre-qualifying financial institutions and broker/dealers, and diversifying the portfolio in order that potential losses on individual investments do not exceed the income generated from the remainder of the portfolio.

Minimization of interest rate risk or the decrease in market value of investments in the City's portfolio due to changes in interest rates shall be done by the City through strong cash flow projections so that realized market value losses are reduced and through investments in shorter-term investments.

Liquidity

The City's investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements that might be reasonably anticipated. Liquidity shall be achieved by matching investment maturities with forecasted cash flow requirements and by investing in securities with active secondary markets. A portion of the portfolio will also be placed in cash equivalent investments, which offer daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investments.

Public Trust

Investments shall be made with judgment and care, under circumstances, then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of capital as well as the probable income to be derived. All participants in the City's investment process shall seek to act responsibly as custodians of the public trust. Investment officials shall avoid any transaction that might impair public confidence in the City's ability to govern effectively.

Yield

The City's investment portfolio shall be designed with the objective of attaining a rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio. Return on investment is of secondary importance compared to the safety, liquidity and public trust objectives described above. The core of investments is limited to relatively low risk investments in anticipation of earning a fair return relative to the risk being assumed. The yield of an equally weighted, rolling six-month Treasury bill portfolio shall be the minimum yield objective or "benchmark". A secondary objective will be to obtain a yield equal to or in excess of a local government investment pool or money market mutual fund. Weighted Average Yield to Maturity will be the portfolio performance standard.

STANDARDS OF CARE

Delegation of Authority

The City Manager, the Director of Finance, and Assistant Director of Finance are the Investment Officers of the City and are responsible for investment decisions and activities. The Investment Officers may delegate the day-to-day administrative duties to other persons authorized to perform investment activities for the City, or he/she may perform the duties him or herself. The City Manager will retain ultimate responsibility for investment decisions.

The Investment Officer(s) are responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft, or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits likely to be derived.

In conjunction with the annual audit, the City's outside auditor will review the internal control structure.

Training Requirements

The Investment Officer(s) are required to attend at least one training session relating to the Officers responsibility under the Act within 12 months after assuming duties receiving at least ten hours of Act-related instruction. Afterwards, the City shall provide at least eight hours of investment training not less than once in a two-year period that begins on the first day of the fiscal year and consists of two consecutive fiscal years after that date for the Investment Officer(s) and/or his/her delegate(s). This Policy approves courses and seminars offered by: the *Government Finance Officers Association of Texas*, the *Government Treasurers Organization of Texas*, the *Texas Municipal League*, the *North Central Texas Council of Governments*, the *International City Manager Association*, the *University of North Texas*, the *Texas State University*, or the *American Institute of Certified Public Accountants* in order to insure the quality and capability of the City's investment personnel making investment decisions in compliance with the Act. The training must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with the Act.

The City shall also encourage those who may perform daily activities with the City investments to attend such training although they are not listed specifically as Investment Officers of the City.

Prudent Person Rule

As set forth in the Act, Investment Officers shall use the standard of prudence with the "Prudent Person Rule". "Investments shall be made with judgment and care, under prevailing circumstances, 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." (2256.006(a))

"In determining whether an investment officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

1. The investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and
2. Whether the investment decision was consistent with the written Investment Policy of the entity." (2256.006(b))

Investment officials acting in accordance with written procedures and the Investment Policy and exercising due diligence shall be relieved of personal responsibilities for an individual investment's credit risk or market price change, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

Ethics and Conflict of Interest

Investment Officers and other employees involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. According to the Act, a personal business relationship with a business exists if one of the following three (3) items applies:

1. The Investment Officer owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization.
2. Funds received by the Investment Officer from the business organization exceed 10 percent of the Investment Officer's gross income for the previous year.
3. The Investment Officer has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the Investment Officer.

Investment Officer(s) must file a disclosure statement with the Texas Ethics Commission and the City Council if an Officer has a personal business relationship with a business organization offering to engage in an investment transaction with the City or the Officer is related within the second degree by affinity or consanguinity, as determined under Chapter 573 of the Texas Government Code, to an individual seeking to transact investment business with the entity.

Special attention should also be given the City's Standards of Conduct-Officers and Employees in Code of Ordinances Section 9.202 (1) and (2):

"No Officer or employee of the City shall:

1. Have a financial interest, direct or indirect, in any contract with the City nor shall be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in any land, materials, supplies or service. The "financial interest" contemplated under this article requires that the officer or employee receive an actual financial benefit from the transaction with the City. An actual financial benefit from the transaction shall not include:
 - A. An ownership in the entity transacting with the City where the ownership interest is less than one (1) percent of the entity.
 - B. Compensation or benefits as an employee, officer, or director of the entity transacting business within the City where such

compensation is not affected by the entity's transaction with the City.

2. Participate in a vote or decision on any matter in which the Officer or employee has a direct or indirect financial interest or in which a relative of the Officer or employee has a direct or indirect financial interest. It is expressly provided herein that an investment or ownership in a publicly held company in an amount less than three thousand, five hundred dollars (\$3,500.00) does not constitute a prohibited financial interest under this article."

AUTHORIZED DEPOSITORY FINANCIAL INSTITUTIONS

A qualified primary depository shall be selected through the City's banking services procurement process, which shall include solicitation of proposals as required under Chapter 105 of the Local Government Code. The centralization of depository services is designed to maximize investment capabilities while minimizing service costs. The selection of a primary depository shall be based on the financial institution offering the most favorable terms and conditions at the least possible cost, while adhering to the guidelines and provisions within the request for proposal. In selecting a primary depository, the City shall give consideration to the financial institution's credit characteristics, financial history, service capabilities, location within City limits or within a ten (10) mile radius of the City limits, and costs for required services. Specialized services may be contracted for by the City with another financial institution or company if the depository cannot provide such service or charges more than the same service with little or no appreciable benefit.

The City may also establish agreements with other financial institutions under separate contract for additional deposit services. Such deposits will only be made after the financial institution has completed and returned the required written instruments and depository pledge agreements. No deposit shall be made except in a qualified public depository as established by State Law.

SELECTION OF INVESTMENT BROKER/DEALERS AND ADVISORS

Selection of Investment Advisors and Broker/Dealers will be performed by the Investment Officer(s), with ratification and approval by the City Council. The selected firms shall provide timely transaction confirmations and monthly portfolio reports. Prospective Broker/Dealers shall provide financial and other information as requested by the Investment Officer(s) sufficient to evaluate their fiscal condition and ability to service the City. The Investment Officer(s) 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, and
- 6.) References from other public entities in Texas.

The Investment Officers shall, at least annually, review, revise, and adopt a list of qualified broker/dealers authorized to engage in securities transactions with the City. The City Council will annually approve the list of those qualified broker/dealers authorized to engage in investment transactions with the City (Sec. 2256.025).

A current audited financial statement may be required to be on file for each financial institution and broker/dealer in which the City invests.

APPROVED INVESTMENT PROVIDERS AND INVESTMENT ADVISORS

Broker/Dealers, Local Government Investment Pools, Money Market Mutual Funds, Financial Institutions, Investment Advisors, and other business organizations eligible to transact investment business with the City shall be presented a written copy of this Investment Policy. Additionally, the qualified representative or equivalent of the Local Government Investment Pool or discretionary Investment Management firm (i.e. business organization) shall execute a Certificate as shown in Appendix "A", or a Certification similar in form, to the effect that the qualified representative has:

- 1.) Received and thoroughly reviewed this Investment Policy, and
- 2.) Acknowledged that their business organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment transactions between itself and the City that are not authorized by this Investment Policy, except to the extent that this authorization is dependent on an analysis of the makeup of the City's entire portfolio or requires and interpretation of subjective investment standards or relates to investment transactions of the City that are not made through accounts or other contractual arrangements over which the business organization has accepted discretionary investment authority.

The City may not engage in an investment transaction with a business organization prior to receiving this written acknowledgment completed by the organization.

Competitive Environment

It is the policy of the City to provide a competitive environment for all individual security purchases and sales, financial institution deposits, and money market mutual fund and local government investment pool selections. The Investment Officers shall develop and maintain procedures for ensuring competition in the investment of the City's funds.

AUTHORIZED AND SUITABLE INVESTMENTS

Investments described below are authorized by the Act as eligible securities for the City. City funds governed by this Policy may be invested in the following types of securities:

- 1.) Obligations of the United States or its agencies and instrumentalities, including the Federal Home Loan Banks.
- 2.) Direct obligations of the State of Texas or its agencies.
- 3.) Other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States or its agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States.
- 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 than A or its equivalent.
- 5.) Financial institution deposits that, are issued by a state or national bank that a) has its main office or a branch office in Texas and is guaranteed or insured by the Federal Deposit Insurance Corporation or its successor, b) is secured by obligations in a manner and amount provided by law and this Policy for deposits of the City, or c) is executed through a depository institution or approved broker that has its main office or a branch office in Texas that meets the requirements of the Act.
- 6.) No-load money market mutual funds that are registered with the Securities and Exchange Commission, and no-load mutual funds which are continuously rated AAA by at least one nationally recognized rating service and follow practices authorized by the Act, are authorized investments per the Act, if:

- (a) the no-load mutual fund has an average weighted maturity of less than two years, and is invested exclusively in obligations approved by Section 2256.014 (a)-(c) of the Act
- (b) the City has not invested more than 15% of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in the mutual funds described above; and
- (c) the City has not invested any portion of its bond proceeds and reserves and funds held for debt service, in mutual funds described above; and
- (d) the City has not invested funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund described above in an amount that exceeds 10% of the total assets of the mutual fund.

7.) Eligible Investment Pools as defined in Section 2256.016 provided that:

- (a) investment in the particular pool has been authorized by the City Council;
- (b) the pool shall have furnished the Investment Officer(s) an offering circular containing the information required by Section 2256.016(b);
- (c) the pool shall furnish to the Investment Officer(s) investment transaction confirmations with respect to all investments made with it;
- (d) the pool shall furnish to the Investment Officer(s) monthly reports that contain the information required by Section 2256.016(c);
- (e) any pool that is created to function as a money market mutual fund must seek to maintain a stable net asset value of one dollar (\$1.00),
- (f) the pool's investment philosophy and strategy are consistent with this Policy and the City's ongoing investment strategy; and
- (g) the pool provides evidence of credit rating no lower than "AAA" or "AAA-m" by at least one nationally recognized credit rating service,

- (h) an investment pool must make available an annual audited financial statement,
 - (i) if the investment pool operates an Internet website, the information required by section 2256.016(b),(c)(2), and (f) must be posted on the website,
 - (j) an investment pool in advertising investment rates must include either all levels of return based on breakpoints provided or state the lowest possible level of return based on the smallest level of funds invested if an investment pool offers fee breakpoints based on fund balances invested.
- 8.) Fully collateralized direct repurchase agreements having a defined termination date that is no later than 270 days from the delivery date, secured by cash or direct obligations of the U.S. or its agencies and instrumentalities, pledged with a third party selected or approved by the political entity, and placed through a primary government securities dealer, and as otherwise defined by the Act. Each issuer of repurchase agreements must sign a copy of a Master Repurchase Agreement, or similar mutually acceptable agreement.
- 9.) Commercial paper as defined in Section 2256.013 is allowed provided that paper has a stated maturity of 270 days or less from the issuance date and is rated not less than A-1 or P-1 or an equivalent rating by at least two nationally recognized credit rating agencies or one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any State.

The City shall take all prudent measures that are consistent with this Investment Policy to liquidate any investment that does not have or is down-graded to less than the minimum rating stated herein. On a quarterly basis, the Investment Officers will monitor the rating of all investments held by the City. However, as stated in Section 2256.017, the City is not required to liquidate investments that were authorized investments at the time of purchase.

UNAUTHORIZED INVESTMENTS

The following investments are specifically prohibited by State Law:

- 1.) Obligations whose payment represents the coupon payment on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.

- 2.) Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.
- 3.) Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years.
- 4.) Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

COLLATERALIZATION

Consistent with the requirements of the Public Funds Investment Act and the Public Funds Collateral Act, the City requires that all bank deposits shall be federally insured or collateralized with eligible securities. This pledged collateral will have a market value equal to or no less than 102% of the deposits plus accrued interest less an amount insured by the FDIC. Evidence of the pledged collateral must be provided to and reviewed by the Director of Finance and will be retained by the City. Evidence of collateral is reviewed annually by the City's independent auditor in conjunction with the annual audit.

Financial institutions serving as City Depositories will be required to sign a Depository Agreement with the City. 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:

- 1.) the Agreement must be in writing;
- 2.) the Agreement has to be executed by the Depository and the City contemporaneously with the acquisition of the assets;
- 3.) the Agreement must be approved by the Depository's Board of Directors or loan committee, and a copy of the meeting minutes must be delivered to the City; and,
- 4.) the 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 Bond Market** Association Master Repurchase Agreement, or mutually acceptable agreement. An executed copy of the Agreement must be on file before the City will enter into any transactions with a counter party.

Monitoring Collateral Adequacy

The City requires monthly reports with market values of pledged securities from all financial institutions with which the City has bank deposits, certificates of deposit, money market account deposits, or other secured deposits. The Investment Officer(s) will monitor adequacy of collateralization monthly.

Weekly monitoring by the Investment Officer(s) of all collateral underlying repurchase agreement is required. More frequent monitoring may be necessary during periods of market volatility.

Collateral Substitution

Financial institution deposits, collateralized certificates of deposit, and repurchase agreements often require substitution of collateral. Any repurchase provider or financial institution requesting substitution must contact the Investment Officer(s) 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 collateral level. Substitution is allowable for all transactions, but should be limited, if possible, to minimize potential administrative problems and transfer expense. The Investment Officer(s) may limit substitution and assess appropriate fees if substitution becomes excessive or abusive.

Collateral Reductions

Should the collateral's market value exceed the required amount, any repurchase provider or financial institution may request approval from the Investment Officer(s) to reduce collateral. Collateral reductions may be permitted only if the City's records indicate that the collateral's market value exceeds the required amount. The Investment Officer(s), or a designee, must provide written notification of the decision to the bank or custodian holding the collateral prior to release

SAFEKEEPING AND CUSTODY

The City shall contract with a bank or banks for the safekeeping of securities either owned by the City as part of its investment portfolio or as part of its depository and repurchase agreements. All collateral securing bank deposits must be held by third-party banking institution ("Custodian") acceptable to and under contract with the City, or by the Federal Reserve Bank. The securities purchased under a repurchase agreement must be delivered to a third-party custodian with whom the City has established a safekeeping agreement ("Safekeeping Agent").

All security transactions, including collateral for repurchase agreements entered into by the City shall be conducted on a delivery-verses-payment (DVP) basis.

By so doing, City funds are not released until the City has received, through the Safekeeping Agent, the securities purchased. The security shall be held in the name of the City or held on behalf of the City. The Safekeeping Agent and Custodian's records shall assure the notation of the City's ownership of or explicit claim on the securities. The original copy of all receipts and monthly reports shall be delivered to the City by the Safekeeping Agent or Custodian.

INVESTMENT PARAMETERS

Diversification

The City will diversify its investments by security type and investment maturity. Diversification by investment type shall be established by the following maximum percentages of investment type to the total investment portfolio:

a.) U.S. Government Securities	100%
b.) Financial Institution Deposits	100%
c.) Eligible Investment Pools	100%
d.) States, Agencies, Counties, Cities and Other	50%
e.) Repurchase Agreements	50%
f.) Money Market Mutual Funds	50%
g.) Commercial Paper	10%

Maximum and Weighted Average Maturity

In order to minimize risk of loss due to interest rate fluctuations, investment maturities will not exceed the anticipated cash flow requirement of the funds. The City intends to match the holding periods of investment funds with liquidity need of the City. The maximum final stated maturity of any investment shall not exceed five years. All long-term maturities will be intended to cover long-term liabilities. In addition, no less than ten percent (10%) of the funds in the portfolio will be in cash equivalent investments at all times. The entire portfolio will have a weighted average maturity of one (1) year or less. This weighted average will be calculated using the stated final maturity dates of each investment.

By Fund Groups

Maturity guidelines by fund are as follows:

- a.) Operating Funds - The weighted average days to maturity for the operating fund portfolio shall be 365 days or less and the maximum allowable maturity shall be two years.
- b.) 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 "unfunded" debt service date with the maturity of any investment. Any

unfunded debt service date is defined as a coupon or principal payment date that does not have cash or investments available to satisfy said payment.

- c.) Debt Service Reserve Funds - Market conditions, Bond Resolutions constraints and Arbitrage compliance will be considered when formulating Reserve Fund strategy. Maturity limitation shall generally not exceed the call provisions of the Bond Ordinance and shall not exceed the final maturity of the bond issue. All Debt Service Reserve Fund investment maturities shall not exceed five years.
- d.) Special Project, Special Purpose or Capital Improvement Funds - The investment maturity of Special Project, Special Purpose or Capital Improvement Funds shall generally be limited to the anticipated cash flow requirements. City funds that are considered "bond proceeds" for arbitrage purposes will be invested using a more conservative approach than the standard investment strategy when arbitrage rebate rules requiring refunding excess earnings. All earnings in excess of the allowable arbitrage earnings will be segregated and made available for any necessary payments to the U.S. Treasury.

INVESTMENT STRATEGY

The City primarily maintains one portfolio in which all funds under the City's control are pooled for investment purposes. 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. Investment guidelines by fund-type are as follows:

1. General, Enterprise, or Operating-type Funds, and the Pooled Fund

Suitability – Any investment eligible in the Investment Policy is suitable for General, Enterprise, or Operating Funds, and the Pooled Fund.

Safety of Principal – All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. However, managing the weighted average days to maturity of each fund's portfolio to less than 365 days and restricting the maximum allowable maturity to two years will minimize the price volatility of the portfolio.

Marketability – Securities with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement. Historical market "spreads" between the bid and offer prices of a particular security-type of less than a quarter of a percentage point will define an efficient secondary market.

Liquidity – General, Enterprise, or Operating-type Funds, and the Pooled Fund require the greatest short-term liquidity of any of the fund-types. Short-term cash equivalent investments will provide daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investments.

Diversification – Investment maturities should be staggered throughout the budget cycle to provide cash flow based on the anticipated operating needs of the City. Diversifying the appropriate maturity structure up to the two-year maximum will reduce interest rate risk.

Yield – Attaining a competitive market yield for comparable security-types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling six-month Treasury Bill portfolio will be the minimum yield objective.

2. Debt Service Funds

Suitability – Any investment eligible in the Investment Policy is suitable for the Debt Service Funds.

Safety of Principal – All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. However, by managing Debt Service Funds maturities to not exceed the debt service payment schedule the market risk of the overall portfolio will be minimized.

Marketability – Securities with active and efficient secondary markets are not necessary as the event of an unanticipated cash flow requirement is not probable.

Liquidity – Debt Service Funds have predictable payment schedules. Therefore, investment maturities should not exceed the anticipated cash flow requirements. Investment pools and money market mutual funds may provide a competitive yield alternative for short-term fixed maturity investments.

Diversification – Market conditions influence the attractiveness of fully extending maturity to the next “unfunded” payment date. Generally, if investment rates are anticipated to decrease over time, the City is best served by locking in most investments. If the interest rates are

potentially rising, then investing in shorter and larger amounts may provide advantage. At no time shall the debt service schedule be exceeded in an attempt to bolster yield.

Yield – Attaining a competitive market yield for comparable security-types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling six-month Treasury Bill portfolio shall be the minimum yield objective.

3. Debt Service Reserve Funds

Suitability – Any investment eligible in the Investment Policy is suitable for the Debt Service Reserve Funds. Bond resolution and loan documentation constraints and insurance company restrictions may create specific considerations in addition to the Investment Policy.

Safety of Principal – All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. However, by managing Debt Service Reserve Fund maturities to not exceed the call provisions of the borrowing will reduce the investment's market risk if the City's debt is redeemed and the Reserve Fund liquidated. No stated final investment maturity shall exceed the shorter of the final maturity of the borrowing or five years. Annual market-to-market requirements or specific maturity and average life limitations within the borrowing's documentation will influence the attractiveness of market risk and influence maturity extension.

Marketability – Securities with less active and efficient secondary markets are acceptable for Debt Service Reserve Funds.

Liquidity – Debt Service Reserve Funds have no anticipated expenditures. The Funds are deposited to provide annual debt service payment protection to the City's debt holders. The funds are "returned" to the City at the final debt service payment. Market conditions and arbitrage regulation compliance determine the advantage of investment diversification and liquidity. Generally, if investment rates exceed the cost of borrowing, the City is best served by locking in investment maturities and reducing liquidity. If the borrowing costs cannot be exceeded, then current market conditions will determine the attractiveness of locking in maturities or investing shorter and anticipated future increased yields.

Diversification – Market conditions and the arbitrage regulations influence the attractiveness of staggering the maturity of fixed rate investments for Debt Service Reserve Funds. At no time shall the final debt service payment date of the bond issue be exceeded in an attempt to bolster yield.

Yield – Achieving a positive spread to the applicable borrowing cost is the desired objective. Debt Service Reserve Fund portfolio management shall operate within the limits of the Investment Policy's risk constraints.

4. Special Project, Special Purpose or Capital Improvement Funds

Suitability – Any investment eligible in the Investment Policy is suitable for Special Project, Special Purpose or Capital Improvement Funds.

Safety of Principal – All investments will be of high quality with no perceived default risk. Market price fluctuations will occur. However, by managing Capital Improvement Funds to not exceed the anticipated expenditure schedule, the market risk of the overall portfolio will be minimized. No stated final investment maturity shall exceed the shorter of the anticipated expenditure schedule.

Marketability – Securities with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement. Historical market "spreads" between the bid and offer prices of a particular security-type of less than a quarter of a percentage point will define an efficient secondary market.

Liquidity – Most capital improvement programs have reasonably predictable draw down schedules. Therefore, investment maturities should generally follow the anticipated cash flow requirements. Investment pools and money market mutual funds will 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.

Diversification – Market conditions and arbitrage regulations influence the attractiveness of staggering the maturity of fixed rate investments for bond proceeds. Generally, if investment rates exceed the applicable cost of borrowing, the City is best served by locking in most

investments. If the cost of borrowing cannot be exceeded, then current market conditions will determine the attractiveness of diversifying maturities or investing in shorter and larger amounts. At no time shall the anticipated expenditure schedule be exceeded in an attempt to bolster yield.

Yield – Achieving a positive spread to the cost of borrowing is the desired objective within the limits of the Investment Policy's risk constraints. The yield of an equally weighted, rolling six-month Treasury Bill portfolio will be the minimum yield objective for non-borrowed funds.

REPORTING

Not less than quarterly, the Investment Officer(s) shall prepare and submit to the City Council, a written, signed, investment report demonstrating a list of investment transactions for the preceding reporting period, in accordance with the Act. Reports will include, but not be limited to, the following:

- 1.) For each pooled fund group: a beginning book value and market value, book and market value additions and changes, and ending book and market value.
- 2.) The book value and market value of each investment at the beginning and end of the period by type of asset and fund type invested.
- 3.) The maturity date of each investment.
- 4.) Statement of compliance of the portfolios as it relates to the investment strategy and the Act.

Detailed and summary reports will be prepared jointly and presented to the City Council and Mayor not less than quarterly. Reports will comply with Section 2256.023, at a minimum.

Quarterly reports will be formally reviewed at least annually by an independent auditor and reported to the City Council once the City invests in items other than money market mutual funds, investment pools, or accounts offered by its depository bank in the form of CD's or money market accounts.

MONITORING OF THE MARKET VALUE OF INVESTMENTS AND COLLATERAL

The Investment Officer(s) shall determine the market value of each investment and of all Collateral pledged to secure deposits of City funds at least quarterly and at a time as close as practicable to the closing of the reporting period for the investments. The City shall utilize reliable sources independent of the investment provider. Such values shall be included on the investment report.

INTERNAL CONTROLS

Investment Officer(s) shall establish a system of internal controls, which shall be designed to prevent losses of public funds arising from fraud, employee error, unanticipated changes in financial markets, or imprudent actions by employees. Pertinent controls include custodian safekeeping receipts records management, documentation of investment bidding activities, written confirmations of oral transactions, reconciliation records, training requirement documentation, and compliance with investment policies. Where practical, the City should emphasize control of collusion, separation of duties, clear delegation of duties, accurate and timely reports, and staying informed about market conditions, changes and trends. In conjunction with the City's annual financial audit, the independent external auditor will assure compliance with the management controls on investments and adherence to investment policies.

INVESTMENT POLICY ADOPTION

The City's Investment Policy, which includes strategies for each fund, shall be adopted by resolution of the City Council. The Policy shall be reviewed annually and any modifications thereto must be approved by the City Council. This adoption by resolution is required even if there are no changes within the Policy.

APPENDIX "A" – Sample Certification

I hereby certify that I have personally read and understand the Investment Policy and master repurchase agreement (if applicable), conditions of the City of Watauga, Texas. I further acknowledge that reasonable procedures and controls designed to fulfill those objectives and conditions have been implemented. Therefore, this firm will preclude investment transactions between itself and the City of Watauga that are not authorized by the City's Investment Policy, except to the extent that this authorization is dependent on an analysis of the makeup the City's entire portfolio, requires an interpretation of subjective investment standards or relates to investment transactions of the City that are not made through accounts or other contractual arrangements over which my firm has accepted discretionary investment authority, thus protecting the City's credit or market risk.

All personnel of this firm dealing with the City of Watauga's account(s) have been informed and will be routinely informed of the City's investment horizons, limitations, strategy and risk constraints, whenever we are so informed by the City.

This firm pledges due diligence in informing the City of foreseeable risks associated with financial transactions connected to this firm.

I further acknowledge that no investment transaction shall occur between this firm and the City, until the City of Watauga receives this consent form, completed by the firm's qualified representative.

FIRM

SIGNATURE OF QUALIFIED FIRM REPRESENTATIVE

PRIMARY REPRESENTATIVE: NAME/TITLE
(please print)

DATE

GLOSSARY

AGENCIES: Federal agency and instrumentality securities.

ASKED: The price at which securities are offered.

BANKERS' ACCEPTANCE (BA): A draft or bill of exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BID: The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.) See Offer.

BROKER: A broker brings buyers and sellers together for a commission.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specified maturity evidenced by a certificate. Large-denomination non-collateralized CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property that a borrower pledges to secure repayment of a loan. Also refers to securities or letters of credit pledged by a bank to secure deposits of public moneys.

COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR): The official annual report for the City of Watauga. It includes five combined statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section.

COUPON: (a) The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. (b) A certificate attached to a bond evidencing interest due on a payment date.

DEALER: A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

DEBENTURE: A bond secured only by the general credit of the issuer.

DELIVERY-VERSES-PAYMENT (DVP): There are two methods of delivery of securities: delivery-verses-payment and delivery-verses-receipt. Delivery-verses-payment is delivery of securities with an exchange of money for the securities. Delivery-versus-receipt is delivery of securities with an exchange of a signed receipt for the securities.

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below offering price shortly after sale also is considered to be at a discount.

DISCOUNT SECURITIES: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g. U.S. Treasury Bills.

DIVERSIFICATION: Dividing investment funds among a variety of securities and/ or maturities offering independent returns.

FEDERAL FARM CREDIT BANK: Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, e.g., S&L's, small business firms, students, farmers, farm cooperatives, and exporters.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to \$250,000 per deposit.

FEDERAL FUNDS RATE: The rate of interest at which Fed Funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB): The institutions that regulate and lend to savings and loan associations. The Federal Home Loan Banks play a role analogous to that played by the Federal Reserve Banks with member commercial banks.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA): FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is currently under conservatorship by the federal government. The corporation's purchases include a variety of adjustable rate mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL OPEN MARKET COMMITTEE (FOMC): Consists of seven members of the Federal Reserve Bank Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven-member Board of Governors in Washington, DC regional banks and about 5,700 commercial banks that are members of the system.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae): GNMA guarantees and issues obligations of qualified loans issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA, or FMHM mortgages. The term "passthroughs" is often used to describe "Ginnie Mae".

LIQUIDITY – Market-based: A market-based liquid asset is one that can be converted easily and rapidly into cash. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and a reasonable trade size can be done at the quoted prices.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP): The aggregate of all funds from political subdivisions that are placed in the custody of a local government cooperative for investment and reinvestment.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MASTER REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase –reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See Asked and Bid.

OPEN MARKET OPERATIONS: Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PORTFOLIO: Collection of investments held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

PRUDENT PERSON RULE: An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state—the so-called legal list. In other states the trustee may invest in security if it is one that would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

QUALIFIED PUBLIC DEPOSITORIES: A bank, credit union, or savings association that maintains a place of business within the state and offers within the state the services required by a depository services contract.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized-yield-to-maturity on a bond or the current income return.

REPURCHASE AGREEMENT (RP OR REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security “buyer” in effect lends the “seller” money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use RFPs extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money that is, increasing bank reserves.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank’s vaults for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES AND EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

SEC RULE 15C3-1: See Uniform Net Capital Rule.

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

TREASURY NOTES: An interest bearing security issued by the U.S. Treasury to finance the national debt. Notes are routinely issued for two, three, five, seven, and ten years.

UNIFORM NET CAPITAL RULE: Securities and Exchange Commission requirement that member firms, as well as nonmember broker-dealers in securities, maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

YIELD: The rate of annual income return on an investment, expressed as a percentage. (a) **Income Yield** is obtained by dividing the current dollar income by the current market price for the security. (b) **Net Yield to Maturity** is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

Exhibit “B”

Authorized Broker/Dealer List

1. Duncan Williams
2. FTN Financial (formerly Coastal Securities)
3. Hilltop Securities (formerly First Southwest Company)
4. Multi-Bank Securities
5. Raymond James & Associates
6. Wells Fargo Securities



AGENDA MEMORANDUM

DATE: February 20, 2018

TO: Honorable City Council Members

FROM: Sandra Gibson, Director of Finance
Marcia Reyna, Human Resources and Civil Service Director

THROUGH: Greg Vick, City Manager

SUBJECT: Approval of recommendation to appoint an Interim Municipal Court Administrator

BACKGROUND/INFORMATION:

Marilyn Clothier's last day with the City of Watauga will be on February 23, 2018. It is respectfully requested that Guadalupe Calvillo serve in the capacity of Interim Municipal Court Administrator until a permanent replacement is hired. Mrs. Calvillo's pay will temporarily be adjusted while she fills in this capacity as allowed per Policy 6.04 Classification and Compensation Plan, Section J. Temporary Assignment Pay of the City of Watauga's Personnel, Administration and Financial Policies and Procedures Manual.

"An employee who is required to serve in a position of a higher classification shall receive either the minimum salary of the position or up to ten percent (10%) above the present salary of the employee as determined by the Department Director and approved by the City Manager."

FINANCIAL IMPLICATIONS:

It is assumed that the assignment will last at least 30 days. Funding source: 01-030-40010

RECOMMENDATION/ACTION DESIRED:

It is respectfully request that Guadalupe Calvillo be appointed as Interim Municipal Court Administrator.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

None

REVIEWED BY:

Zolaina Parker
Sandra Gibson

Created/Initiated - 02/20/2018
Approved - 02/20/2018



AGENDA MEMORANDUM

Marcia Reyna
Greg Vick
Zolaina Parker

Approved - 02/20/2018
Approved - 02/20/2018
Final Approval - 02/20/2018



AGENDA MEMORANDUM

DATE: January 30, 2018
TO: Honorable City Council Members
FROM: Robert Parker, Chief of Police
THROUGH: Greg Vick, City Manager
SUBJECT: Approval of Watauga Police Department Annual Contact Report

BACKGROUND/INFORMATION:

The Watauga Police Department has complied with Article 2.132 of the Texas Code of Criminal Procedure (CCP), Law Enforcement Policy on Racial Profiling as required. Watauga Police Department is required to submit a report of vehicle stop and search data by race of the operator prior to March 1st of each year for the previous calendar year. The attached report is a compilation of the required data. No concerns are identified in this report.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Recommend that the report be approved for submission to the Texas Commission on Law Enforcement.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. 2017 Annual Contact Report

REVIEWED BY:

Sandy Toney	Created/Initiated - 02/12/2018
Robert Parker	Approved - 02/12/2018
Greg Vick	Approved - 02/13/2018
Zolaina Parker	Final Approval - 02/14/2018

The Watauga Police Department
Annual Contact Report
(2017)



TIER 1 REPORTING PARTIAL EXEMPTION

**Our vehicles that conduct motor vehicle stops are
equipped with video and audio equipment and we
maintain videos for 90-days**

Partial Exemption Racial Profiling Reporting (Tier 1)

Department Name: Watauga Police Department
Agency Number: 439231
Chief Administrator: Robert Parker, Chief of Police
Reporting Name: Robert Parker, Chief of Police
Contact Number: (817) 514-5884
E-mail Address: RParker@wataugatx.org

Certification to Report 2.132 (Tier 1) – Partial Exemption

Policy Requirements (2.132(b) CCP):

Each enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- 1) Clearly define acts constituting racial profiling;
- 2) Strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- 3) Implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- 4) Provide public education relating to the agency's complaint process;
- 5) Require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article
- 6) Require collection of information relating to motor vehicle stops in which a citation is issued and to arrest made as a result of those stops, including information relating to:
 - a) The race or ethnicity of the individual detained;

- b) Whether a search was conducted and, if so, whether the individual detained consented to the search; and
 - c) Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
- 7) Require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
- a) The Commission on Law Enforcement Officer Standards and Education; and
 - b) The governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

These policies are in effect

 1/3/2018

Chief Administrator

Date

Partial Exemption Racial Profiling Reporting

(Tier 1)

Video and Audio Equipment Exemption

Partial Exemption Claimed by (2.135(a) CCP):

☒ All cars regularly used for motor vehicle stops are equipped with video camera and transmitters-activated equipment and each motor stop is recorded and the recording of the stop is retained for at least 90 days after the stop.

OR

☐ In accordance with 2.135(a)(2) the agency has requested and not received funds to install the recording equipment.

I claim this exemption



11/3/2018

Chief Administrator

Date

Partial Exemption Racial Profiling Reporting (Tier 1)

(This is the TCOLE recommended form. The form is not mandatory. The information contained in this form, however, is mandatory. You may use your form, but all information must be provided.)

If you claim a partial exemption you must submit a report that contains the following data or use this format to report the data.

Instructions: Please fill out all boxes. If zero, use 0.

1. Total on lines 4, 11, 14, and 17 must be equal.
2. Total on line 20 must equal 15

Number of Motor Vehicles Stops?

1. 2337 Citation only
2. 14 Arrest only
3. 180 Citations and Arrest
4. 2531 – Total

Race or Ethnicity?

5. 330 African
6. 41 Asian
7. 1938 Caucasian
8. 209 Hispanic
9. 12 Middle Eastern
10. 1 Native American
11. 2531 – Total

Race or Ethnicity known prior to stop?

12. 114 Yes
13. 2417 No
14. 2531 – Total

Search Conducted?

15. 292 Yes
16. 2239 No
17. 2531 -- Total

Was search Consented?

18. 80 Yes
19. 212 No
20. 292– Total Must equal #15

Partial Exemption Racial Profiling Reporting (Tier 1)

Option to submit required data by utilizing agency report

You must submit your report in PDF format

Electronic Submission on data required by 2.132(b)(6) CCP

(6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:

- (A) the race or ethnicity of the individual detained;
- (B) whether a search was conducted and , if so, whether the individual detained consented to the search; and
- (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

This report meets the above requirements.



1/3/2018

Chief Administrator

Date

Send entire documents electronically to this website

www.tcole.texas.gov

WATAUGA POLICE DEPARTMENT
INTEROFFICE MEMORANDUM

To: Robert Parker, Chief of Police
From: Kimberly Bruns, Police Records Supervisor
Subject: 2017 Motor Vehicle Contacts Report
Date: January 02, 2018

In 2001, the Texas Legislature passed Senate Bill 1074 which became the Texas Racial Profiling Law. That law came into effect on January 1, 2002. It required all police departments in Texas to collect traffic-related data and report that information to their local governing authority by March 1st of each year. In 2009, the racial profiling law was modified (when the Texas Legislature passed House Bill 3389) to include the collection and reporting of all motor vehicle related contacts where a citation was issued or arrest made. In addition, since 2009, the law requires that all police officers indicate whether or not they knew the race or ethnicity of the individual before detaining them. Further in 2009, it was required that agencies report motor vehicle related data not only to their local governing authority but also to the Texas Commission on Law Enforcement (TCOLE) by March 1st of each year. The 2009 requirements took effect on January 1, 2010. This purpose of collecting and presenting this information is to identify and address (if necessary) areas of concern regarding racial profiling practices. In accordance with the law, the Watauga Police Department has collected and reported traffic and motor vehicle related contact data since 2001.

The attached statistical report is a compilation of data during the period of 1/1/2017 and 12/31/2017. This report is done in accordance with Article 2.132. (b)(6) of the Code of Criminal Procedure, which requires "collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to: the race or ethnicity of individual detained; whether a search was conducted and, if so, whether the individual detained consented to the search; and whether the peace officer knew the race or ethnicity of the individual detained before the detaining of that individual."

This report includes both raw numbers and percentage for each group. However, caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category. For example, if only one Native American is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Also, the attached statistical report contains the necessary information for the report that needs to be submitted to the Texas Commission on Law Enforcement in accordance with Article 2.132.

(b)(7)(A) Of the Code of Criminal Procedure. The submission of the TCOLE report will need to be done by the department's "Training" division since they have the required access permissions.

If you have any question about this report or the procedures associated with Racial Profiling Law, please do not hesitate in asking me.

Watauga Police Department
Motor Vehicle Related Contact Information
1/1/2017 to 12/31/2017
Tier 1 Data

Race/Ethnicity*	Contacts		Searches		Consensual Searches		Custody Arrest	
	N	%	N	%	N	%	N	%
Caucasian	1938	76.57%	225	77.05%	69	86.25%	155	79.90%
Hispanic	209	8.26%	25	8.56%	3	3.75%	16	8.25%
African	330	13.04%	35	11.99%	6	7.5%	20	10.31%
Asian	41	1.62%	4	1.37%	0	0%	1	0.52%
Native American	1	0.04%	0	0%	0	0%	0	0%
Middle Eastern	12	0.47%	3	1.03%	2	2.5%	2	1.03%
T total	2531		292		80		194	

Officer Knew Race/Ethnicity* Before Stop	Count
Yes	114
No	2417
Total	2531

*Race/Ethnicity are defined by House Bill 3389 as being of a "particular descent, including Caucasian, African, Hispanic, Asian, Native American or Middle Eastern".



AGENDA MEMORANDUM

DATE: February 6, 2018

TO: Honorable City Council Members

FROM: Paul Hackleman, P.E., CFM, Director of Public Works

THROUGH: Greg Vick, City Manager

SUBJECT: Approval of resolution agreeing to meet all matching contribution requirements for the expenditures under the Tarrant County Home Investment Partnerships Program (HOME) for Program Year 2018

BACKGROUND/INFORMATION:

The Department of Housing and Urban Development (HUD) annually appropriates funds to entitlement communities through the Home Investment Partnership Block Grant (HOME) program. Tarrant County receives HOME funds and is availing these funds to cities who wish to assist their citizens with homeowner rehabilitation. These funds are targeted to benefit low to moderate income persons. Funds are to be used for the development of safe and decent housing by providing homeowner-occupied single family rehabilitation. The program is managed by Tarrant County Community Development (TCCD) office and funds are directly invested into the home being rehabilitated. Cities wishing to participate must commit to providing 30% non-federal match for amount of HOME funds that will be spent in that City.

The City of Watauga has participated in the HOME program since 2013-2014 and has appropriated matching funds in the amount of \$50,000 annually. Because of the wait list for the program, appropriated funds were only partially expended in FY2013-2014 and FY2014-2015. In FY2015-2016, the program was funded by Community Development Block Grant funds and no matching contribution was required. In Program Year 2017, the County is preparing to bill the city for one home repair. For Watauga homes that have qualified for the HOME program, the rehabilitation investment averages about \$25,000 per home (grant and match funds). Home rehabilitation activities include repairs to roofing, foundation, plumbing, electrical and weatherization of homes.

The attached resolution requests grant funds in the amount of up to \$200,000. Cities are required to provide the matching funds for activities undertaken within the City. The required City of Watauga match (30%) would not exceed \$60,000. The City of Watauga will participate by supplying the 30% matching funds thru cash reimbursement and the



AGENDA MEMORANDUM

waiver of applicable building and inspection fees.

The HOME Program Years run from July 1st to June 30th and therefore overlay our fiscal year. Federal CDBG Funding is usually in place by August of the Program Year.

FINANCIAL IMPLICATIONS:

Strategic Initiative Fund - \$60,000 for the Program Year 2018 (July 1, 2018 - June 30, 2019)

RECOMMENDATION/ACTION DESIRED:

Consideration and Approval of Resolution agreeing to meet all matching contribution requirements for the expenditures under the Tarrant County Home Investment Partnerships Program (Home) for Program Year 2018.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. 2018 HOME Application
2. City Attorney Letter of Approval and Proposed Resolution

REVIEWED BY:

Paul Hackleman, P.E., CFM
Sandra Gibson
Greg Vick
Zolaina Parker

Created/Initiated - 02/12/2018
Approved - 02/12/2018
Approved - 02/13/2018
Final Approval - 02/14/2018

HOME INVESTMENT PARTNERSHIP GRANT

Program Year 2018

IMPORTANT NOTES

Return Application to:

Tarrant County Community Development Division
Attention: Patricia Ward (HOME Match application)
1509B S. University Drive, Suite 276
Fort Worth, Texas 76107

DUE: March 30, 2018

Overview and Eligible Activities

The Department of Housing and Urban Development (HUD) appropriates funds to entitlement communities through the HOME Investment Partnership Block Grant (HOME) program. Tarrant County receives HOME funds and is availing these funds to cities who wish to assist their citizens with homeowner rehabilitation. ***These funds are targeted to benefit low- to moderate-income persons preserving safe and decent housing by providing homeowner-occupied single-family rehabilitation.*** This rehabilitation program is managed by the Tarrant County Community Development (TCCD) office and funds are directly invested into the home being rehabilitated. Although individual city residents will work directly with TCCD the city applying for HOME funds must commit to providing 30%* non-federal match for the amount of HOME funds that will be spent in that city.

Match Requirement

The Department of Housing and Urban Development (HUD) **requires matching funds on all HOME expenditures. Each applicant is required to provide at least 30%* non-federal match for activities undertaken in that city.** Match can be generated in many ways and must be approved by County staff prior to a commitment of funds. The city is required to submit a letter and Council resolution affirming the match amount as part of this application.

For more detailed information, please contact Patricia Ward at Tarrant County Community Development Division (817) 850-7940. Additional information about the HOME Program can be found online at www.hud.gov.

* Per HOME regulation, CFR 24 92.218; match contributions must total not less than 25% of the funds.



HOME Investment Partnership Grant - PY2018 Project Information Form

1. **Applicant City Name:**

2. **Type of Project(s) desired:**



Homeowner rehabilitation

3. **Project Location (Citywide or Zip Code):**



Citywide

Zip Code(s):

4. **Amount of HOME funds requested (\$200,000 max.):** \$200,000

5. **Required Match Amount (at least 30% of #4 above):** \$60,000

6. **Applicant Contact Person(s):**

Name: Paul D. Hackleman

Phone: 817-514-5837

Email: phackleman@wataugatx.org

7. **Date of Submittal:**

8. **Attachments:**

We require a signed resolution or the date of the council meeting in which a resolution may be signed and forwarded to our office when available. The resolution must confirm the source and amount of non-federal match amount available by the city in order to participate in this program.

Confirmation of Program

Date of Council meeting	
Supporting records of meeting (e.g. Council resolution)	☒ Check here if you have attached a signed resolution confirming the match amount that will be dedicated to this program.

*A sample of a resolution follows. You may use or modify this sample to your city needs.
An electronic version is available upon request.*

RESOLUTION
AGREEING TO MEET ALL MATCH CONTRIBUTION REQUIREMENTS FOR THE
EXPENDITURES UNDER THE TARRANT COUNTY HOME INVESTMENT
PARTNERSHIPS PROGRAM FOR
PROGRAM YEAR 2018

WHEREAS, the HOME Program was created by the National Affordable Housing Act of 1990 (NAHA) and is intended to provide decent affordable housing to lower-income households; expand the capacity of nonprofit housing providers; strengthen the ability of state and local government to provide housing, and; leverage private-sector participation; and

WHEREAS, Tarrant County is a Participating Jurisdiction under the HOME Investment Partnerships Program in accordance with § 92.105; and

WHEREAS, the City of Watauga is a member of the Tarrant County Urban County Community Development/HOME Consortium and is eligible to participate in the HOME program; and

WHEREAS, the City of Watauga has requested \$ 200,000 in HOME funding to be expended on HOME eligible activities within the city's jurisdiction and has agreed to provide a 30% matching contribution for all HOME funds expended within the City of Watauga, in accordance with §92.218; §92.219; and §92.220.

NOW, THEREFORE, BE IT RESOLVED THAT WE, THE CITY COUNCIL OF THE CITY OF Watauga, do hereby agree to commit \$ 60,000 in match contribution to affordable housing for all activities undertaken in our city through the HOME program.

AND IT IS SO RESOLVED.

LAW OFFICES
EVANS, DANIEL, MOORE, EVANS & BIGGS
(NOT A PARTNERSHIP)

MARK G. DANIEL

BOARD CERTIFIED - CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

CRIMINAL TRIAL SPECIALIST-BOARD CERTIFIED
NATIONAL BOARD OF TRIAL ADVOCACY

SUNDANCE SQUARE
115 WEST SECOND STREET, SUITE 202
FORT WORTH, TEXAS 76102

(817) 332-3822
FACSIMILE (817) 332-2763

OF COUNSEL

TIM EVANS
TIM MOORE
LANCE T. EVANS
WILLIAM R. BIGGS

February 6, 2018

Mr. Paul Hackleman
Director of Public Works
City of Watauga
7800 Virgil R. Anthony Sr. Blvd.
Watauga, Texas 76148

VIA E-MAIL

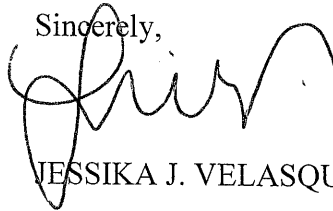
Re: *Resolution adopting the HOME Investment Partnership Grant, Program
Year 2018*

Dear Mr. Hackleman:

We have received and reviewed the proposed HOME Investment Partnership Grant for Program Year 2018. Please find enclosed a Resolution prepared by our office approving the adoption of the Grant. The Resolution may be submitted for consideration at the next City Council meeting.

Thank you for your attention to the above and the opportunity to be of assistance. Should you have any questions or need anything further, please do not hesitate to contact our office.

Sincerely,



JESSIKA J. VELASQUEZ

MGD/jjv

cc: Patrick Shelbourne, Mayor Pro Tem
Mr. Greg Vick, City Manager
Ms. Zolaina Parker, City Secretary

CITY OF WATAUGA, TEXAS
RESOLUTION NO. _____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS AGREEING TO MEET ALL MATCH CONTRIBUTION REQUIREMENTS FOR THE EXPENDITURES UNDER THE TARRANT COUNTY HOME INVESTMENT PARTNERSHIPS PROGRAM FOR PROGRAM YEAR 2018; PROVIDING THAT ALL RESOLUTIONS IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THAT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the HOME Program was created by the National Affordable Housing Act of 1990 (NAHA) and is intended to provide decent affordable housing to lower-income households; expend the capacity of nonprofit housing providers; strengthen the ability of state and local government to provide housing; and leverage private-sector participation; and

WHEREAS, Tarrant County is a participating Jurisdiction under the HOME Investment Partnerships Program in accordance with § 92.105; and

WHEREAS, the City of Watauga is a member of the Tarrant County Urban County Community Development/HOME Consortium and is eligible to participate in the HOME Program; and

WHEREAS, the City of Watauga has requested \$200,000 in HOME funding to be expended on HOME eligible activities within the city's jurisdiction and has agreed to provide a 30% matching contribution for all HOME funds expended within the City of Watauga, in accordance with § 92.218, § 92.219 and § 92.220;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS THAT:

I.

The City of Watauga does hereby agree to commit \$60,000 in match contribution to affordable housing for all activities undertaken in our city through the HOME Program. The terms of the HOME Investment Partnership Grant, as set forth in Exhibit "A," attached hereto and incorporated by reference, are hereby adopted.

II.

This Resolution shall be and is hereby cumulative of all other Resolutions of the City of Watauga, Texas, and this Resolution shall not operate to repeal or affect any such other Resolutions except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Resolution, in which event, such conflicting provisions, if any, in such other Resolutions are hereby repealed.

III.

If any section, sub-section, sentence, clause, or phrase of this Resolution shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of the Resolution.

IV.

This Resolution shall become effective and be in full force and effect from and after the date of passage and adoption by the City Council and upon approval thereof by the Mayor and the City of Watauga, Texas.

PASSED AND ADOPTED by the City Council of the City of Watauga, Texas this
_____ day of _____, 2018.

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

ZOLAINA R. PARKER, City Secretary

APPROVED AS TO FORM AND LEGALITY:

MARK G. DANIEL, City Attorney

HOME INVESTMENT PARTNERSHIP GRANT

Program Year 2018

IMPORTANT NOTES

Return Application to:

Tarrant County Community Development Division
Attention: Patricia Ward (HOME Match application)
1509B S. University Drive, Suite 276
Fort Worth, Texas 76107

DUE: March 30, 2018

Overview and Eligible Activities

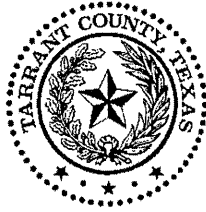
The Department of Housing and Urban Development (HUD) appropriates funds to entitlement communities through the HOME Investment Partnership Block Grant (HOME) program. Tarrant County receives HOME funds and is availing these funds to cities who wish to assist their citizens with homeowner rehabilitation. ***These funds are targeted to benefit low- to moderate-income persons preserving safe and decent housing by providing homeowner-occupied single-family rehabilitation.*** This rehabilitation program is managed by the Tarrant County Community Development (TCCD) office and funds are directly invested into the home being rehabilitated. Although individual city residents will work directly with TCCD the city applying for HOME funds must commit to providing 30%* non-federal match for the amount of HOME funds that will be spent in that city.

Match Requirement

The Department of Housing and Urban Development (HUD) **requires matching funds on all HOME expenditures. Each applicant is required to provide at least 30%* non-federal match for activities undertaken in that city.** Match can be generated in many ways and must be approved by County staff prior to a commitment of funds. The city is required to submit a letter and Council resolution affirming the match amount as part of this application.

For more detailed information, please contact Patricia Ward at Tarrant County Community Development Division (817) 850-7940. Additional information about the HOME Program can be found online at www.hud.gov.

* Per HOME regulation, CFR 24 92.218; match contributions must total not less than 25% of the funds.



HOME Investment Partnership Grant - PY2018 Project Information Form

1. **Applicant City Name:**

2. **Type of Project(s) desired:**



Homeowner rehabilitation

3. **Project Location (Citywide or Zip Code):**



Citywide



Zip Code(s):

4. **Amount of HOME funds requested (\$200,000 max.):** \$200,000

5. **Required Match Amount (at least 30% of #4 above):** \$60,000

6. **Applicant Contact Person(s):**

Name: Paul D. Hackleman

Phone: 817-514-5837

Email: phackleman@watauqatx.org

7. **Date of Submittal:**

8. **Attachments:**

We require a signed resolution or the date of the council meeting in which a resolution may be signed and forwarded to our office when available. The resolution must confirm the source and amount of non-federal match amount available by the city in order to participate in this program.

Confirmation of Program

Date of Council meeting

Supporting records of meeting (e.g. Council resolution)



Check here if you have attached a signed resolution confirming the match amount that will be dedicated to this program.



AGENDA MEMORANDUM

DATE: February 20, 2018

TO: Honorable City Council Members

FROM: Shawn Fannan, Fire Chief

THROUGH: Greg Vick, City Manager

SUBJECT: Approval of recommendation to appoint Randy Barkley, Battalion Chief as Emergency Management Director for the City of Watauga

BACKGROUND/INFORMATION:

Historically, the Emergency Management Director has been approved and appointed by the City Mayor. Randy Barkley, Battalion Chief has served as the Emergency Management Director for the last eleven years and the Fire Department recommends he be reappointed.

FINANCIAL IMPLICATIONS:

None

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend appointment of Randy Barkley as Emergency Management Director for the City of Watauga.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Letter of Approval from City Attorney

REVIEWED BY:

Zolaina Parker	Created/Initiated - 02/20/2018
Shawn Fannan	Approved - 02/20/2018
Greg Vick	Approved - 02/20/2018
Zolaina Parker	Final Approval - 02/20/2018

LAW OFFICES
EVANS, DANIEL, MOORE, EVANS, BIGGS & DECKER
(NOT A PARTNERSHIP)

MARK G. DANIEL

BOARD CERTIFIED - CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

CRIMINAL TRIAL SPECIALIST-BOARD CERTIFIED
NATIONAL BOARD OF TRIAL ADVOCACY

SUNDANCE SQUARE
115 WEST SECOND STREET, SUITE 202
FORT WORTH, TEXAS 76102

(817) 332-3822
FACSIMILE (817) 332-2763

OF COUNSEL:
TIM EVANS
TIM MOORE
LANCE T. EVANS
WILLIAM R. BIGGS
ANDREW J. DECKER

February 20, 2018

Via Email

Ms. Zolaina Parker, City Secretary
City of Watauga
7105 Whitley Road
Watauga, Texas 76148

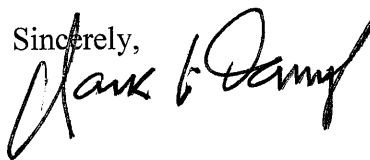
Re: Emergency Management Director/Coordinator Notification

Dear Ms. Parker:

Per your request, I have reviewed the Emergency Management Director/Coordinator Notification wherein the City is appointing the Fire Battalion Chief of Operations to conduct the emergency management program for the City of Watauga. I approve of the same and would recommend that this be included on the next City Council meeting agenda for consideration and approval.

Thank you for the opportunity to be of assistance. Please do not hesitate to contact me should you have any questions concerning this matter.

Sincerely,



MARK G. DANIEL

MGD:tp

cc: Mayor Pro tem Pat Shelbourne
Ms. Andrea Gardner, City Manager

EMERGENCY MANAGEMENT DIRECTOR/COORDINATOR NOTIFICATION

Section 418.101 of the Texas Government Code states: "The presiding officer of the governing body of each political subdivision will notify the Division of Emergency Management of the manner in which the political subdivision is providing or securing an emergency management program, identify the person who heads the agency responsible for the program, and furnish additional pertinent information." This form is used to make the required notification to TDEM.

The information on this form may be released to those inquiring about local emergency management programs pursuant to the Texas Open Records Act. Hence, TDEM recommends that you provide business addresses and mobile telephone numbers rather than home addresses and telephone numbers.

COUNTY:	Tarrant	(Required)
Jurisdiction:	City of watauga	(City or County Name)
Official's Title:	Mayor	(Mayor/Judge)
Name:	HectorGarcia	(First & Last Name)
Mailing Address:	7105 Hightower Drive	(The best address to receive mail)
City, State, Zip:	Watauga, Texas 76148	
Office Number:	817-514-5737	
Cell Number:		
Fax Number:	817-281-1991	
E-mail:	mayor@cowtx.org	(Please include – this is a back-up for mailing)

EMERGENCY MANAGEMENT PROGRAM APPOINTMENT STATUS

- ☐ I HAVE NOT appointed an Emergency Management Coordinator and will personally direct the local emergency management program.
- ☒ I HAVE appointed/re-appointed the Emergency Management Coordinator identified below to conduct the emergency management program for this jurisdiction. The effective date of the appointment is: _____
- ☐ We share our EMC with _____ (name of jurisdiction).

*If the COUNTY Emergency Management Coordinator has been appointed to other jurisdictions within the county, the County Judge and the participating City Mayors must sign this form.
(See the third page for additional signature blocks.)*

The EMC for this is jurisdiction is (please select one):

- ☐ Paid, Full Time, EMC only
- ☒ Paid, Full Time, EMC and other job duties (Fire Chief, Fire Marshall, Police Chief, EMS Director, Etc.) (please specify other duty/duties) Fire Battalion Chief of Operations
- ☐ Paid part time, EMC only
- ☐ Paid, Part Time, EMC and other job duties (Fire Chief, Fire Marshall, Police Chief, EMS Director, Etc.) (please specify other duty/duties) _____
- ☐ Unpaid/volunteer EMC only
- ☐ Unpaid/Volunteer, EMC and other volunteer job duties (Fire Chief, Fire Marshall, Police Chief, EMS Director, Etc.) (please specify other duty/duties) _____
- ☐ Other (please describe) _____



AGENDA MEMORANDUM

DATE: February 12, 2018

TO: Honorable City Council Members

FROM: Hal Gerhardt, City Council Member, Place 1

SUBJECT: Discussion and action on approval of a proposed resolution dedicating a plaque and renaming the Watauga Community and Recreation Center the, Hector F. Garcia Community Center

BACKGROUND/INFORMATION:

Council Member Hal Gerhardt requested this resolution be placed on the agenda for your consideration and approval.

FINANCIAL IMPLICATIONS:

Funds for plaque and signage to be determined by City Manager.

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of proposed resolution.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Letter of City Attorney Approval and Proposed Resolution

REVIEWED BY:

Zolaina Parker	Created/Initiated - 02/16/2018
Greg Vick	Approved - 02/16/2018
Zolaina Parker	Final Approval - 02/20/2018

LAW OFFICES
EVANS, DANIEL, MOORE, EVANS, BIGGS & DECKER
(NOT A PARTNERSHIP)

MARK G. DANIEL

BOARD CERTIFIED - CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

CRIMINAL TRIAL SPECIALIST-BOARD CERTIFIED
NATIONAL BOARD OF TRIAL ADVOCACY

SUNDANCE SQUARE
115 WEST SECOND STREET, SUITE 202
FORT WORTH, TEXAS 76102

(817) 332-3822
FACSIMILE (817) 332-2763

OF COUNSEL:
TIM EVANS
TIM MOORE
LANCE T. EVANS
WILLIAM R. BIGGS
ANDREW J. DECKER

February 20, 2018

Via Email

Ms. Zolaina Parker, City Secretary
City of Watauga
7105 Whitley Road
Watauga, Texas 76148

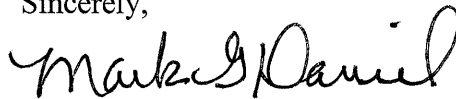
Re: Resolution re the Watauga Recreation and Community Center

Dear Ms. Parker:

Per your request, I have reviewed the Resolution by the City Council of the City of Watauga for the purpose of dedicating a plaque to be placed at the Watauga Recreation and Community Center and naming said facilities the "Hector F. Garcia Community Center." I approve of the Resolution and would recommend that the same be included on the next City Council meeting agenda for consideration and approval.

Thank you for the opportunity to be of assistance. Please do not hesitate to contact me should you have any questions concerning this matter.

Sincerely,



MARK G. DANIEL

MGD:tp

cc: Mayor Pro tem Pat Shelbourne
Mr. Greg Vick, City Manager

CITY OF WATAUGA, TEXAS
RESOLUTION NO. _____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WATAUGA, TEXAS FOR THE PURPOSE OF DEDICATING A PLAQUE TO BE PLACED AT THE WATAUGA RECREATION AND COMMUNITY CENTER LOCATED AT 7901 INDIAN SPRINGS ROAD; AND NAMING SAID FACILITIES THE HECTOR F. GARCIA COMMUNITY CENTER, IN HONOR AND RECOGNITION OF THE COMMENDABLE SERVICE AND LEADERSHIP RENDERED BY HECTOR F. GARCIA DURING HIS TIME IN OFFICE IN THE CAPACITY AS MAYOR OF THE CITY OF WATAUGA, TEXAS.

WHEREAS, the City Council intends to give full recognition of the exceedingly excellent service rendered by Hector F. Garcia, in the faithful performance of his duties as City Mayor, by always having the best interest of the citizens of Watauga, and always striving to make the City of Watauga the best place to live.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Watauga, Texas that:

I.

In full recognition of exceedingly excellent service in the faithful performance of all duties as City Mayor, Hector F. Garcia, is hereby commended for absolute loyalty, honesty and integrity at all times, and as such, is deserving of having the Watauga Recreation and Community Center named in his honor as, Hector F. Garcia Community Center.

II.

A plaque shall be dedicated and placed at the City of Watauga, Recreation and Community Center, located at 7901 Indian Springs Road, along with a sign naming the Recreation and Community Center, Hector F. Garcia Community Center.

III.

This resolution shall be and is hereby cumulative of all other resolutions of the City of Watauga, Texas, and this resolution shall not operate to repeal or affect any of such other resolutions, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this resolution, in which event such conflicting provisions, if any, in such other resolution or resolutions are hereby repealed.

IV

If any section, subsection, sentence, clause or phrase of this resolution shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this resolution.

V.

This resolution shall become effective and be in full force and effect from and after the date of passage and adoption by the City Council of the City of Watauga, Texas and upon approval thereof by the Mayor Pro tem of the City of Watauga, Texas to become effective immediately.

PASSED AND ADOPTED by the City Council of the City of Watauga, Texas, on this the 26th day of February, 2018.

APPROVED:

PATRICK SHELBOURNE, Mayor Pro Tem

ATTEST:

ZOLAINA R. PARKER, City Secretary

APPROVED AS TO FORM AND LEGALITY:

MARK G. DANIEL, City Attorney



AGENDA MEMORANDUM

DATE: February 6, 2018

TO: Honorable City Council Members

FROM: Paul Hackleman, P.E., CFM, Director of Public Works

THROUGH: Greg Vick, City Manager

SUBJECT: Discussion and action on approval of the 2.0 Million Gallon Elevated Storage Tank Rehabilitation, Bid Project # 18-008 with M.K. Painting Inc. in the amount of \$248,000

BACKGROUND/INFORMATION:

The City of Watauga solicited bids for the 2.0 Million Gallon Elevated Storage Tank Rehabilitation Project. This project is for the rehabilitation of the water tower storage tank interior through removal of old paint, cleaning, repairing, and repainting.

Bids were received on Wednesday, January 31, 2018 from M.K. Painting, Inc., SES Infrastructure Services, LLC., Utility Services Co., Inc., Tank Pro, Inc., J.R. Stelzer Co., Blastco Texas, Tankez Coatings, Inc., Premier Worldwide, Inc., N.G. Painting, L.P., and TMI Coatings. References have been checked for M.K. Painting, Inc. and they are qualified to perform the work on this project.

M.K. Painting has requested a late start day of September-October 2018 and staff is recommending acceptance of this request. The contractor bid 45 calendar days to complete the project. By starting in the fall of 2018, we ensure that the water storage tank is in service during the high water usage periods for the City.

During the rehabilitation, the Watauga Water Tower shall be off line to the city's water supply to our residents. We shall utilize the same sources of water from North Richland Hills, but would expect the TRA supply to increase from normal system operation. The cost of water from the TRA supply is about \$0.50 more per 1,000 gallons including the Fort Worth rate of use charge.

Staff is recommending award of the bid in the amount of \$248,000.00 which includes a \$10,000 Miscellaneous Allowance to M.K. Painting, Inc.



AGENDA MEMORANDUM

FINANCIAL IMPLICATIONS:

Total Rehabilitation Cost: \$248,000

General Capital Projects Fund-2011 CO	\$97,491
Utilities Capital Projects Fund-2012 CO	\$134,271
Utilities Capital Projects Fund Balance	\$16,238

RECOMMENDATION/ACTION DESIRED:

Authorize the City to enter into a Rehabilitation Contract with M.K. Painting, Inc. in the amount of \$248,000 for the rehabilitation of the 2.0 Million Gallon Elevated Storage Tank.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. City Attorney Letter of Approval-Elevated Storage Tank Rehabilitation
2. PR54259 2.0 MG Elevated Storage Tank Conformed Bid Documents
3. PR54259-Elevated Water Tank-Constr Award Recommendation_20180207 with attach
4. Elevated Storage Tank Rehab- Agenda - Construction Award - Feb 2018

REVIEWED BY:

Paul Hackleman, P.E., CFM
Paul Hackleman, P.E., CFM
Sandra Gibson
Greg Vick
Zolaina Parker

Created/Initiated - 02/15/2018
Approved - 02/15/2018
Approved - 02/15/2018
Approved - 02/16/2018
Final Approval - 02/20/2018

LAW OFFICES
EVANS, DANIEL, MOORE, EVANS, BIGGS & DECKER
(NOT A PARTNERSHIP)

MARK G. DANIEL

BOARD CERTIFIED - CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

CRIMINAL TRIAL SPECIALIST-BOARD CERTIFIED
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SUNDANCE SQUARE
115 WEST SECOND STREET, SUITE 202
FORT WORTH, TEXAS 76102

(817) 332-3822
FACSIMILE (817) 332-2763

OF COUNSEL:
TIM EVANS
TIM MOORE
LANCE T. EVANS
WILLIAM R. BIGGS
ANDREW J. DECKER

February 20, 2018

Via Email

Mr. Paul Hackleman
Public Works Director
City of Watauga
7105 Whitley Road
Watauga, Texas 76148

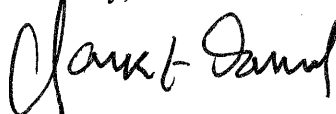
Re: *City Project No. 18-008*
2.0 M.G. Elevated Storage Tank Rehabilitation
Specifications and Contract Documents
Recommendation of Construction Contract Award PR54259

Dear Mr. Hackleman:

Pursuant to your request, I have reviewed the Specifications and Contract Documents for City Project No. 18-008 regarding the rehabilitating of the 2.0 M.G. Elevated Storage Tank located within the City. I have also reviewed the Recommendation of Construction Contract Award from Mr. William Wendland of Burgess & Niple. Mr. Wendland recommends the contract be awarded to M.K. Paitning, Inc. of Wyandotte Michigan with the bid for this project in the amount of \$248,000.00. I approve of this Contract as to form and legality and have indicated the same by my signature. I would defer to City staff to assess the reasonableness of the contract award. I would recommend that you forward the same to the City Council for consideration and approval.

Thank you for your attention to the above and the opportunity to be of assistance. Should you have any questions, please do not hesitate to contact my office.

Sincerely,



MARK G. DANIEL

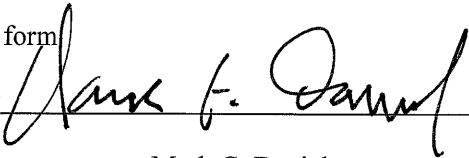
MGD/tp

cc: Mayor Pro tem Pat Shelbourne
Ms. Andrea Gardner, City Manager
Ms. Zolaina Parker, City Secretary

LEGAL AND FISCAL OFFICERS

_____, 2018

The foregoing Agreement is approved as to form

By 

Name Mark G. Daniel

Title City Attorney, City of Watauga, Texas

I, Patrick Shelbourne, Mayor Pro Tem hereby certify that I am the qualified and acting fiscal officer of the City of Watauga, Texas, and that the amount of money to wit TWO HUNDRED FORTY EIGHT THOUSAND AND 00/100 DOLLARS (\$248,000.00)

_____ required to meet the cost of the attached Agreement between The City of Watauga and M. K. Painting, Inc.

OWNER

CONTRACTOR

has been lawfully appropriated for the purpose of said Agreement and the money so appropriated is on deposit (in process of collection) to the credit of the appropriate fund free from any previous encumbrances.

_____, 2018

By _____

Name Patrick Shelbourne

Title Mayor Pro Tem

SPECIFICATIONS AND CONTRACT DOCUMENTS

CITY PROJECT NO. 18-008 for

**2.0 M.G. ELEVATED STORAGE TANK
REHABILITATION
2018**



OWNER

City of Watauga
7105 Whitley Rd.
Watauga, TX 76148



William D. Wendland

1/8/2018

BURGESS & NIPLE
Engineers ■ Planners

3950 Fossil Creek Blvd., Suite 210
Fort Worth, Texas 76137
(817) 306-1444 fax (817) 306-1555
TBPE FIRM REGISTRATION NO. F-10834

Burgess & Niple Project Number 54259

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00 11 13	Advertisement For Bids	
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00 52 00	Agreement	
00 56 00	Legal and Fiscal Officers	
00 61 13.13	Performance Bond	
00 61 13.16	Payment Bond	
00 61 13.19	Maintenance Bond	
00 62 16	Certificate of Insurance (Sample Form)	
00 70 00	General Conditions	
00 73 00	Supplementary Conditions	
00 73 43	Davis-Bacon Wage Rates	ADD #1
01 33 00	Submittals	
02 31 01	Water Storage Facility 2017 Inspection Report	
13 02 00	Elevated Water Storage Tank Rehabilitation Coating & Painting for Steel Water Storage Tanks	
30 00 00	Technical Site Civil	
DRAWINGS		
Title Sheet		
Tank Elevation and Section		



Sealed Bids for the rehabilitation of the 2.0 M.G. Elevated Storage Tank will be received in the City Purchasing Office located at City Hall, 7105 Whitley Road, Watauga, Texas 76148 until Wednesday, January 31, 2018 at 2:00PM (CST) at which time they will be publicly opened and read aloud. Bids received after the closing date and time will not be considered.

The work covered by the Contract Documents includes the following: Repainting the interior of the 2.0 M.G. Elevated Storage Tank in the City of Watauga, Texas, together with the necessary appertaining work.

Complete Contract Documents may be examined without charge or deposit from the engineer, William D. Wendland, P.E. at Burgess & Niple, 3950 Fossil Creek Blvd., Suite 210, Fort Worth, Texas 76137. The Contract Documents may be purchased at the same location for a non-refundable cost of \$100.00. Make checks payable to "BURGESS & NIPLE". Complete Contract Documents have also been provided to CivCast USA for immediate download. Please go to <http://www.civcastusa.com/>. The Project ID is "19463-54259". Prospective Bidders shall address all inquiries through the project's CivCast website.

Attention to the Bidders is called to the Instructions to Bidders, which are included in the proposed Contract Documents.

A non-mandatory pre-bid conference will be held Wednesday, January 24, 2018 at 10:00AM at the 2.0 M.G Elevated Storage Tank Site, 7800 Virgil Anthony Blvd., Watauga, Texas 76148.

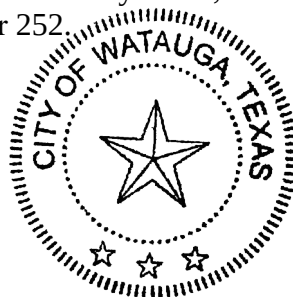
Successful Bidders shall be required to comply with all laws pertaining to minimum wage and discrimination of persons.

The City of Watauga reserves the right to reject any and all Bids or to increase or decrease or omit any item or items and/or award to the lowest responsive and responsible Bidder. The City of Watauga also reserves the right to waive any informalities or irregularities in the Bidding.

Published: Wednesday, January 10, 2018
Wednesday, January 17, 2018

I, Zolaina R. Parker, City Secretary for the City of Watauga, hereby certify that this notice was posted on the bulletin boards at City Hall, 7105 Whitley Road, Watauga, Texas, in accordance with the Texas Local Government Code Chapter 252.


Zolaina R. Parker, City Secretary, TRMC



ADDENDA TO CONTRACT

All addenda that are posted for this project shall be filed behind this cover sheet and acknowledged on Section 00 41 00, "Bid Form," and Section 00 52 00, "Agreement."

ADDENDUM NO. 1
to the
CONTRACT DOCUMENTS
for
2.0 M.G. WATER STORAGE TANK REHABILITATION
CITY PROJECT NO. 18-008

CITY OF WATAUGA, TEXAS

This addendum DOES NOT MODIFY the project bid date.

Bids will be received in the City of Watauga Purchasing Office until Wednesday, January 31, 2018 at 2:00PM (CST) at which time they will be publicly opened and read aloud in the Council Chambers.

This Addendum, issued pursuant to the provisions of the Instructions to Bidders of the Contract Documents identified by heading above, is hereby made a part of said Documents and should be acknowledged in the space provided on Page 00 41 00 - 3 of the Bid Form by all persons submitting bids on the Project. Such acknowledgement also constitutes certification by the bidder that he has obtained corresponding acknowledgement of receipt by all of his subcontractors and suppliers.

The following are questions and answers as we were able to record at the pre-bid conference held on Wednesday, January 24, 2018 regarding this project. Questions are in **bold** and answers or statements are in *italics*.

This project is to blast the interior surfaces of the water tank, make minor repairs shown in the inspection report found in the specifications and to recoat according to the specifications.

1. What year was the tank built?

The tank construction was completed January 1999. It has not been repainted since then.

2. Can we work 7 days a week?

Not normally. The site is secured by a gate, which will allow Contractor access Monday through Friday 7AM to 5PM. But by pre-approved special request, you will be able to work times outside this window, which will require the Contractor to pay for the City Inspector's overtime pay @ \$60 / hour.

3. Are any local permits required?

The City will require the awarded Contractor to obtain a Building Permit. Among other things, the Contractor will indicate the basic steps they will undertake during the project and how they will protect the site. There will not be a fee for this permit.

ADDENDUM NO. 1
to the
CONTRACT DOCUMENTS
for
2.0 M.G. WATER STORAGE TANK REHABILITATION
CITY PROJECT NO. 18-008

4. Does the tank site have power and water?

Yes. Water can be accessed from a fire hydrant on-site using a City-provided fire hydrant meter. The Contractor will have to pay for this water. The fire hydrant meter requires a \$1,010 deposit from the Contractor and water usage is \$14.20 for first 267 cubic feet and then \$4.91 for each additional 100 cubic feet. Electricity is limited, but the Contractor will be free to use what we have available at no charge.

5. Is the interior of the tank known to contain lead?

We do not think there is any lead.

6. Will there be access to the tank through the pedestal or will we need to stay away from that area?

Past experience has shown that access through the pedestal will not be sufficient. Contractor should expect to access the tank from the outside using the catwalk hatch. Whether or not the Contractor opens the catwalk hatch, the Contractor will have to replace the hatch gasket as part of the project (no extra pay).

Bidders are to ask questions through the project's CivCast website.

Bidders are to download the specifications and Bid Form from the CivCast website. The Bid Form is in Excel. Bidder is to complete the Bid Form in Excel, print it out and turn it in with their bid. The number of construction days are also bid on the Bid Form.

The tank has been inspected yearly. The coating has blisters, probably covering 70% of the tank, which are seen in the video. Some may have popped.

Plan sheets are in the back of the specifications.

7. Will the Engineer provide a link to the dive video?

The dive video (> 500 MB) can be downloaded from <http://bit.ly/2rG9Q1d>.

8. What is around the bottom base of the bowl?

Those are covers for cellular antennas. If the Contractor removes a cover, he will have to replace the cover and all hardware with new.

9. Is the pigeon hole clear?

No, not totally. There are nearby cellular antennas.

10. Is Dehumidification required by the Owner?

No. But the Contractor should weigh the time savings when using dehumidification against the price bid.

ADDENDUM NO. 1
to the
CONTRACT DOCUMENTS
for
2.0 M.G. WATER STORAGE TANK REHABILITATION
CITY PROJECT NO. 18-008

After the discussion, the entire group went to the fourth floor and observed the access hatch.

11. Where can we stage our equipment?

The Contractor can stage within the on-site parking lot, adjacent to and north of the water tower.

The Attendance list from the pre-bid meeting is attached to this Addendum.

The following five questions were posted to the project's CivCast website after the pre-bid meeting.

1. Who will be the coatings inspector on the project?

The City and the Engineer will inspect the coatings.

2. When does the owner want to start the project?

We anticipate awarding the construction contract at the February 26 City Council meeting. So, construction may be able to start in late March.

3. Do prevailing wages apply for this project? If so, is there a prevailing wage determination for the project?

Yes. The contract is governed by the Davis-Bacon prevailing wage rate according to the Instructions to Bidders, paragraph 18.26. See attached.

4. The specifications say to test for non-visible contaminants and then clean the surface if present. Do we need to include the cost of this in the base bid?

Yes. In bid item 1.

5. What brand of cathodic protection is currently in the tank?

It is Corrpro Model TASCA 30-8Z-10.

SPECIFICATIONS

1. Add Section 00 73 43 Davis-Bacon Wage Rates. See attached.

PLANS

1. There are no changes to the plans.

ADDENDUM NO. 1
to the
CONTRACT DOCUMENTS
for
2.0 M.G. WATER STORAGE TANK REHABILITATION
CITY PROJECT NO. 18-008

This Addendum issued:

BURGESS & NIPLE, INC.
TBPE FIRM REGISTRATION NO. F-10834



January 26, 2018

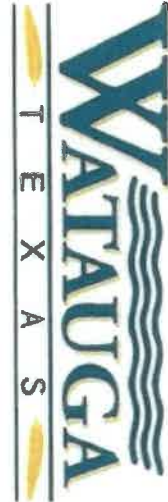
William D. Wendland

William D. Wendland, P.E.

Attachments

END OF ADDENDUM NO. 1

ADDENDUM NO. 1
to the
CONTRACT DOCUMENTS
for
2.0 M.G. WATER STORAGE TANK REHABILITATION
CITY PROJECT NO. 18-008



BURGESS & NIPLE
Engineers & Planners

MEETING SIGN-IN SHEET

Date: 1/24/2018

Time: 10:00 AM

RE: 2.0 M.G. Elevated Storage Tank Rehab. Pre-Bid Conference
City Project No. 18-008

NAME	FIRM	PHONE NUMBER	EMAIL
William D. Wendland	Burgess & Niple	C: 817-905-6183 O: 817-306-1444x6105	billy.wendland@burgessniple.com
Paul Hackleman	City of Watauga	(817) 514-5806	PHackleman@wataugatx.org
Brandon Dupree	City of Watauga	(817) 514-5851	BDupree@wataugatx.org
Randy Richards	City of Watauga	(817) 514-5840	RRichards@wataugatx.org
<i>DDG</i>			
<i>Billy C. Lippert</i>	<i>SES</i>	<i>210-781-9207</i>	<i>bclippert@sespro.com</i>
<i>Jillie Lippert</i>	<i>SES</i>	<i>817-403-3608</i>	<i>jillie.lippert@sespro.com</i>
<i>Ronnie Rowden</i>	<i>COW</i>	<i>817-514-5818</i>	<i>RRowden@cowtx.org</i>
<i>Timothy Boyles</i>	<i>TANKING INC</i>	<i>205-750-0444</i>	<i>augie@tankering.com</i>
<i>MIC GRAMMACH</i>	<i>N GP</i>	<i>830 257 5940</i>	<i>mic@negraining.net</i>

P:\PR54259\docs\specs\PR54259 Pre-Bid Conference - Attendee List.xlsx

DAVIS-BACON WAGE RATES

General Decision Number: TX180036 01/05/2018 TX36

Superseded General Decision Number: TX20170036

State: Texas

Watauga

Construction Type: Heavy

Counties: Johnson, Parker and Tarrant Counties in Texas.

Heavy Construction Projects (Including Water and Sewer Lines)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2018

* PLUM0146-002 05/01/2016

	Rates	Fringes
PLUMBER/PIPEFITTER.....	\$ 29.48	8.30

SUTX1990-041 06/01/1990

	Rates	Fringes
--	-------	---------

DAVIS-BACON WAGE RATES

CARPENTER.....\$ 10.40 \$3.64

Concrete Finisher.....\$ 9.81

ELECTRICIAN.....\$ 13.26

Form Setter.....\$ 7.86

Laborers:

Common.....\$ 7.25

Utility.....\$ 8.09

PAINTER.....\$ 10.89

Pipelayer.....\$ 8.43

Power equipment operators:

Backhoe.....\$ 11.89 3.30

Bulldozer.....\$ 10.76

Crane.....\$ 13.16 3.30

Front End Loader.....\$ 10.54

Mechanic.....\$ 10.93

Scraper.....\$ 10.00

Reinforcing Steel Setter.....\$ 10.64

TRUCK DRIVER.....\$ 7.34

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons

DAVIS-BACON WAGE RATES

resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

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Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination

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- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

INSTRUCTIONS TO BIDDERS

I-1. DEFINED TERMS

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (EJCDC C-700, Copyright © 2007) have the meanings assigned to them in the General Conditions. The term "Bidder" means one that submits a bid directly to Owner, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

I-2. COPIES OF BIDDING DOCUMENTS

2.1 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the advertisement or invitation to bid may be obtained from the Issuing Office.

2.2 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

I-3. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform Work, each Bidder must be prepared to submit within five (5) days of Owner's request written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below (or in the Supplementary Instructions). Each Bid must contain evidence of Bidder's qualification to do business in the jurisdiction where the Project is located or covenant to obtain such qualification prior to award of the contract.

I-4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

4.1 It is the responsibility of each Bidder before submitting a Bid to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work, (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work, (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify Engineer of all conflicts, errors or discrepancies in the Contract Documents.

4.2 Reference is made to the Supplementary Conditions for identification of:

4.2.1 Those reports of explorations and tests of subsurface conditions at the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the accuracy of technical data contained in such reports but not upon nontechnical

INSTRUCTIONS TO BIDDERS

data, interpretations or opinions contained therein or for the completeness thereof for the purposes of bidding or construction.

4.2.2 Those drawings of physical conditions in or relating to existing surface and subsurface conditions (except Underground Facilities) which are at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the accuracy of the technical data contained in such drawings but not upon the completeness thereof for the purposes of bidding or construction.

4.2.3 Copies of such reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the technical data contained therein upon which Bidder is entitled to rely as provided in Paragraphs 4.2.1 and 4.2.2 are incorporated therein by reference. Such technical data has been identified and established in the Supplementary Conditions.

4.3 Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner does not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

4.4 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, Underground Facilities and other physical conditions, and possible changes in the Contract Documents due to differing conditions appear in Paragraphs 4.2 and 4.3 of the General Conditions.

4.5 Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.6 On request in advance, Owner will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up and restore the site to its former condition upon completion of such explorations.

4.7 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

4.8 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is

INSTRUCTIONS TO BIDDERS

premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

I-5. INTERPRETATIONS AND ADDENDA

5.1 All questions about the meaning or intent of the Contract Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than five (5) days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

5.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

I-6. CONTRACT TIME

The time for Substantial Completion is to be inserted in the Bid Form by the Bidder.

I-7. LIQUIDATED DAMAGES

Provisions for liquidated damages, if any, are set forth in the Agreement.

I-8. SUBSTITUTE OR "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or- equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.7.1, 6.7.2 and 6.7.3 of the General Conditions and may be supplemented in the General Requirements.

I-9. SUBCONTRACTORS, SUPPLIERS AND OTHERS

9.1 In contracts where the Contract Price is on the basis of Cost-of-the-Work Plus a Fee, the apparent Successful Bidder, prior to the Notice of Award, shall identify in writing to Owner those portions of the Work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the Work with Owner's written consent.

9.2 No Contractor shall be required to employ any Subcontractor, Supplier, other person or organization against whom Contractor has reasonable objection.

INSTRUCTIONS TO BIDDERS

I-10. BID FORM

10.1 The Bid Form is included with the Bidding Documents; additional copies may be obtained from Engineer (or the issuing office).

10.2 All blanks on the Bid Form must be completed electronically and printed.

10.3 Bids by corporations must be executed in the corporate name and signed by a partner or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

10.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

10.5 All names must be typed or printed below the signature.

10.6 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

10.7 The address and telephone number for communications regarding the Bid must be shown.

I-11. SUBMISSION OF BIDS

Bids are to be submitted to the City of Watauga City Hall, Purchasing Department, 7105 Whitley Road, Watauga, Texas 76148 and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of the Bidder and accompanied by other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

I-12. MODIFICATION AND WITHDRAWAL OF BIDS

Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

I-13. OPENING OF BIDS

Bids will be opened as indicated in the Advertisement to Bid. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

INSTRUCTIONS TO BIDDERS

I-14. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All bids will remain subject to acceptance for sixty (60) days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid prior to that date.

I-15. AWARD OF CONTRACT

15.1 Owner reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time or changes in the Work, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Also, Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

15.2 In evaluating Bids, Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

15.3 Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

15.4 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

15.5 If the contract is to be awarded, it will be awarded to the lowest responsive and responsible Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.

15.6 If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within sixty (60) days after the day of the Bid opening.

INSTRUCTIONS TO BIDDERS

I-16. SIGNING OF AGREEMENT

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen (15) days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement. Within ten (10) days thereafter Owner shall deliver one (1) fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

I-17. BID SECURITY

17.1 A bid security is required.

17.2 Each Contractor submitting a Bid shall accompany his Bid with either a certified or cashier's check payable to the City of Watauga, upon a national or state bank, or a Bid Bond from a reliable surety company authorized to do business in the State of Texas, in an amount of not less than five (5) percent of the total amount bid, payable without recourse to the City of Watauga, as a guarantee that the selected Bidder will comply with the terms set forth in the Bid and as stated in the Invitation to Bid and in the Supplementary Conditions.

17.3 The bid security of the successful Bidder will be retained until the Bidder has executed the Agreement and furnished the required Contract Security, whereupon checks furnished as bid security will be returned; if the Bidder fails to execute and deliver the Agreement and furnish the required Contract Security within ten (10) days of the Notice of Award, Owner may annul the Notice of Award and the bid security of that Bidder will be forfeited. The bid security of any Bidder whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the seventh (7th) day after the executed Agreement is delivered by Owner to Contractor and the required Contract Security is furnished but not to exceed sixty (60) days after the Bid opening. Checks furnished as bid security by other Bidders will be returned within sixty (60) days of the Bid opening.

I-18. STANDARD TERMS AND CONDITIONS

18.1 The City of Watauga requires that the following standard terms and conditions pertain to this project. These may only be superseded, in whole or in part, by the General Instructions and Information, Scope of Work, or data contained herein.

18.2 **Agreement:** this Bid, when properly accepted by the City, shall constitute a contract equally binding between the successful Bidder and the City. No different or additional terms shall become a part of this contract with the exception of change orders issued by the City.

18.3 **Contract Administration:** under this contract, the City of Watauga may appoint a Contract Administrator with designated responsibility to insure compliance with contract requirements. This includes, but is not limited to, acceptance, inspection, actual performance testing, and delivery. Actual performance testing shall be accomplished with the assistance and resources of the vendor. The Contract Administrator shall serve as liaison between the using

INSTRUCTIONS TO BIDDERS

department and the successful Bidder. Purchasing shall be kept informed of any adverse situations relating to the award of this Bid.

18.4 Alternate Award: The City of Watauga reserves the right to award a Bidder as an “alternate award”. The alternate Bidder’s Bid shall remain in effect for the term of the awarded contract. Should the primary Bidder become unable or unwilling to complete the contract term; the alternate Bidder will be notified in writing of their official contract and start date. All terms and conditions of the original Bid will remain in effect.

18.5 Identical Bids: in the event of two or more identical low Bids, the contract shall be awarded as prescribed by Texas Local Government Code Chapter 271, subchapter Z, Section 271.901.

18.6 Pricing: price(s) bid must be held firm for ninety (90) days to allow for evaluation and approval unless otherwise noted in the bid documents.

18.7 Invoices: must be submitted by the successful Bidder to the City of Watauga, Accounting, 7105 Whitley Road, Watauga, Texas 76148.

18.8 Payment: will be made upon receipt of goods/completion of services and acceptance by the City and receipt of valid invoice. All payment terms shall be net 30, and shall be made on approved invoices in accordance with the Texas Prompt Payment Act.

18.9 Delivery or Contract Completion Date: Bidder shall provide a delivery or contract completion date if requested on Bid Response Form. This date may, where time is of the essence, determine the award. If the successful Bidder accepts the City’s order, but does not deliver in the specified time, thereby causing penalties, fees or other actual expenses to the City, the City reserves the right to pass along these expenses to Bidder. Consistent failure to meet delivery promises without valid reason may be cause for removal from the Bidder’s list. When delivery delays can be foreseen, the Bidder shall give prior notice to Purchasing which shall have the right to extend the delivery due date if reasons for delay appear acceptable. Default in promised delivery, without acceptable reasons, or failure to meet specifications, authorizes the City to purchase the goods elsewhere, and charge any increase in cost and handling to the defaulting Bidder.

18.10 Correspondence: the Bid Number must appear on all correspondence, inquiries, etc., pertaining to the Bid.

18.11 Funding: the City of Watauga is a home-rule, municipal, government operated and funded on October 1st to September 30th fiscal year; accordingly, the City reserves the right to terminate, without liability to the City, any contract for which funding is not available.

18.12 Assignment: the successful Bidder shall not assign, sell, transfer, or convey this contract in whole or in part, without the prior written consent of the City of Watauga. Such consent shall not relieve the assignor of liability in the event of default by the assignee.

INSTRUCTIONS TO BIDDERS

18.13 **Liens:** the successful Bidder agrees to and shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods, and services which may be provided under the City's request, by seller or seller's vendor(s). Upon request, a proper release for all liens, or satisfactory evidence of freedom from liens, shall be delivered to the City.

18.14 **Audit:** the City of Watauga reserves the right to audit the records, as it pertains to this Bid, and performance of the successful Bidder during the term of the contract and for three (3) years after the contract is completed.

18.15 **Insurance:** the City of Watauga requires Bidder(s) to carry the minimum insurance as required by state law.

18.16 **Protest:**

18.16.1 All protests regarding the Bid solicitation process must be submitted in writing to the City Purchasing Office within five (5) working days following the opening of Bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the Local Government Code, as well as any protest relating to alleged improprieties with the bidding process.

18.16.2 This limitation does not include protests relating to staff recommendations as to award of this Bid. Protests relating to staff recommendations may be directed to the City Council by contacting the City Secretary.

18.16.3 Failure to protest within the time allotted shall constitute a waiver of any protest.

18.17 **Late Bids:** Bids will not be accepted after the date and time indicated. The City of Watauga is not responsible for the lateness of mail, carrier, courier, or any other form of delivery service chosen by the bidder.

18.18 **Altering Bids:** Bid cannot be altered or amended after submission deadline. Any interlineations, alteration, or erasure made before submission deadline, must be initialed by the signer of the Bid, guaranteeing authenticity.

18.19 **Presentation of Bids:** no oral, telegraphic, telephonic, or facsimile Bids will be considered unless otherwise noted.

18.20 **Modifications and Amendments:** the City shall have the right to modify this order subject to adjustment(s) in the price in accordance with the applicable provisions of the purchase order, if any, or pursuant to mutual agreements. No agreement or understanding to modify this order shall be binding on the City unless it is in writing and signed by the authorized representative of the City.

18.21 **Exceptions, Substitutions and Deviations:** Bidders taking exception to the specifications indicated herein must be clearly stated on attached sheets. The absence of such exceptions shall indicate that Bidder has not taken exceptions and items offered are in strict compliance with the

INSTRUCTIONS TO BIDDERS

specifications and successful Bidder(s) will be held responsible thereof. The City reserves the right to accept any and/or all of the exception(s), substitution(s), or deviation(s) as deemed to be in the best interest of the City. Bidders will not be allowed to make unauthorized substitutions after award is made.

18.22 Bidder Shall: defend, indemnify, and save harmless the City, and all its officers, agents, and employees from all suits, actions, or other claims of any character, name, and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property because of any negligent act or fault of the bidder, or of any agent, employee, subcontractor, or supplier in the execution of, or performance under, any contract which may result from proposed award. Bidder indemnifies and will indemnify and save harmless the City from liability, claim, or demand on their part, agents, servants, customers, and/or employees whether such liability, claim, or demand arise from event or casualty happening or within the occupied premises themselves or happening upon or in any of the halls, elevators, entrances, stairways, or approaches of or to the facilities within which the occupied premises are located. Bidder shall pay any judgment with costs that may be obtained against the City growing out of such injury or damages.

18.23 Compliance with Laws: Bidder shall give all notices and comply with all federal, state, and local laws, ordinances, rules and regulations, and lawful orders of any public authority bearing on the performance of the services. This agreement and the rights and obligations of the parties hereto shall be interpreted, construed and enforces in accordance with the laws of the State of Texas. The Bidder warrants and covenants to the City that all services will be performed in compliance with all applicable federal, state, county, and city health and safety codes, rules and ordinances including, but not limited to, the Texas Industrial Safety and Health Act, and the Workers Right to Know Law.

18.24 Historically Underutilized Businesses (HUB): HUB businesses are strongly encouraged to participate in all purchasing activities of the City. While this is an important goal of the City, it may not necessarily be a determining factor in the award criteria, except where required by state or city laws, ordinances, statutes, etc. If an HUB goal has been established for the Bid, the applicable documents must be submitted within five business days after the Bid opening date, exclusive of the Bid opening date.

18.25 Payment, Performance, and Maintenance Bonds: When Payment, Performance, and/or Maintenance Bonds are required, the Bidder must provide the bonds, in the amounts and on the conditions required, within fourteen (14) business days after notification of award, or as otherwise required by the specifications.

18.26 Wages: Bidder shall comply with all applicable provisions of the Federal Fair Labor Standards Act (FLSA), and shall indemnify, defend, and hold harmless the City, its officers, employees, and agents from any and all liability, including but not limited to, wages, overtime pay, Social Security, unemployment, Federal Income Withholding Taxes, liquidated damages, penalties, court costs, and attorney's fees arising under any wage and hour law, including but not limited to, FLSA, for work performed by bidder employees for which the City may be found jointly or solely liable. In the advent of a Public Works project, the City and the contract are also governed by the Davis-Bacon prevailing wage rate.

INSTRUCTIONS TO BIDDERS

18.27 Termination of Contract: this contract shall remain in effect until contract expires, delivery and acceptance of products and/or performance of services ordered. The contract may also be terminated by either party with thirty (30) days written notice prior to any cancellation. The City reserves the right to award the canceled contract to next lowest Bidder as it deems to be in the best interest of the City.

18.28 Termination for Default:

18.28.1 The City of Watauga reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. The City reserves the right to terminate the contract immediately in the event the successful Bidder fails to do any of the following:

- Meet schedules
- Make payment of any fees
- Perform in accordance with these specifications
- Keep equipment functional

18.28.2 In the event the successful Bidder shall fail to perform, keep, or observe any of the terms and conditions, the City shall give the Bidder written notice of such default. If said default is not remedied to the satisfaction and approval of the City within ten (10) working days of receipt of such notice by Bidder, default shall be declared and all the Bidder's rights shall terminate. The Bidder, in submitting this Bid, agrees that the City shall not be liable to persecution for damages in the event that the City declares the Bidder in default.

18.29 Termination for Convenience: this contract may be cancelled or terminated at any time by giving vendor thirty (30) days written notice. Bidder may be entitled to payment for services actually performed; to the extent said services are satisfactory.

18.30 Termination for Insolvency: the City may terminate this contract/agreement forthwith if any of the following occur:

- Insolvency of Bidder: Bidder shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not is insolvent within the meaning of such laws.
- The filing of a voluntary or involuntary petition regarding Bidder under the Federal Bankruptcy Code
- The appointment of a receiver or trustee for Bidder
- The execution by Bidder of a general assignment for the benefit of creditor

18.31 Termination Without Cause: the City shall have the right to terminate the contract, in whole or in part, without cause any time upon thirty (30) days prior written notice. Upon receipt of a notice of termination, the Bidder shall promptly cease placing orders and all further work pursuant to the contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Bidder, to the extent funds are appropriated or otherwise legally available for

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such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.

18.32 **Waiver:** no waiver by either party of any breach or any provision of this contract shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this contract shall not be construed as a waiver thereof.

18.33 **Severability:** if any provision of the contract or the applicable thereof to any person or circumstances is held invalid, the remainder of this contract and the application of such provision to other persons or circumstances shall not be affected.

18.34 **Testing:** the City of Watauga reserves the right to test equipment, supplies, material, and goods for quality, compliance with specifications, and ability to meet the needs of the user. Demonstration units must be available for review upon request. Should the goods or services fail to meet requirements and/or be unavailable for evaluation, the bid is subject to rejection.

18.35 **Remedies:** the successful Bidder and the City of Watauga agree that each party have all rights, duties, and remedies available as stated in the Uniform Commercial Code.

18.36 **Venue:** this agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in the City of Watauga, Tarrant County, Texas.

18.37 **Silence of Specifications:** the apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial products and practices are to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of the specifications in this bid shall be made on the basis of this statement. The items furnished under this contract shall be new, unused, of the latest product in production to commercial trade, and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

18.38 **No Bids:** if Bidder does not wish to bid at this time but wishes to remain on the bid list for this product/service, please submit a “no bid” form by the same time and at the same location as stated for bidding. If response is not received in the form of a “bid” or “no bid” for three consecutive requests, vendor shall be removed from the bid list. If however, you choose to “no bid” this product and/or service and wish to remain on bid list for other commodities and/or services, please state particular product and/or service under which you wish to be classified. The City of Watauga is very conscious and extremely appreciative of the time and effort you have expended to submit a bid. We would appreciate you indicating on your “no bid” response any requirements of this bid request, which may have influenced your decision to “no bid”.

18.39 **F.O.B. / Damage:** Bids shall be F.O.B. inside delivery and shall include all delivery and packaging costs. The City of Watauga assumes no liability for goods delivered in damaged or unacceptable condition. The successful Bidder shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification of damage by the City.

INSTRUCTIONS TO BIDDERS

18.40 Destination Charges: all products offered shall be F.O.B. City of Watauga. All applicable freight and delivery charges (if applicable) shall be a separate line item and included in the total bid price.

18.41 Packaging: unless otherwise indicated, items will be new, unused, and in first class condition in containers suitable for damage-free delivery and storage. The cost of all special packaging, box crating, or cartage shall be included in the pricing specified on the response unless otherwise specifically stated in the City's request. All packaging, crating, or other debris resulting from delivery or set-up of the commodity purchased shall be removed and properly disposed of by the successful Bidder.

18.42 Bid Openings

18.42.1 All Bids submitted will be read or acknowledged at the City's regularly scheduled opening for the designated project. However, the reading of a Bid at Bid Opening should not be construed as a comment on the responsiveness of such Bid or as any indication that the City accepts such Bid as responsive.

18.42.2 The City will make a determination as to the responsiveness of Bids submitted based upon compliance with all applicable laws, City of Watauga purchasing guidelines, and project documents, including but not limited to, the project specifications and contract documents. The City will notify the successful Bidder upon award of the contract and, according to state law all Bids received will be available for inspection at that time.

18.43 Terms: the terms and conditions of the Bid will be considered when evaluating for award. The City will compute and consider prompt payment discounts, if any, offered by a Bidder in determining the low Bid.

18.44 Pre-Printed Terms and Conditions / Bidders Contract Documents: Bidders pre-printed terms and conditions or restrictions commonly appearing or attached with the Bid and/or Bidder's specification material and contract documents will be disregarded in the absence of a noticeable written statement from Bidder that all or a particular portion of such writing are in addition to or supersede the City terms and conditions. Even with a written statement from Bidder, City's terms and conditions may prevail.

18.45 Right of Inspection: City shall have the right to inspect the goods upon delivery before accepting them. Bidder shall be responsible for all charges for the return to Bidder of any goods rejected as being nonconforming under the specifications.

18.46 Products: supplied under this contract shall be subject to the City's approval. Product(s) found defective or not meeting specifications shall be picked up and replaced by the Bidder within ten (10) working days at no expense to the City. If product is not picked up within twenty (20) working days after notification, the item shall become a donation to the City of Watauga for disposition.

INSTRUCTIONS TO BIDDERS

18.47 **Warranty:** guarantees and warranties shall be attached as a part of the Bid as they shall be a consideration in awarding the contract. The successful Bidder shall warrant that all products/services shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship, and title. If any of the work in accordance with this Bid is found to not be in accordance with the requirements of the documents, the Bidder shall correct such work promptly after receipt of written notice from the City, Architect, Engineer, or other entity as the Bid documents may provide. This obligation shall survive acceptance of the work under the contract and termination of this contract. If supplier fails within a reasonable time after written notice, to correct defective work, to remove and replace rejected work, or supplier fails to comply with any provision in the contract document, either the City or its designee may, after ten (10) days written notice to Bidder, correct and remedy any such deficiency and bill said Bidder for actual expenses incurred.

18.48 **Manufacturer's Standard Warranty:** will be required in writing with delivery of product. If this Bid involves the lease or purchase of machinery and equipment that may be subject to future recalls, the supplier agrees to notify the City of any such recall.

18.49 **Design, Strength, and Quality:** of materials must conform to the highest standards of manufacturing practice.

18.50 **Purchase Order:** the City of Watauga shall generate a purchase order to the successful Bidder. The purchase order number must appear on all itemized packing slips and invoices. The City will not be responsible for any orders placed and/or delivered without a valid purchase order.

18.51 **Packing Slips:** or other suitable documents shall accompany the commodity(s) and shall show:

- Name and billing address of company
- Name and address of receiving department and/or delivery location
- City of Watauga purchase order number
- Descriptive information as to the item(s) delivered, including product code, item number, quantity, number of units, etc.

18.52 **Change Orders:** no oral statement of any person shall modify or otherwise change, or effect the terms, conditions, or specifications stated in the resulting contract. All change orders to the contract will be made by the City of Watauga in writing. Purchasing shall be informed at all times of any change orders.

18.53 **Title and Risk of Loss:** the title and risk of loss of goods shall not pass to the City of Watauga until the City actually receives and takes possession of the goods at the point(s) of delivery, after inspection and the acceptance of goods.

18.54 **Conflict of Interest:** no public official shall have interest in this contract, in accordance with the Texas Local Government Code Subtitle C, Chapter 171. Bidders will be required to submit a Conflict of Interest Questionnaire, stating that no officer or employee of the City has, or will have; during the said term of this contract any prohibited interest as defined. The Bidder understands that any existence of a prohibited interest at any time during the term of contract will render the contract voidable.

INSTRUCTIONS TO BIDDERS

18.55 Disclosure of Interest: Pursuant to Chapter 176 of the Texas Local Government Code, a person, or agent of a person, who contracts or seeks to contract for the sale or purchase of property, goods, or services with the City of Watauga must file a completed Conflict of Interest Questionnaire which is included in this solicitation or available at www.ethics.state.tx.us. The Conflict of Interest Questionnaire must be filed with the City of Watauga no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City or submits to the City an application, response to a Request for Proposal or Bid, correspondence, or writing related to a potential agreement. An updated Conflict of Interest Questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. An offense under Chapter 176 is a Class C misdemeanor.

18.56 Certificate of Interested Parties:

18.56.1 In 2015 the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code and applies to all contracts entered into on or after January 1, 2016. The law states that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity. The law applies to all contracts/purchases of a governmental entity that require action or vote by the governing body of the entity.

18.56.2 With regards to the City of Watauga, a Bidder that is awarded a contract or purchase that is greater than \$50,000 is required to electronically create a Form 1295 through the Texas Ethics Commission website (<https://www.ethics.state.tx.us>) and submit a signed declaration copy of the form to the City. A contract, including City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.

18.57 Prohibition of Boycott of Israel:

18.57.1 House Bill 89, effective September 1, 2017, amended the Texas Government Code to add Chapter 2270, Prohibition on contracts with companies boycotting Israel. Effective September 1, 2017, a state agency and a political subdivision (which includes a city) may not enter a contract with a company for goods or services unless the contract contains a written verification from the company that (a) it does not boycott Israel, and (b) will not boycott Israel during the term of the contract.

18.57.2 “Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business with Israel or in an Israel-controlled territory, but does not include an action made for ordinary business purposes.

18.57.3 “Company” is defined to mean a for-profit sole proprietorship, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

INSTRUCTIONS TO BIDDERS

18.58 **Senate Bill 252:**

18.58.1 Senate Bill 252, effective September 1, 2017, prohibits governmental contracts with a company doing business with Iran, Sudan, or a foreign terrorist organization. Senate Bill 252 amended the Texas Government Code to add Chapter 2252, Prohibition on contracts with certain companies. This Bill prohibits state agencies from contracting with or investing in companies that do business with Iran or designated foreign terrorist organizations.

18.58.2 “Foreign terrorist organization” means an organization designated as a foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

18.58.3 “Government contracts” means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment. The term includes a contract to obtain a professional or consulting service subject to Chapter 2254.

18.59 **Ethics:** Bidder shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official, or agent of the City. The City may, by written notice to the successful Bidder, cancel this contract without liability to the Bidder if it is determined by the City that gratuities or bribes in the form of entertainment, gifts, or otherwise, were offered or given by the Bidder, its agents, or its representatives to any City officer, employee, or elected representative with respect to the performance of this contract. In addition, the successful Bidder shall be subject to penalties as stated in Title 8 of the Texas Penal Code.

18.60 **Disability:** in accordance with the provisions of the Americans With Disabilities Act of 1990 (ADA), Bidder warrants that it and any and all of its subcontractors will not unlawfully discriminate on the basis of disability in the provision of services to general public, nor in the availability, terms, and/or conditions of employment for applicants for employment with, or employees of vendor or any of its subcontractors. Bidder warrants it will fully comply with ADA’s provisions and any other applicable federal, state, and local laws concerning disability and will defend, indemnify and hold the City harmless against any claims or allegations asserted by third parties or subcontractors against the City arising out of Bidder’s and/or its subcontractor’s alleged failure to comply with the above-referenced laws concerning disability discrimination in the performance of this contract.

18.61 **Employment Eligibility Verification:** Bidder warrants that it fully complies with all federal, state, county, and/or city statutes and regulations regarding the employment of aliens and others, and that all its employees performing work with the City meet the citizenship, or alien status requirements set forth in federal, state, county, and/or city statutes and regulations. Bidder shall indemnify, defend, and hold harmless the City, its officers, agents, and employees from and against any other liability which may be assessed against vendor or City in connection with any alleged violation of any federal, state, county, and/or city statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

INSTRUCTIONS TO BIDDERS

18.62 Nondiscrimination: Bidder certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and will be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental handicap, in compliance with all applicable federal and state anti-discrimination laws and regulations. Bidders shall certify to and comply with EEO regulations.

18.63 No Third-party Beneficiary: for purposes of this contract, including its intended operation and effect, the parties to this contract specifically agree and contract that: (1) the agreement only affects matters/disputes between the parties to this contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may be in a contractual relationship with the City or Bidder or both; and (2) the terms of this contract are not intended to release either by contract or operation of law, any third person or entity from obligations owing by them to either the City or Bidder.

18.64 Minimum Standards for Responsible Prospective Bidders: a prospective Bidder must affirmatively demonstrate a Bidder's responsibility. The City of Watauga may request representation and other information sufficient to determine Bidder's ability to meet these minimum standards including but not limited to:

- Have adequate financial resources, or the ability to obtain such resources as required
- Be able to comply with the required or proposed delivery schedule
- Have satisfactory record of performance
- Have a satisfactory record of integrity and ethics
- Not have any outstanding taxes, child support, or other indebtedness to the State of Texas or the City
- Be otherwise qualified and eligible to receive an award

18.65 Award:

18.65.1 The City may award contract to either the lowest responsible Bidder or to the Bidder who provides goods or services at the Best Value. Until final award of the contract, the City reserves the right to reject any or all Bids, to waive technicalities, or propose to do the work otherwise in the best interest of the City.

18.65.2 The City will award contract(s) for goods or services to the lowest responsible bidder that represents the "best value" to the City, price and other factors considered. When determining the best value the City may consider the following per Local Government Code Chapter 252.043:

- The purchase price
- Reputation of the bidder and of the bidder's goods or services
- Quality of the bidder's goods or services
- Extent to which the goods or services meet the City's needs
- Bidder's past relationship with the City
- Impact on the ability of the City to comply with laws and rules relating to contracting with Historically Underutilized Businesses and non-profit organizations employing persons with disabilities
- Total long-term cost to the City to acquire the bidder's goods or services
- Any relevant criteria specifically listed in the request for bid or proposal

INSTRUCTIONS TO BIDDERS

18.66 **Non-resident Bidders:** Texas Government Code, chapter 2252: non-resident Bidders. Texas law prohibits cities and governmental entities from awarding contracts to a non-resident unless the amount of such Bid is lower than the lowest Bid by a Texas resident by the amount a Texas resident would be required to underbid in the non-resident Bidder's state.

18.67 **Withdrawal:** A Bid may not be withdrawn or cancelled by the Bidder without permission of the City for a period of ninety (90) days following the date designated for receipt of Bids, and Bidder so agrees upon submittal of their Bid.

18.68 **Review of Documents:** Bidders are expected to examine, making all necessary investigations required to be fully and thoroughly informed as to all difficulties that may be encountered in the complete execution of all work in accordance with the contract documents. Each Bidder shall examine all specifications, requirements and other data or instructions pertaining to the work. Bidders shall promptly notify the City of Watauga of any omission, ambiguity, inconsistency or error that they may discover upon examination of the documents. The City assumes no responsibility for any errors or misrepresentations that result from incomplete Bids. No plea of ignorance of conditions that exist, or difficulties or conditions concerning the work to be performed, or execution of the work shall be accepted as an excuse for any failure or omission on the part of specifications documents governing the work. The Bidder(s) awarded the contract shall not be allowed any extra compensation by reason of any matter or aspect prior to the bidding.

18.69 **Ownership of Documents:** Original documents, including plans, designs, and notes developed in connection with services or commodities provided hereunder belong to, and shall remain the property of the City. The vendor may receive reproducible copies of such documents upon request. Some of these documents, if patented, trade secrets or proprietary in any way, and are so noted in the proposal, may not be a subject to the Texas Open Records Act, Chapter 252, Subchapter C, Section 252.048 (Vernon's Texas Codes Annotated).

18.70 **Proprietary Information:** All material submitted to the City of Watauga becomes public property and is subject to the Texas Open Records Act upon receipt. If a Bidder does not desire proprietary information in the Bid to be disclosed, each page must be identified and marked proprietary at the time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

18.71 **Default:**

18.71.1 The City of Watauga reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. The City of Watauga reserves the right to terminate the contract immediately in the event the successful Bidder fails to:

1. Substantially meet delivery or completion schedules
2. Otherwise, substantially perform in accordance with the accepted proposal

INSTRUCTIONS TO BIDDERS

18.71.2 Breach of contractor or default authorizes the City to award to another Bidder, purchase elsewhere and charge the full increase in cost and handling to the defaulting party.

18.72 **Addendum:**

18.72.1 Any interpretations, corrections, changes or any other clarifications to this Bid document will be issued in the form of written addenda. The City, its agents and employees shall not be responsible for any information given by way of verbal communication.

18.72.2 Addenda shall be sent to all who are known to have received a copy of the Bid. Bidders shall acknowledge receipt of all addenda. Interpretations, corrections, or changes to the Bid made in any other manner are not binding upon the City of Watauga, and Bidders shall not rely upon such interpretations, corrections, or changes.

18.72.3 Oral explanations or instructions given before the award of the contract are not binding. It is the sole responsibility of the Bidder to ensure that all available information has been received prior to submission. The City will not be held liable for any addenda information not received by Bidder.

18.73 **Tax Exempt:** The City of Watauga is exempt from Federal Excise and State Sales Tax; therefore, tax must not be added to Bid. A tax-exempt form shall be furnished to the successful Bidder upon request. Under no circumstances shall the City of Watauga be liable to pay taxes for which the City has an exemption.

18.74 **Price Fixing/Collusion:** In submitting a Bid to this request, the Bidder thereby certifies that the Bidder has not participated in nor been party to any collusion, price fixing, or any other agreements with any company, firm, or person concerning the pricing on the enclosed Bidder.

18.75 **Bid Ambiguity:** Any ambiguity in the Bid as a result of omission, error, lack of clarity or non-compliance by the Bidder with the specifications, instructions, and all conditions of Bidder shall be construed in the favor of the City. The City reserves the right to request additional information or clarification from Bidders, or to allow corrections of errors or omissions.

18.76 **Force Majeure:** Neither party shall be required to perform any term, condition or covenant in this contract so long as such performances are delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor performance restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the party required to perform and which by the exercise of due diligence said party is unable, wholly or in part, to prevent or overcome.

18.77 **Taxes, Unemployment Benefits, Etc.:** The successful Bidder hereby accepts exclusive liability for, and agrees to indemnify the City against liability for the payment of any and all contributions or taxes for unemployment insurance, old age pensions or annuities or other purposes now or hereafter imposed by the Government of the United States and/or by the Government of any State of the United States, which are in whole or in part measured by and/or based upon the

INSTRUCTIONS TO BIDDERS

wages, salaries, or other remuneration paid to persons employed by the successful Bidder on work in connection with this contract.

BID FORM

TO: City of Watauga
Purchasing Department
7105 Whitley Road
Watauga, Texas 76148
817-514-5833

FOR: 2.0 M.G. Elevated Storage Tank Rehabilitation
Watauga, Texas

The undersigned, as Bidder, declares that the only person or parties interested in this Bid as principals are those named herein, that this Bid is made without collusion with any other person, firm, or corporation; that he has carefully examined the form of Contract, Notice to Bidders, Specifications, and the Plans therein referred to, and has carefully examined the locations, conditions and classes of materials of the proposed work; and agrees that he will provide all the necessary labor, machinery, tools, apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the Contract and Specifications in the manner prescribed therein and according to the requirements of the Engineer as therein set forth.

It is understood that the following quantities of work to be done at unit prices are approximate only, and are intended principally to serve as a guide in evaluating Bids.

It is further agreed that the quantities of work to be done and materials to be furnished may be increased or diminished as may be considered necessary, in the opinion of the Engineer, to complete the work fully as planned and contemplated, and that all quantities of work, whether increased or decreased are to be performed at agreed prices set forth except as provided for in the Specifications.

It is further agreed that the contract is a unit price contract and unit prices are provided to allow for additional work. Prices may be increased to cover additional work ordered by the Engineer, but not shown on the plans or required by the Specifications, in accordance with the provisions of the General Conditions. Similarly, they may be decreased to cover deletion of work so ordered.

The Contractor shall bid an amount of time for the work to be substantially complete on page 2 of the Bid Form.

The Contractor, as Bidder, hereby proposes and agrees to furnish the work on a unit price Contract based on the construction plans for the following stipulated amounts:

BID FORM

ITEM NO.	DESCRIPTION OF UNIT	UNIT	BID QUANTITY	UNIT PRICE	COST
1	Project Preparation, Abrasive Blasting and Cleaning According to SSPC-SP10 and Notes on Plan Sheet 2, Near White Metal Blast, and Painting all INTERIOR Surfaces of Tank Including Appurtenances.	LS	1	\$230,000.00	\$ 230,000.00
2	Site Cleanup including Handling, Hauling and Disposal of Paint, Residue, Chips or Spent Abrasives to Appropriate Off-Site Landfill Unless Required Otherwise By Owner.	LS	1	\$ 2,000.00	\$ 2,000.00
3	Spot Repairing Leaks and Deep Pits by Welding as Ordered, Including Operator, Unit Equipment and Materials	Unit Hours	20	\$ 150.00	\$ 3,000.00
4	Spot Repairing Shallow Pitted Areas with Epoxy Patching Paste as ordered, Including Operator, Equipment, Paste Material and Smooth Finishing	Unit Hours	20	\$ 100.00	\$ 2,000.00
5	Water Testing and Sterilization of Tank, Complete	LS	1	\$ 1,000.00	\$ 1,000.00
6	Miscellaneous Allowance (only if authorized)	LS	1	\$ 10,000.00	\$ 10,000.00
	TOTAL AMOUNT BID				\$ 248,000.00

NUMBER OF CONSTRUCTION DAYS BID: 45 CONSECUTIVE CALENDAR DAYS

BID FORM

Bidder agrees that the Work will be substantially complete within the amount of calendar days bid on Page 2 of the Bid Form after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and will be completed and ready for final payment in accordance with Paragraph 14.07B of the General Conditions within an additional thirty (30) calendar days after the date of substantial completion.

It is understood that the Owner reserves the right to reject any and all Bids.

The work proposed to be done shall be accepted when fully completed and finished in accordance with the Plans and Specifications to the satisfaction of the City of Watauga, Texas.

The undersigned certifies that the Bid prices contained in this Bid have been carefully checked and are submitted as correct and final.

Receipt is hereby acknowledged of the following Addenda to the contract documents:

Addendum No. 1 dated 1-26-18
Addendum No. 2 dated _____
Addendum No. 3 dated _____

Received _____
Received _____
Received _____

Respectfully submitted,

(SEAL)

If Bidder is Corporation

Date: 1-31-18

M.K. PAINTING, INC
(Contractor)
By: JLB JOHN BETHELL
Title: SUPERINTENDENT
Address: 4157 SEVENTH
WYANDOTTE MI 48192
Phone: 734-285-5861

AIA® Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

M.K. Painting, Inc.

4157 Seventh

Wyandotte, MI 48192

OWNER:

(Name, legal status and address)

City of Watauga

7105 Whitney Road

Watauga, TX 76148

BOND AMOUNT: Five Percent (5%) of Amount of Bid

SURETY:

(Name, legal status and principal place of business)

North American Specialty Insurance Company

1450 American Lane, Suite 1100

Schaumburg, IL 60173

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

PROJECT:

(Name, location or address, and Project number, if any)

2.0 M.G. Elevated Storage Tank Rehabilitation 2018

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this **31st** day of **January, 2018**

(Witness)

(Witness)

M.K. Painting, Inc.

(Principal)

SUPERINTENDENT

(Title)

North American Specialty Insurance Company

(Surety)

(Title)

Susan L Small , Attorney-in-Fact

Init.

SWISS RE CORPORATE SOLUTIONS

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY
WESTPORT INSURANCE CORPORATION

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Overland Park, Kansas and Washington International Insurance Company a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Overland Park, Kansas, and Westport Insurance Corporation, organized under the laws of the State of Missouri, and having its principal office in the City of Overland Park, Kansas each does hereby make, constitute and appoint:

ROBERT TROBEC, KATHLEEN M. IRELAN, IAN J. DONALD, JEFFREY A. CHANDLER, ALAN P. CHANDLER, SUSAN L. SMALL, T.J. GRIFFIN, JOHN L. BUDDE,

STEVEN K. BRANDON, TERENCE J. GRIFFIN, WILLIAM A. PIRRET and TERRI L. YOUNG

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

ONE HUNDRED TWENTY FIVE MILLION (\$125,000,000.00) DOLLARS

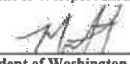
This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on March 24, 2000 and Westport Insurance Corporation by written consent of its Executive Committee dated July 18, 2011.

"RESOLVED, that any two of the President, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By 
Steven P. Anderson, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company
& Senior Vice President of Westport Insurance Corporation

By 
Mike A. Ito, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company
& Senior Vice President of Westport Insurance Corporation



IN WITNESS WHEREOF, North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 9th day of November, 20 17.

North American Specialty Insurance Company
Washington International Insurance Company
Westport Insurance Corporation

State of Illinois
County of Cook

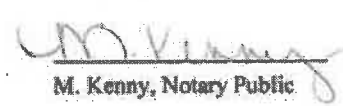
ss:

On this 9th day of November, 20 17, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of

Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Senior Vice President of Westport Insurance Corporation and Michael A. Ito Senior Vice President of Washington International Insurance Company and Senior Vice President

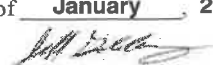
of North American Specialty Insurance Company and Senior Vice President of Westport Insurance Corporation, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.




M. Kenny, Notary Public

I, Jeffrey Goldberg, the duly elected Vice President and Assistant Secretary of North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 31st day of January, 2018.


Jeffrey Goldberg, Vice President & Assistant Secretary of Washington International Insurance Company &
North American Specialty Insurance Company & Vice President & Assistant Secretary of Westport Insurance Corporation



4157 SEVENTH STREET
WYANDOTTE, MICHIGAN 48192

PHONE: (734) 285-5881

FAX: (734) 285-5882

as Satellite Site
46 Roberts Road
Kley, Texas 77447
81) 475-6239 office/cell
81) 739-0794 fax

mkpaintinginc@aol.com
www.mkpaintinginc.com

Resolution to Appoint an Authorized Agent

During a special meeting held on February 1, 2004, of the Board of Directors of M. K. Painting, Inc., a corporation formed under Michigan laws, it was RESOLVED that John Berthel is hereby appointed as an Authorized Agent of this Corporation, with authority to make purchases, sign bidding documents, bonding documents and contracts in the Corporation's name and behalf.

The undersigned hereby certifies that he is the duly elected and sole officer of the Corporation and, therefore, is the custodian of the books and records of M. K. Painting, Inc., and the foregoing is a true record of a resolution at the above mentioned meeting, and that meeting was held in accordance with state law and the By-Laws of the above-named Corporation on February 1, 2004, and that said resolution is now in full force and effect without modification or rescission.

Signed Harry Elmazan
Harry Elmazan, President of M. K. Painting, Inc.

Dated 4-21-04

NORTH GROUP, LLC

Independent Representative of Tnemec Company Incorporated

2790 W. Grand River, Suite 100 Howell, MI 48843 TEL: 517-540-0038 FAX: 517-540-0041 www.tnemec.com/northgroup



Mr. John Bethell
M.K. Painting, Inc.
4157 Seventh Street
Wyandotte, MI 48192

RE: RECOMMENDED CONTRACTOR

To Whom It May Concern:

This letter confirms that M.K. Painting, Inc. is a preferred painting contractor and is well versed and knowledgeable in the application of the Tnemec Company Coatings. M.K. Painting exhibits high quality standards when completing projects and is highly recommended to perform coating work.

M.K. Painting excels with completing projects on time and per the contract documents. They offer excellent field support and cooperation for any unexpected issue that can arise during a project.

North Group, LLC is pleased to be working with M.K. Painting and is available to answer any questions regarding their company or workmanship. If you have any questions and/or need any additional information, please feel free to contact me at your earliest convenience.

Sincerely,

Ken Hartwig
Industrial Sales

NOTICE OF AWARD

Project: 2.0 M.G. Elevated Storage Tank Rehabilitation

Owner: City of Watauga

Owner's Contract No.: 18-008

Bidder: M. K. Painting, Inc.

Bidder's Address: 4157 Seventh

Wyandotte, MI 48192

The OWNER has considered the Bid submitted by you on January 31, 2018 (Bid Date) for the above-described work in response to its Advertisement for Bids and Instructions to Bidders.

You are hereby notified that your has been accepted for items in the amount of TWO HUNDRED FORTY EIGHT THOUSAND AND 00/100 DOLLARS (\$248,000.00).

Seven (7) copies of the proposed Contract Documents accompany this Notice of Award.

You must comply with the following conditions precedent within 15 days of the date you receive this Notice of Award.

1. Deliver to the Engineer seven (7) fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract Bonds and Insurance as specified in the Instructions to Bidders (Paragraph 16) and General Conditions (Article 2).

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

City of Watauga

Owner

By: William D. Wendland

Authorized Signature

Engineer

Title

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2018 by and between The City of Watauga (hereinafter called OWNER) and M. K. Painting, Inc. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 WORK

- 1.01 CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows:

City Project No. 18-008 2.0 M.G. Elevated Storage Tank Rehabilitation

ARTICLE 2 ENGINEER

For this agreement, the ENGINEER
is designated as:

Burgess & Niple

3950 Fossil Creek Blvd., Suite 210

Fort Worth, Texas 76137

817-306-1444 Fax 817-306-1555

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

ARTICLE 3 CONTRACT TIME

- 3.01 All time limits for milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 3.02 The Work will be substantially completed within the amount of calendar days bid on the Bid Form after the date when the Contract times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.97 of the General Conditions within an additional thirty (30) calendar days after the date of substantial completion.

3.03 LIQUIDATED DAMAGES

- A. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the work is not completed within the time specified in paragraph 3.01 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions.
- B. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by OWNER if the work is not completed on time.

- C. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER the sum of \$500 for each consecutive calendar day that expires after the time specified in paragraph 3.01, or any proper extension thereof granted by OWNER for completion and readiness for final payment.

ARTICLE 4 CONTRACT PRICE

- 4.01 OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents in current funds of TWO HUNDRED FORTY EIGHT THOUSAND AND 00/100 DOLLARS (\$248,000.00), in accordance with the Bid Schedule as awarded by the OWNER as included herein, subject to additions and deductions by Change Order and quantities actually performed.

ARTICLE 5 PAYMENT PROCEDURES

- 5.01 APPLICATION FOR PAYMENT.
- A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.
- 5.02 PROGRESS PAYMENTS.
- A. OWNER shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by ENGINEER monthly during construction as provided in the General Conditions. All progress payments will be on the basis of the progress of the work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price work based on the number of units completed).
- 5.03 FINAL PAYMENT.
- A. Upon final completion and acceptance of the work in accordance with paragraphs 14.07.B and 14.07.C of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraphs 14.07.B and 14.07.C.

ARTICLE 6 INTEREST

- 6.01 All monies not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate provided by law at the place of the project.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS

- 7.01 In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:
- A. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."
- B. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, performance, and furnishing of the work.

- D. CONTRACTOR has examined and agreed with provisions concerning responsibilities for the adequacy of data furnished to prospective BIDDERS with respect to subsurface conditions, other physical conditions and underground facilities, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03, and 4.04 of Section 00 70 00, "General Conditions," and Section 00 73 00, "Supplementary Conditions".
- E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto.
- F. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the work as indicated in the Contract Documents.
- G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 CONTRACT DOCUMENTS

- 8.01 The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the work consist of the following:
 - A. This Agreement.
 - B. Exhibits to this Agreement.
- 8.02 Procurement and Contracting Requirements, Specifications and Supplemental Specifications as listed in Section 00 01 10, "Table of Contents," prepared or issued by Burgess & Niple, dated January 8, 2018.
- 8.03 Drawings prepared by Burgess & Niple, numbered 1 and 2, dated January 8, 2018 and are included in the back of these specifications.
- 8.04 ADDENDA:
 - No. 1, dated January 26, 2018

- 8.05 All completed forms including procurement forms and contract forms as listed in Section 00 01 10, "Table of Contents".
- 8.06 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.04.A and 3.04.B of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04.A or 3.04.B of the General Conditions.

ARTICLE 9 MISCELLANEOUS

- 9.01 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.02 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.03 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.
- 9.04 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.05 The Contract, or any agreement subsidiary thereto, shall not be binding or of any force unless the Finance Director of the City shall endorse thereon a certificate (similar to the legal and Fiscal Officers from, Section 00 56 00) that there remains unexpended or in the process of collection and unapplied, an appropriation or fund applicable thereto and sufficient to pay the estimated expenses of completing this Contract or subsidiary agreement, as certified by the officers making the same.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed seven (7) copies of this Agreement. Counterparts have been delivered to OWNER, CONTRACTOR, and ENGINEER.

The effective date of this Agreement shall be _____, 2018.

OWNER:

City of Watauga _____

By _____

Name Patrick Shelbourne

Title Mayor Pro Tem

CONTRACTOR:

M. K. Painting, Inc.

By _____

Name _____

Title _____

Address _____

Telephone _____

Employer Identification No. _____

Contractor's License No. _____

(If a corporation, a second officer must sign.)

By _____

Name _____

(Please Type or Print)

Title _____

(SEAL)

(SEAL)

ATTEST:

ATTEST:

By _____

By _____

Name _____

Name _____

(Please Type or Print)

(Please Type or Print)

Title _____

Title _____

Address for giving notices

Address for giving notices

(If CONTRACTOR is a corporation, attach
evidence of authority to sign.

LEGAL AND FISCAL OFFICERS

_____, 2018

The foregoing Agreement is approved as to form

By _____

Name Mark G. Daniel

Title City Attorney, City of Watauga, Texas

I, Patrick Shelbourne, Mayor Pro Tem hereby certify that I am the qualified and acting fiscal officer of the City of Watauga, Texas, and that the amount of money to wit TWO HUNDRED FORTY EIGHT THOUSAND AND 00/100 DOLLARS (\$248,000.00)

_____ required to meet the cost of the attached Agreement between The City of Watauga and M. K. Painting, Inc.

OWNER

CONTRACTOR

has been lawfully appropriated for the purpose of said Agreement and the money so appropriated is on deposit (in process of collection) to the credit of the appropriate fund free from any previous encumbrances.

_____, 2018

By _____

Name Patrick Shelbourne

Title Mayor Pro Tem

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

M. K. Painting, Inc.
(Name of CONTRACTOR)

a Corporation, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

(Name of Surety)

hereinafter called Surety, are held and firmly bound unto The City of Watauga
(Name of OWNER)

hereinafter called OWNER, in the penal sum of TWO HUNDRED FORTY EIGHT THOUSAND AND
00/100 DOLLARS (\$248,000.00)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The Condition of this Obligation is such that whereas, the Principal entered into a certain Agreement with the OWNER, dated the _____ day of _____, 2018, a copy of which is hereto attached and made a part hereof for the construction of:

2.0 M.G. Elevated Storage Tank Rehabilitation

Now, therefore, if the Principal shall well, truly, and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Agreement during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the 2 year guaranty period, and if he shall satisfy all claims and demands incurred under such Agreement, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

Provided, further, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or to the work or to the specifications.

Provided, further, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PERFORMANCE BOND

In Witness Whereof, this instrument is executed in seven (7) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 2018.

Principal M. K. Painting, Inc.

Attest: _____ By _____

(SEAL) _____ Name _____

_____ Title _____

Witness as to Principal

Surety _____

Attest: _____

(SEAL) _____ By _____

_____ Attorney-in-Fact

Witness as to Surety

SURETY COMPANY ADDRESS:

SURETY AGENT'S ADDRESS:

_____ Street _____ Agency Name _____

_____ City _____ State _____ Zip _____ Street _____

_____ Telephone _____ City _____ State _____ Zip _____

_____ Telephone _____

Note: Date of Bond must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and must not exceed the underwriting limitation.

Surety companies must be authorized to transact business in the state where the Project is located and shall furnish proof of such authorization with the Bid.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

M. K. Painting, Inc.

(Name of CONTRACTOR)

a Corporation, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

(Name of Surety)

hereinafter called Surety, are held and firmly bound unto The City of Watauga
(Name of OWNER)

hereinafter called OWNER, in the penal sum of TWO HUNDRED FORTY EIGHT THOUSAND AND
00/100 DOLLARS (\$248,000.00) in

lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The Condition of this Obligation is such that whereas, the Principal entered into a certain Agreement with the OWNER, dated the _____ day of _____, 2018, a copy of which is hereto attached and made a part hereof for the construction of:

2.0 M.G. Elevated Storage Tank Rehabilitation

Now, therefore, if the Principal shall promptly make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such Agreement, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

Provided, further, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or to the work or to the specifications.

Provided, further, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PAYMENT BOND

In Witness Whereof, this instrument is executed in **seven (7)** counterparts, each one of which shall be deemed an original, this the _____ day of _____, 2018.

Principal M. K. Painting, Inc.

Attest: _____ By _____

(SEAL) _____ Name _____

_____ Title _____

Witness as to Principal

Surety _____

Attest:

(SEAL)

_____ By _____

Witness as to Surety

Attorney-in-Fact

SURETY COMPANY ADDRESS:

SURETY AGENT'S ADDRESS:

Street

Agency Name

City

State

Zip

Street

Telephone

City

State

Zip

Telephone

Note: Date of Bond must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and must not exceed the underwriting limitation.

Surety companies must be authorized to transact business in the state where the Project is located and shall furnish proof of such authorization with the Bid.

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that M. K. Painting, Inc., as Principal, and _____, a corporation organized under the laws of _____ as Surety, do hereby expressly acknowledge themselves to be held and bound to pay unto the City of Watauga, a municipal corporation, chartered by virtue of a Special Act of the Legislature of the State of Texas, at City of Watauga, Tarrant County, Texas, the sum of TWO HUNDRED FORTY EIGHT THOUSAND AND 00/100 DOLLARS (\$248,000.00) (100% of contract price) for the payment of which sum will and truly to be made unto said City of Watauga and its successors, said principal and sureties do hereby bind themselves their assigns, and successors jointly and severally.

THIS obligation is conditioned, however, that whereas said M. K. Painting, Inc. has this day of _____, 2018, entered into a written contract with the said City of Watauga, to build and construct the:

2.0 M.G. Elevated Storage Tank Rehabilitation

in the City of Watauga, Texas which contract and the specifications therein mentioned adopted by the City of Watauga are hereby expressly made a part thereof as though the same were written and embodied herein.

WHEREAS, under the specifications and contract it is provided that the CONTRACTOR will maintain and keep in good repair the work herein contracted to be done and performed for a period of Two (2) year(s), from the date of acceptance with possible extensions. It being understood that the purpose of this section is to cover all defective conditions arising by reason of defective material, work or labor performed by said CONTRACTOR; and in case the said CONTRACTOR shall fail to do so, it is agreed that the CITY may do said work and supply such materials, and charge the same against the said CONTRACTOR AND SURETIES on this obligation, and said CONTRACTOR AND SURETIES hereon shall be subject to the liquidated damages mentioned in said contract for each day's failure on its part to comply with the terms of the said provision of said contract.

MAINTENANCE BOND

NOW THEREFORE, if the said CONTRACTOR shall keep and perform its said agreement to maintain said work and keep the same in good repair for the said maintenance period of Two (2) year(s), as provided, then these presents shall be null and void and have no further effect, but if default shall be made by the CONTRACTOR in the performance of his contract to so maintain and repair said work, then these presents shall have full force and effect and said City of Watauga shall have and recover from said CONTRACTOR and SURETIES damages in the premises, as provided, and it is further agreed that this obligation shall be a continuing one against the principal and sureties hereon, and that successive recoveries may be had thereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any cause during said time.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed by them; and the said Surety has caused these presents to be executed by its ATTORNEY-IN-FACT _____ and the said ATTORNEY-IN-FACT has hereunto set his hand this the _____ day of _____, 2018.

M. K. Painting, Inc.
Principal

Surety

By _____

By _____

Title _____

Title _____

Address _____

Address _____

The name and address of the Resident Agency of Surety is:

(SAMPLE FORM)

CERTIFICATE OF INSURANCE

TO:

DATE: _____

PROJECT NO. _____

OWNER

TYPE OF: _____

ADDRESS

PROJECT: _____

THIS IS TO CERTIFY THAT _____
(Name and Address of Insured)

is, at the date of this certificate, insured by this Company with respect to the business operations hereinafter described, for the types of Insurance and in accordance with the provisions of the standard policies used by this Company, and further hereinafter described. Exceptions to standard policy noted on reverse side hereof.

TYPE OF INSURANCE

	Policy No.	Effective	Expires	Limits of Liability
Workmen's Compensation				
Public Liability				1 Person \$ 1 Accident \$
Contingent Liability				1 Person \$ 1 Accident \$
Property Damage				
Builder's Risk				
Automobile				
Other				

The foregoing Policies (do) (do not) cover all sub-contractors.

Locations Covered: _____

Descriptions of Operations Covered: _____

The above policies either in the body thereof or by appropriate endorsement provide that they may not be changed or canceled by the insurer in less than five days after the insured has received written notice of such change or cancellation.

Where applicable local laws or regulations require more than five days actual notice of change or cancellation to the assured, the above policies contain such special requirements, either in the body thereof or by appropriate endorsement thereto attached.

(Name of Insurer)

By: _____

Title: _____

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable

television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which

Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

- a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 - 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 - 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is

identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
- 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
- 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 - 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 - 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;

- b. locating all Underground Facilities shown or indicated in the Contract Documents;
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated:

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and

Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all

of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
 - 1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the

insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers,

directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase, or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property

insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and “Or-Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *“Or-Equal” Items:* If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.

- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times;
and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

- 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection.

Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such

agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all

governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas:

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by

negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures:

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor

has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed 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 Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to

Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to

- substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the

Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The cost of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the

party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
- 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or

- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor

and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for

payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of 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 to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 - 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 3. Contractor's repeated disregard of the authority of Engineer; or
 - 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 - 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 - 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 - 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of

- or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
 - E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
 - F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or

3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTARY CONDITIONS

TO STANDARD GENERAL CONDITIONS - SECTION 00 70 00 EJCDC C-700 (2007 EDITION)

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SUPPLEMENTARY CONDITIONS

Supplementary Conditions. These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (C-700, 2007 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

Article 1 Definitions and Terminology. The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (C-700, 2007 Edition) have the meanings assigned to them in the General Conditions.

1.01.17 Drawings. Add the following sentence to the definition.

"Drawings may also be described as Plans."

1.01.44 Substantial Completion. Add the following to the first sentence.

"and a Certificate of Substantial Completion has been completed."

Add the following to the end of definition.

"In order for the work or a specific part thereof to be substantially complete, training requirements must have been met and all work shall have been demonstrated to be in compliance with operational requirements for 30 continuous days."

1.01.52 Final Completion. Add the following term and definition.

"52. Final Completion – The project will be complete when all work is complete including all punch list items and all documents are completed and submitted to the OWNER. These include, but are not limited to, Letters of Approval from various regulatory agencies, inspection certificates, and all other items as required in paragraph 14.07."

1.01.53 Written Notice. Add the following term and definition.

"53. Written Notice – Any notice to any party of the Contract relative to any part of this Contract shall be in writing, and considered delivered and the service thereof completed once posted by certified or registered mail to the said party at his last given address or delivered in person to said party or his authorized representative on the work."

1.02 Terminology. Add the following paragraphs G, H, and I.

"G. Imperative Mood. These specifications are written to the BIDDER before the award of the Contract and to the CONTRACTOR after award of the Contract. The sentences that direct the CONTRACTOR to perform work are mostly written as commands. For example, a requirement to provide cold-weather protection would be expressed as, 'Provide cold-weather protection for concrete,' rather than 'The Contractor shall provide cold-weather protection for concrete.' In the imperative mood, the subject 'the Bidder' or 'the Contractor' is understood.

"H. Engineer Interpretations. In order to avoid cumbersome and confusing repetition of expressions in these specifications, it is provided that whenever anything is, or is to be, done, if, as, or, when, or where 'demonstrated, contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned,' it shall be understood as if the expression were followed by the words 'by the Engineer or 'to the Engineer.'

"I. 'Shown.' When this term is used in the specifications, it means 'shown on the drawings' unless stated otherwise."

2.02 Copies of Documents. Amend the first sentence of paragraph 2.02 so it shall read as follows:

"The OWNER shall furnish the CONTRACTOR two copies of Contract Documents. . . ."

2.03 Commencement of Contract Times; Notice to Proceed. Revise paragraph A to read as follows:

"A. The Contract Times will begin on the day indicated in the Notice to Proceed. The date for the Contract Times may be extended by mutual agreement between the OWNER and the CONTRACTOR."

2.05 Before Starting Construction. Revise paragraph A to read as follows:

"A. Preliminary Schedules: Within fifteen days after Notice of Award, CONTRACTOR shall submit to ENGINEER for its timely review:"

Add the following paragraphs after 2.05.A.1:

"a. A preliminary progress schedule, as a minimum shall be defined as a bar chart schedule that indicates dates for starting and completing the various stages of the work, including a minimum of:

- On-site mobilization.
- Submittal dates by specification division - starting and ending.
- Major structure excavations.
- Structural completion of major structures.
- Substantial completion of structures.
- Operational demonstration (phases if proposed).
- Project substantial completion.
- Major equipment installations.

The preliminary progress schedule shall become the basis on which the required CPM schedule shall be developed. Schedule must incorporate and indicate compliance with any Contract Milestone dates including Substantial and/or Final Completion dates."

Revise paragraph 2.05.A.2 to read as follows:

"2. A preliminary schedule of submittals in accordance with paragraph 1.4 A of Section 01 33 00, 'Submittals' and "

3.02 Reference Standards. Revise paragraph A.1 to read as follows:

"1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, whether such references be specific or by implication, shall mean the latest standard or specification in effect 60 days prior to the date of taking Bids. All laws, codes, or regulations of governmental authority shall be the latest at the time of opening of Bids."

4.02 Subsurface and Physical Conditions. Replace paragraph 4.02 with the following:

"4.02 Subsurface and Physical Conditions

"A. Reports and Drawings: The Supplementary Conditions identify:

"1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents and they are included in the Appendix of the Contract Documents. These reports and tests are not Contract Documents and are to be considered 'technical data.'

"2. CONTRACTOR may not rely upon or make any claim against OWNER or ENGINEER, or any of their Related Entities with respect to:

"a. The completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

"b. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

"c. Any CONTRACTOR interpretation of or conclusion drawn from any 'technical data' or any such other data, interpretations, opinions or information. "

4.03 Differing Subsurface or Physical Conditions. Replace paragraph 4.03.A with the following:

"A. Notice: If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

"1. Is of such nature as to require a change in the Contract Documents; or

"2. Differs materially from that shown or indicated in the Contract Drawings; or

"3. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent on work of the character provided for in the Contract Documents;

"then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any work in connection therewith (except as aforesaid) until receipt of written order to do so."

4.04 Underground Facilities. Add the following new paragraphs immediately after paragraph 4.04.A.2.

"4.04.A.3 Location of Subsurface Utilities.

"a. The location of subsurface utilities is shown on the plans from information furnished by the utility owners.

"b. The CONTRACTOR shall, at least two (2) working days, excluding Saturdays, Sundays, and legal holidays, prior to construction in the area of the subsurface utility, notify the subsurface utility Owner in writing, by telephone, or in person. The marking or locating shall be coordinated to stay approximately two (2) days ahead of the planned construction.

"c. The CONTRACTOR shall alert immediately the occupants of nearby premises as to any emergency that he may create or discover at or near such premises.

"d. The CONTRACTOR shall have full responsibility for coordination of the work with owners of such underground facilities during construction, for the safety and protection thereof as provided in paragraph 6.13 and repairing any damage thereto resulting from the work, the cost of all of which will be considered as having been included in the Contract Price.

"4.04.A.4 Where existing utilities and structures are indicated as being in the line of the proposed improvement, the CONTRACTOR shall expose them sufficiently in advance of the construction operations to permit adjustments in line or grade, if required, to eliminate interferences.

"4.04.A.5 Existing pipes or conduits crossing the trench, or otherwise exposed, shall be adequately braced and supported to prevent movement during construction.

"4.04.A.6 Broken Utility Services.

"a. Utility services broken or damaged shall be repaired at once to avoid inconvenience to customers and utility owners.

"b. Temporary arrangements, as approved by the ENGINEER, may be used until any damaged items can be permanently repaired.

"c. All items damaged or destroyed by construction and subsequently repaired must be properly maintained by the CONTRACTOR.

"d. CONTRACTOR must work 24 hours a day until service is restored to damaged utility.

"4.04.A.7 Existing Utility Relocation.

"a. Where it is necessary to relocate an existing utility or structure, the work shall be done in such manner as is necessary to restore it to a condition equal to that of the original facility.

"b. No such relocation shall be done until approval is received from the authority responsible for the utility or structure being changed."

4.05 Reference Points. Add the following sentence to paragraph 4.05.A.

"Copies of a Registered Surveyor's notes on location of facilities shall be supplied to the ENGINEER."

4.06 Hazardous Environmental Condition at Site. Delete paragraph 4.06.G in its entirety.

5.02 Licensed Sureties and Insurers. Add the following sentence after paragraph 5.02.A.

"Insurance companies shall carry a rating of at least A- by A. M. Best Company, Inc.
<http://www.ambest.com/>"

5.03 Certificates of Insurance – Deleted in its entirety and replaced with the following:

A. Prior to commencing Work, CONTRACTOR shall furnish OWNER with an ACORD Forms 24 and 25, Certificates of Property and Liability Insurance, executed by a duly authorized representative of each insurer, setting out compliance with the insurance requirements set forth in Section 5.04.

B. Failure of OWNER to demand such certificate or other evidence of full compliance with these insurance requirements or failure of OWNER to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONTRACTOR's obligation to maintain such insurance.

C. OWNER shall have the right, but not the obligation, to prohibit CONTRACTOR or any lower-tier subcontractor from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by OWNER.

D. Failure to maintain the insurance required in Section 5.04 shall constitute an event of default pursuant to Section 15.02 A.4. of the Standard General Conditions of the

Construction Contract, and shall allow OWNER to terminate this Agreement at OWNER'S option. If CONTRACTOR fails to maintain the insurance set forth herein, OWNER shall have the right, but not the obligation, to purchase said insurance at CONTRACTOR's expense.

E. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to OWNER when requested.

F. OWNER reserves the right to review at any time insurance policies maintained by CONTRACTOR to confirm that CONTRACTOR has complied with the provisions of the General and Supplementary Conditions. CONTRACTOR shall provide certified copies of all insurance policies required above within 10 days of OWNER's written request. If policies have not yet been issued by carrier, CONTRACTOR shall provide the insurance carrier binders specifically evidencing coverage as required above.

5.04 CONTRACTOR's Insurance

The limits of liability for the insurance required by paragraph 5.04 shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations. This coverage may be primary or a combination of primary and umbrella excess liability. The General Aggregate Limit shall apply specifically to this project by providing a Designated Construction Project General Aggregate Limit endorsement.

Workers' Compensation, etc., under paragraphs 5.04.A.1 and 5.04.A.2:

- | | | |
|----|--|-----------|
| 1. | State: | Statutory |
| 2. | Applicable Federal (e.g., Longshoreman's): | Statutory |
| 3. | Employer's Liability: | \$500,000 |

Commercial General Liability (under paragraphs 5.04.A.3 through 5.04.A.5 [including completed operations, products liability, and contractual liability]):

- | | | |
|----|---|--------------|
| 1. | General Aggregate (per occurrence) | \$ 2,000,000 |
| | Products/Completed Operations | |
| | Aggregate | \$ 2,000,000 |
| | Personal & Advertising Injury | \$ 2,000,000 |
| | Each Occurrence | \$ 1,000,000 |
| | Fire Damage (any one fire) | \$ 50,000 |
| | Medical Expense (any one person) | \$ 5,000 |
| 2. | Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable. | |

Comprehensive Automobile Liability (under paragraph 5.04.A.6):

Combined Single Limit of	\$1,500,000
--------------------------	-------------

5.04.B.1. Additional insured shall include the officers and employees of the OWNER, ENGINEER, and the ENGINEER's Consultants.

5.04.B.7 Add the following paragraphs after paragraph 5.04.B:

"7. The CONTRACTOR shall also purchase and maintain such insurance as will protect him from claims set forth below which arise out of or result from the CONTRACTOR's execution of the work, whether such execution be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone of whose acts any of them may be liable:

"a. Claims for damages because of flooding;

"b. Claims arising from property damage to wires, conduits, pipes, mains, sewers, tanks tunnels, any similar property, and any apparatus in connection therewith beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, backfilling, tunneling, or pile driving; and

"c. Claims for property damage arising out of collapse of or structural injury to any building or structure due to grading of land, excavating, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work, or caisson work.

"8. In addition, the following coverages shall be provided if the work contemplated by the Contract involves such operations.

"a. Claims for damage to property arising from operations directly or indirectly incident to blasting or explosion, however caused; and

"b. Claims for damage to property arising out of moving, shoring, underpinning, raising or demolition of any building or structure, or removal or rebuilding of any structural support thereof."

5.06 Property Insurance. Revise paragraph A to read as follows:

"A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the Site in the amount of full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:"

In paragraph A.2, delete the phrase, "(other than caused by flood)".

In paragraph B, revise sentence 1 to read "CONTRACTOR shall purchase and maintain. . ."

Delete paragraph E in its entirety.

5.07 Waiver of Rights. In paragraph A, revise sentence 1 to read "CONTRACTOR intends that all policies. . . ."

5.08 Receipt and Application of Insurance Proceeds. Revise paragraph A to read as follows:

"A. Any insured loss under the policies of insurance required by paragraph 5.06 will be paid directly to the CONTRACTOR. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment."

Revise paragraph B to read as follows:

"B. CONTRACTOR as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen (15) days after the occurrence of loss to CONTRACTOR's exercise of this power. If such objection be made, CONTRACTOR as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, CONTRACTOR as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, CONTRACTOR as fiduciary shall give bond for the proper performance of such duties."

6.01 Supervision and Superintendence. Add the following sentence after the first sentence of paragraph 6.01.A.

"The OWNER, the ENGINEER, and related entities expressly disclaim any responsibilities for the means, methods, techniques, safety, sequence, and procedures of construction."

6.02 Labor; Working Hours. Add the following paragraphs after paragraph 6.02.B.

"C. The CONTRACTOR agrees that in the hiring of employees for the performance of Work under this Agreement or any sub agreement, neither the CONTRACTOR, nor any Subcontractor, nor any person acting on behalf of either, shall by reason of race, creed, sex, disability, national origin, or color, discriminate against any citizen in the employment of labor or workers who are qualified and available to perform the work to which the employment relates; nor shall the CONTRACTOR, or any Subcontractor, or any person acting on the behalf of either, in any manner discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, sex, disability, national origin, or color."

"D. Prevailing Rates of Wages"

NONFEDERAL PROJECTS.

- a. This Contract shall be based upon payment by CONTRACTOR and his SUBCONTRACTORS of wage rates not less than the general prevailing rate of

per diem wages for Work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

- b. CONTRACTOR shall comply with all requirements of the prevailing wage law of the State of Texas, Texas Revised Civil Statutes, Article 5159a, including the latest amendments thereto.
- c. The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

6.04 Progress Schedule. Revise paragraph A.1 to read as follows:

"CONTRACTOR shall submit to ENGINEER for acceptance (as part of the application for progress payment, at least quarterly) proposed adjustments in the progress schedule."

6.05 Substitutes and "Or-Equals." Add the following paragraph A.2.e.

"If a proposed substitute item is accepted, all incidental costs associated with the use of the substitute including, but not limited to, redesign, claims of other Contractors, changes to electrical supply equipment, additional equipment or material required for the installation, etc., shall be at the expense of the Contractor proposing the substitute unless otherwise agreed to by the Owner."

6.06 Concerning Subcontractors, Suppliers, and Other. Add the following to the end of paragraph 6.06.A.

"The CONTRACTOR shall not award work to the Subcontractor(s) in excess of fifty (50) percent of the Contract price without prior written approval by the OWNER. The CONTRACTOR shall require all subcontractors to be licensed, where required, and shall provide license number of all subcontractors to the OWNER."

6.07 Patent Fees and Royalties. Delete paragraph 6.07.B in its entirety.

6.09 Laws and Regulations. Add the following paragraphs after paragraph 6.09.C.

"D. If CONTRACTOR observes that the specifications or drawings are at a variance with any laws or regulations, the CONTRACTOR shall give ENGINEER prompt written notice thereof and any necessary changes will be authorized by one of the methods indicated in paragraph 3.04.

"E. Violating Facilities. The CONTRACTOR agrees to comply with all applicable standards, orders, or requirements under Section 306 of the Clean Air Act, 42 USC 1857(h), Section 508 of the Clean Water Act, 33 USC 1368, Executive Order 11738, and EPA regulations, 40 CFR Part 32, which prohibit the use under nonexempt federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities."

6.10 State Sales Tax. Materials to be incorporated in this work may be purchased by the CONTRACTOR free of state sales tax.

6.19 Contractor's General Warranty and Guarantee. Add the following paragraph after paragraph 6.19.C:

"D. The CONTRACTOR shall guarantee all materials and equipment furnished and work performed for a period of two (2) years from the date of Substantial Completion. *During this warranty period*, the CONTRACTOR warrants and guarantees that the completed project is free from all defects due to faulty materials or workmanship.

"1. CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects.

"2. The OWNER will give notice of observed defects with reasonable promptness.

"3. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other Work that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred.

"4. The Bid Guaranty and Contract Bond or Contract Bond shall remain in full force and effect as required in 5.01.A."

7.02 Coordination. Revise paragraph A to read as follows:

"If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth:"

7.04 Separate Contractor Claims. Add the following paragraphs to Article 7.

"A. Should CONTRACTOR, its subcontractors, or its suppliers cause damage to the work or property of any separate contractor at the site, or should any claim arising out of CONTRACTOR's, its Subcontractors', or its suppliers' performance of the work at the site be made by any separate contractor against CONTRACTOR, OWNER, ENGINEER, or any other person, CONTRACTOR shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.

"B. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and ENGINEER harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals, and court and arbitration costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any separate contractor against OWNER or ENGINEER to the extent based on a claim arising out of CONTRACTOR's performance of the work.

"C. Should a separate contractor cause damage to the work or property of CONTRACTOR or should the performance of work by any separate contractor at the site give rise to any other claim, CONTRACTOR shall not institute any action, legal or equitable, against OWNER or ENGINEER or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter

which seeks to impose liability on or to recover damages from OWNER or ENGINEER on account of any such damage or claim.

"D. If CONTRACTOR is delayed at any time in performing or furnishing work by any act or neglect of a separate contractor and OWNER and CONTRACTOR are unable to agree as to the extent of any adjustment in Contract Time attributable thereto, CONTRACTOR may make a claim for an extension of time in accordance with Article 12. An extension of the Contract Time shall be CONTRACTOR's exclusive remedy with respect to OWNER and ENGINEER for any delay, disruption, interference, or hindrance caused by any separate contractor. The CONTRACTOR's exclusive remedy for recovery of damages under this section is against such other contractor causing the damage."

9.03 Project Representative. Add the following paragraphs after paragraph 9.03.A.

"B. In conjunction with the requirements of paragraph 9.03.A, the Resident Project Representative's duties, responsibilities, and limitations of authority are as follows:

"1. Resident Project Representative is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. Resident Project Representative's dealings with subcontractors shall only be with the approval of CONTRACTOR. Resident Project Representative shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

"2. Conduct on site observations of the work in progress to assist ENGINEER in determining if the work is proceeding in accordance with the Contract Documents.

"3. Report to ENGINEER whenever Resident Project Representative believes that any work is unsatisfactory, faulty, or defective or does not conform to the Contract Documents, or has been damaged or does not meet the requirements of any inspection, test, or approval required to be made by others; and advise ENGINEER of work that Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval by others.

"4. Verify that tests, equipment, and system start-ups and operating and maintenance training are conducted in the presence of appropriate personnel and that CONTRACTOR maintains adequate records thereof; and observe, record, and report to ENGINEER appropriate details relative to the test procedures and start-ups.

"5. Interpretation of Contract Documents. Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER."

10.01 Authorized Changes in the Work. Add the following paragraphs immediately following paragraph 10.01.B.

"C. The OWNER is the only party who shall have authority to direct changes in the work. Such authority shall not be waived, transferred, or expanded without his written authority."

12.03 Delays. Add the following paragraphs to Article 12.03.C.

"1. Abnormal Weather Conditions. For the purpose of this Contract, the CONTRACTOR agrees that it may expect inclement weather for the number of calendar days in accordance with the following table.

Inclement Weather Table

	0.10 Inch Precipitation, or More	32 Degrees F., or Less
January	4	2
February	4	2
March	5	0
April	5	0
May	6	0
June	5	0
July	3	0
August	4	0
September	4	0
October	5	0
November	5	0
December	5	1

"2. Also, the CONTRACTOR agrees that the measure of extreme weather during the period covered by this Contract shall be the number of days in excess of those shown for each month in the table above, in which precipitation exceeds 0.10 inch, or in which the highest temperature was 32 degrees F., or less from nearest weather station's records over the same period of time."

13.02 Access to Work. Add the following paragraph immediately following paragraph 13.02.A.

"13.02.B Authorized representatives and agents of any federal or state agency shall be permitted to inspect all work so far as facilities, materials, payrolls, records of personnel, invoices of material, and other relevant data and records."

13.03 Tests and Inspections. Add paragraph G which shall read:

"G. Contractor shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:"

14.02 Progress Payment. Replace paragraph 14.02.A.3 with the following:

"3. The amount of retainage with respect to progress payments is as follows:

Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

95 % of Work completed (90% of Work completed for contracts less than \$400,000).

0 % of materials and equipment not incorporated in the Work (but delivered, suitable stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions).

Revise paragraph 14.02.C.1 to read as follows:

"Thirty days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR."

14.04 Substantial Completion. Add the following sentence immediately after the last sentence of paragraph 14.04.B.

"CONTRACTOR shall accompany ENGINEER on all inspections to help itemize punch list items."

14.06 Final Inspection. Add the following sentence immediately after the last sentence of paragraph 14.06.A.

"B. CONTRACTOR shall accompany ENGINEER on all inspections to help itemize punch list."

15.02.A.5 OWNER May Terminate for Cause. Add the following paragraphs immediately following paragraph 15.02.A.4.

"5. If CONTRACTOR commences a voluntary case under any chapter of the bankruptcy code (Title 11, United States Code) as now or hereafter in effect or if the CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any federal or state law in effect at such time relating to bankruptcy or insolvency.

"6. If a petition is filed against CONTRACTOR under chapter of the bankruptcy code, as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

"7. If CONTRACTOR makes a general assignment for the benefit of Creditors.

"8. If a trustee, receiver, custodian, or agent of CONTRACTOR is appointed under applicable law or under Contract whose appointment or authority to take charge of the property of CONTRACTOR is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors, if CONTRACTOR admits in writing an inability to pay its debt generally as they become due."

16.01 Methods and Procedures. Add the following to paragraph 16.01.A. at the beginning of the second sentence:

"If the parties mutually agree to mediate the disputed claim,"

Add the following sentence to paragraph 16.01.C.3 at the end of the last sentence:

"within the state in which the OWNER is located."

Add the following paragraph to Article 16.

"16.02 The CONTRACTOR will carry on the work and maintain the progress schedule during any arbitration or court proceedings, unless otherwise mutually agreed in writing."

17.07 Assignments. Add this new section following paragraph 17.06.

"17.07 Assignments

"A. Neither the Contractor nor the Owner shall sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of his right, title, or interest therein, or his obligations thereunder, without written consent of the other party."

17.08 Disinfection. Add the following paragraphs to Article 17.

"17.08.A Pipelines, reservoirs, clear water basins, and all structures designed to carry or hold water that is for domestic consumption shall be thoroughly cleaned and flushed and disinfected before being put in service and before acceptance by the OWNER. See Division 1 section 'Leakage Test and Disinfection' for more information and requirements.

"17.08.A.1 The CONTRACTOR shall supply all water for testing structures. The CONTRACTOR shall provide all materials, piping, valving, fuel, electricity, and all other items necessary to transport the water to the structures."

17.09 Watertight Structures. Add the following paragraphs to Article 17 of the General Conditions.

"17.09.A All structures to be used for holding water shall be made watertight and shall be tested by filling with water before they are accepted.

"17.09.A.1 The Contractor shall supply all water for testing structures. The CONTRACTOR shall provide all materials, piping, valving, fuel, electricity, and all other items necessary to transport the water to the structures".

DAVIS-BACON WAGE RATES

General Decision Number: TX180036 01/05/2018 TX36

Superseded General Decision Number: TX20170036

State: Texas

Watauga

Construction Type: Heavy

Counties: Johnson, Parker and Tarrant Counties in Texas.

Heavy Construction Projects (Including Water and Sewer Lines)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2018

* PLUM0146-002 05/01/2016

	Rates	Fringes
PLUMBER/PIPEFITTER.....	\$ 29.48	8.30

SUTX1990-041 06/01/1990

	Rates	Fringes
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DAVIS-BACON WAGE RATES

CARPENTER.....\$ 10.40 \$3.64

Concrete Finisher.....\$ 9.81

ELECTRICIAN.....\$ 13.26

Form Setter.....\$ 7.86

Laborers:

Common.....\$ 7.25

Utility.....\$ 8.09

PAINTER.....\$ 10.89

Pipelayer.....\$ 8.43

Power equipment operators:

Backhoe.....\$ 11.89 3.30

Bulldozer.....\$ 10.76

Crane.....\$ 13.16 3.30

Front End Loader.....\$ 10.54

Mechanic.....\$ 10.93

Scraper.....\$ 10.00

Reinforcing Steel Setter.....\$ 10.64

TRUCK DRIVER.....\$ 7.34

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons

DAVIS-BACON WAGE RATES

resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

DAVIS-BACON WAGE RATES

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination

DAVIS-BACON WAGE RATES

- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

DAVIS-BACON WAGE RATES

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

SUBMITTALS

- GENERAL

RELATED DOCUMENTS. Drawings and general provisions of the Contract, including General and Supplementary Conditions, Division 1, and all related specification sections, apply to this section.

DESCRIPTION OF WORK

Scope of Work. Provide all labor and materials necessary to furnish the following submittals as required by each individual section of the specifications.

- Shop drawings.
- Product data.
- Samples/mock-ups.
- Operation and Maintenance (O&M) manuals.
- Personnel qualifications.
- Training documents.
- Source quality control documents.
- Material field test reports.
- Start-up documents.
- Operational demonstration documents.
- Product/material certifications.
- Special warranties.
- Project record documents.
- Others (as specified in the individual technical specifications).

QUALITY ASSURANCE (Not used)

SUBMITTALS

General. Submit all submittals in accordance with the requirements within this specification section.

Submittal Package No. 1 – Submittal Schedule

Submit a submittal schedule according to paragraph 2.05 of Section 00 70 00, "General Conditions."

This schedule shall include all submittals (including all Prime Contractors' submittals) that are required to be used on the project, and the date of submittal to the Engineer.

Include in schedule a milestone for notification of the Engineer prior to field-verifying operation and maintenance manuals.

Submittals requiring multiple submissions shall include multiple listings on the documents.

The Engineer will review the list and make any necessary comments.

Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals and related activities that require sequential activity.

Coordinate transmittal of different types of submittals for related elements of the work so processing will not be delayed by the need to review submittals concurrently.

SUBMITTALS

Multiple Prime Contracts. Allow time in schedule for all submittals to go through the Prime General Contractor for coordination purposes before they are forwarded to the Engineer.

Processing. Allow sufficient review time so that installation will not be delayed as a result of the time required to process submittals, including time for resubmittals, depending upon the complexity of the submittal.

Allow two (2) weeks for processing each submittal.

No extension of the Contract Time will be authorized because of failure to transmit submittals to the Engineer sufficiently in advance of the work to permit processing.

JOB CONDITIONS (Not used)

DELIVERY, STORAGE, AND HANDLING

Store and protect large samples and mock-ups until the Project is completed, then properly dispose of off-site.

Maintain and make available to the Engineer, at the job site, a complete file of all approved submittals as part of the project record documents.

SPECIAL WARRANTY (Not used)

- PRODUCTS

SUBMITTAL TRANSMITTAL

Transmit each submittal from the Contractor to Engineer/Architect using a transmittal form. Include the following on the transmittal form.

Relevant information and requests for data.

Deviations from Contract Document requirements, including minor variations and limitations..

Other pertinent information to identify the items being submitted.

GENERAL REQUIREMENTS FOR SUBMITTALS

Originals

The Contractor, the subcontractors, or suppliers shall generate submittal information.

No reproductions of partial (or complete) versions of the plans, sections, details, schematics, specification pages, etc., from the Contract Documents are acceptable.

Complete Submittals. Clearly describe the equipment to be furnished with complete and detailed submittal information.

Identification. Properly identify all submittal-related documents and arrange in a logical order to best present the information. Provide an index that includes the following on every submittal.

Manufacturer's name and address.

Submittal date and revision number, if applicable.

Contract identification and specification section.

Drawing scale and orientation.

SUBMITTALS

Submittal page number or sequence of pages.
Drawing number.

Verification

Where existing conditions or structures exist, field-verify dimensions, elevations, clearances, etc.
The submittal shall not be accepted for review until such verified data is clearly indicated.

Legends

All submittal diagrams, drawings, schematics, etc., shall include complete keys, legends or similar explanation as to the graphics, and symbols and abbreviations used.

In general, all graphics, symbols, abbreviations, and equipment nomenclature used for a submittal shall duplicate those used on the Contract Drawings.

Approvals. Provide the following on each submittal.

A space approximately 4" x 5" on to record the Contractor's review and approval markings and the action taken. These shall include the Contractor's:

Approval stamp.
Signature.
Date of approval.
Deviations from the Contract Documents.

An equal area beside the Contractor's review and approval markings for the Engineer review stamp.

One Section per Submittal. Each submittal shall pertain to only one specification section.

All submittal information shall be:

Neatly arranged.
Legible.
Not distorted or faded.
English.
In United States standard units.
Typed.

All letters, certifications, and similar documents shall be submitted in their entirety. Single pages of multiple-page letters, or letters with deleted passages will not be acceptable for submittal purposes.

"Generic" letters, test reports, material certifications, or similar documents which do not specifically address the requirements of the Contract Documents for the actual materials being furnished will not be acceptable.

Mark all submittals to clearly indicate the full extent of the equipment to be furnished.

Indicate all options to be provided, materials of construction, dimensions, and other information pertinent to the submittal.

SUBMITTALS

Options, materials, and dimensions which do not pertain to the materials or equipment to be furnished shall be neatly marked out so as to avoid confusion and doubt during review, delivery, and installation.

Resubmittals must clearly identify all changes and revisions.

The drawing shall be marked "revised" with the revision date indicated.

Each resubmittal shall reference the previous submittal by the Engineer's log number.

"By Others"

All submittals are reviewed as if prepared by the Prime Contractor.

The term "By Others" is appropriate to indicate supply by the Owner or another Prime Contractor.

Where a subcontractor or supplier uses the term "By Others" to indicate work by the Prime Contractor or another subcontractor or supplier, the Prime Contractor shall change "By Others" to indicate the actual source.

Deviations from Contract. Highlight, encircle, or otherwise indicate deviations from the Contract Documents in all submittals.

SPECIFIC SUBMITTAL-TYPE REQUIREMENTS

Shop Drawings. The following paragraphs detail the general requirements for shop drawings and specific requirements for specific types of shop drawings.

General Requirements.

A shop drawing is a detailed representation of the work to be performed to demonstrate compliance with the Contract Drawings including:

- Material and equipment layout.
- Fabrication drawings.
- System and electrical schematic diagrams.
- Equipment and material schedules.
- Installation details.

Submit newly prepared information, drawn to accurate scale.

Standard information prepared without specific reference to the project is not considered shop drawings.

Equipment/Material Layout Drawings.

Include:

- Plot plans.
- Plant site maps.
- Equipment location plans.
- Equipment and material layout plans and sectional views.
- Connection detail drawings.
- Similar drawings showing the incorporation of materials and equipment into the work.

SUBMITTALS

The physical layout to scale, including elevations, plant grid coordinates, dimensions to new/existing structures, and other items of the work.

Dimensions.

Labeling.

Notes.

Legends.

Bills of materials.

All other information required to graphically describe the proposed work.

Product Data. Product data is submittal information that fully describes the item to be incorporated into the work. Product data shall include when applicable:

Manufacturer name.

Catalog cut-sheets.

General descriptive bulletins/brochures/specifications.

Materials of construction data and parts list.

Finish/treatment data.

Equipment/material weight/loading data.

Power/utility requirements.

Engineering design data, calculations, and system analyses.

Digital system documentation.

Any deviations from the contract documents.

Material Certifications. These include signed certificates or declarations by the Contractor, supplier, manufacturer, testing laboratory, or recognized certification agency which document that materials and product composition or construction comply with specified requirements and stated reference standards.

Manufacturer's printed recommendations.

Compliance with recognized trade association and testing agency standards.

Application of testing agency labels and seals.

Notation of dimensions verified by field measurement.

Notation of coordination requirements.

Specific response to detailed specification requirements.

Maximum operating pressure and temperature ratings.

Personnel Qualifications

General. These qualification statements and information pertain to personnel and entities employed in the prosecution of the work.

Specific Information. Provide the following information regarding the proposed personnel or entity.

Education/training.

Company employment history.

Professional experience.

References.

Certifications or licenses.

Stated qualifications shall be pertinent to the specific task for which qualifications are requested.

Source Quality Control Documents

SUBMITTALS

Inspection.

Inspection data includes inspection procedures and results of factory inspections of products, equipment, or systems.

Within this type of submittal information are factory witness test procedures, schedules and reports, and similar data.

Testing.

Test data is the information leading to or resulting from tests performed on materials, equipment, or systems at the manufacturer's facilities or in testing laboratories.

This also includes data on testing equipment.

Examples of test data include all information, test arrangement, drawings, illustrations, diagrams, curve plots, graphs, and other data which substantiates or establishes a material or product characteristic, quality, or other trait as a result of test required by the Contract Documents.

Material Field Test Reports

Report Data. Written reports of each inspection, test, or similar service shall include, but not be limited to:

Date of issue.

Project title and number.

Name, address, and telephone number of testing agency.

Dates and locations of samples and tests or inspections.

Names of individuals making the inspection or test.

Designation of the work and test method.

Identification of product and specification section.

Complete inspection or test data.

Test results and interpretations of test results.

Ambient conditions at the time of sample taking and testing.

Comments or professional opinion as to whether inspected or tested work complies with Contract Document requirements.

Name and signature of laboratory inspector.

Recommendations on testing.

Example reports covered by this paragraph include compaction tests and concrete, leakage, and disinfection tests.

Special Warranties

There are two (2) general types of warranties covered by this specification.

Manufacturer's Express Warranties.

These are formal statements of certifications by manufacturers which warrant to the Owner that products and equipment are free from defects in material and workmanship.

These are standard warranties issued with products and equipment which supplement the Contractor's warranty and may also extend coverage past the expiration of the Contractor's warranty.

Include with the manufacturer's warranty data shall be a notification of the availability of an extension to the standard warranty including terms.

SUBMITTALS

Special Express Warranties.

The form, format, and conditions of special warranties are described in the various specification sections of the Contract Documents.

These are formal warranties above and beyond the Contractor's warranty and manufacturer's standard warranties.

These warranties may be based on performance, power consumption, maintenance projects, or other operating parameters.

Extended warranties, service contracts, and performance bonds are also included under this category.

Term or Period. Unless otherwise established by individual sections in Divisions 2 through 44, all Contractor express warranties shall extend for one (1) calendar year from the date of substantial completion of the project or acceptance date of the product or portion of work thereof, whichever is the later date.

Content of Warranty. The warranty shall contain, as applicable:

Effective starting date of the warranty period.

Statement of the terms and conditions of the warranty, if any.

Project Record Documents

Project record documents are to be in accordance with paragraph 6.12 of Section 00 70 00, "General Conditions."

Record Contract Drawings. Legibly mark contract drawings to record actual construction including:

Depths of various elements of foundation in relation to data.

Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements.

Location of internal utilities and appurtenances concealed in construction referenced to visible and accessible features of structure.

Field changes of dimension and detail.

Changes made by change order or field order.

Extra Materials/Spare Parts

Coat or package extra materials to prevent corrosion or deterioration during long-term indoor storage.

Clearly label all packaging with:

Part name.

Part number.

Associated equipment name and number.

Manufacturer's name and address.

The required storage environment for the materials.

SUBMITTALS

Other. These include special tools/repair parts list, photographs, videos, certificates, construction schedules, drawings, reports, meeting minutes, data, and information required by the Contract Documents which do not logically fall into the submittal types defined above.

- EXECUTION

SUBMITTAL PREPARATION AND TRANSMITTAL

Coordination

Coordinate preparation and processing of submittals with performance of construction activities. Transmit each submittal sufficiently in advance of performance of related construction activities to avoid delay and in accordance with the submittal schedule.

The General Contractor is responsible for resolving any disputes between Prime Contractors over submittals.

Verification

Verify the correctness and completeness of all submittals prior to forwarding same for review. All submittals shall comply with the Contract Documents.

Package each submittal appropriately for transmittal and handling including a transmittal form.

The Prime General Contractor shall submit the minimum number of submittals as listed in paragraph 3.3 of this specification or a single pdf.

Submittals received from sources other than the Prime General Contractor will be returned without action.

Other Prime Contractors shall submit all submittals through the Prime General Contractor.

ENGINEER'S REVIEW AND ACTION

General

Except for submittals for record, information, or similar purposes where action and return is not required or requested, the Engineer will review each submittal, mark to indicate action taken, and return promptly.

Cost to review any submittal more than twice will be deducted from Contractor's monthly estimates and final payments.

The Engineer reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.

Action Stamp. The Engineer will stamp each submittal with a uniform, self-explanatory action stamp. The stamp will be appropriately marked, as follows, to indicate action taken.

Final Unrestricted Release. Where submittals are marked "Approved" or "No Exceptions Taken," that part of the work covered by the submittal may proceed provided it complies with requirements of the Contract Documents; final acceptance will depend upon that compliance.

Final-but-Restricted Release. When submittals are marked "Approved as Noted," that part of the work covered by the submittal may proceed provided it complies with notations or corrections on the submittal and requirements of the Contract Documents; final acceptance will depend on that compliance.

SUBMITTALS

Returned for Resubmittal.

When submittal is marked "Not Approved" and/or "Revise and Resubmit," do not proceed with that part of the work covered by the submittal, including purchasing, fabrication, delivery, or other activity.

Revise or prepare a new submittal in accordance with the notations; resubmit without delay. Repeat if necessary to obtain a different action mark.

Do not permit submittals marked "Not Approved" and/or "Revise and Resubmit" to be used at the project site or elsewhere where work is in progress.

MINIMUM NUMBER OF SUBMITTALS AND DISTRIBUTION

After a submittal has been approved, the Engineer will make the following distribution in hard copy or pdf format:

Submittal	Minimum No. of Submittals	Distribution		
		Owner	Contractor	Engineer
1. Shop Drawings	3	1	1	1
2. Product Data	3	1	1	1
3. Samples/Mock-Ups	2	1	0	1
4. Personnel Qualifications	3	1	1	1
5. Material Field Test Reports	3	1	1	1
6. Special Warranties	3	1	1	1
7. Project Record Documents	1	1	0	0

Multiprime Contract Distribution.

The Engineer will forward all reviewed submittals to the Prime General Contractor only.

The Prime General Contractor is then responsible to send each submittal to every Prime Contractor that it affects for their use.

END OF SECTION

ELEVATED WATER STORAGE TANK REHABILITATION
COATING & PAINTING FOR STEEL WATER STORAGE TANKS

PART 1 - GENERAL

1.01 SCOPE

- A. The work of this section includes the coating of all interior surfaces.

1.02 RELATED WORK SPECIFIED ELSEWHERE (If Applicable)

1.03 REFERENCE SPECIFICATIONS AND STANDARDS

- A. Without limiting the general aspects of other requirements of these specifications, all surface preparation, coating and painting of interior and exterior surfaces and inspection shall conform to the applicable requirements of the Society for Protective Coatings, NACE International, ASTM (American Society for Testing and Materials), AWWA and the manufacturer's printed instructions.

1. **ASTM** (American Society for Testing and Materials)
 - ASTM D 520 Standard Specification for Zinc Dust Pigment
 - ASTM D 4417 Standard Test Methods for Field Measurement of Surface Profile of Blast Cleaned Steel
 - ASTM E 337 Standard Practice Test Method for Measuring Humidity with a Psychrometer
 - ASTM D2200 Standard Methods of Evaluating Degree of Rusting on Painted Surfaces
2. **ANSI** (American National Standards Institute)
 - ANSI/ASC 29.4 Exhaust Systems Abrasive Blasting Operations – Ventilation and Safe Practice
 - ANSI/NSF Standard 61 Drinking Water Components
3. **AWWA** (American Water Works Association)
 - AWWA D 102 Coating Steel Water Storage Tanks
4. **Consumer Product Safety Act, Part 1303**
5. **NACE International**
 - NACE Publication TPC2 Coatings and Linings for Immersion Service: Chapter 1 Safety, Chapter Surface Preparation, Chapter 3 Curing, and Chapter 4 Inspection
 - NACE Standard SP0178 Standard Recommended Practice – Fabrication Details, Surface Finish Requirements and Proper Design

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

	Considerations for Tanks and Vessels to be Lined for Immersion Service
NACE Standard SP0188	Standard Recommended Practice – Discontinuity (Holiday) Testing of Protective Coatings
NACE Standard RP0287	Field Measurement of Surface Profile of Abrasive Blast-Cleaned Steel Surfaces Using a Replica Tape
NACE Standard RP0288	Standard Recommended Practice, Inspection of Linings on Steel and Concrete

6. **OSHA** (Occupational Safety & Health Administration)
1915.35 Standards – 29 CFR – Painting
7. **SSPC** (Society for Protective Coatings)
 - SSPC-SP2 Hand Tool Cleaning
 - SSPC-SP3 Power Tool Cleaning
 - SSPC-SP11 Power Tool Cleaning to Bare Metal
 - SSPC-PA-1 Shop, Field and Maintenance Painting
 - SSPC-PA-2 Measurement of Dry Film Thickness with Magnetic Gages
 - SSPC-PA-3 Guide to Safety in Paint Application
 - SSPC-Guide 12 Guide for Illumination of Industrial Painting Project
 - SSPC-VIS 1-89 Pictorial Surface Preparation Standards for Painting Steel Surfaces
 - SSPC Paint Spec 36 Two Component Weatherable Aliphatic Polyurethane Topcoat, Performance-Based
8. **SSPC/NACE Joint Standards**
 - SSPC-SP5/NACE 1 White Metal Blast Cleaning
 - SSPC-SP6/NACE 3 Commercial Blast Cleaning
 - SSPC-SP7/NACE 4 Brush-Off Blast Cleaning
 - SSPC-SP10/NACE 2 Near-White Metal Blast Cleaning

- B.** The Engineer's decision shall be final as the interpretation and/or conflict between any of the referenced specifications and standards contained herein.

1.04 CONTRACTOR

- A.** The Contractor shall have three years practical experience and successful history in the application of specified product to surfaces of steel water tanks. Upon request, he shall substantiate this requirement by furnishing a list of references and job completions.

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

- B. The Contractor shall submit with his bid a written statement by the coatings manufacturer stating that the Contractor is familiar with the materials specified and has workers capable of performing the work specified herein.
- C. The personnel performing the work shall be knowledgeable and have the required experience and skill to adequately perform the work for this project, in accordance with SSPC-PA1, "Shop, Field and Maintenance Painting".

1.05 QUALITY ASSURANCE

- A. **General:** Quality assurance procedures and practices shall be utilized to monitor all phases of surface preparation, application and inspection throughout the duration of the project. Procedures or practices not specifically defined herein may be utilized provided they meet recognized and accepted professional standards and are approved by the Engineer.
- B. **Surface Preparation:** Surface preparation will be based upon comparison with: "Pictorial Surface Preparation Standards for Painting Steel Surfaces: SSPC-VIS 1-89", ASTM D2200-95, "Standard Methods of Evaluating Degree of Rusting on Painted Surfaces", ASTM D 4417-91, Method A and/or Method C or NACE Standard RP0287-87. In all cases the written standard shall take precedence over the visual standard. In addition, NACE Standard SP0178-91, along with the Visual Comparator, shall be used to verify the surface preparation of welds.
- C. **Application:** No coating or paint shall be applied when: 1) the surrounding air temperature or the temperature of the surface to be coated or painted is below the minimum surface temperature for the products specified herein, 2) rain, snow, fog or mist is present, 3) the surface temperature is less than 5°F above the dew point, 4) the air temperature is expected to drop below the minimum temperature for the products specified within six hours after application of coating. Dewpoint shall be measured by use of an instrument such as a Sling Psychrometer in conjunction with U.S. Department of Commerce Weather Bureau Psychrometric Tables. If any of the above conditions are prevalent, coating or painting shall be delayed or postponed until conditions are favorable. The day's coating or painting shall be completed in time to permit the film sufficient drying time prior to damage by atmospheric conditions.
- D. **Coating Thickness:** Thickness of coatings and paint shall be measured checked according to the procedures outlined in SSPC-PA 2 "Measurement of Dry Film Thickness with Magnetic Gages", May 2012 Edition. Dry film thickness shall be a Level 2 as defined in Paragraph 9.2, excepting that no single gage reading shall be less than 80% of the specified dry film thickness. Areas that fail to meet these criteria shall be corrected at no expense to the Owner. Use of an instrument such as a Tooke Gauge, precision groove grinder, etc. is permitted if a destructive test is deemed necessary by the Engineer and the total DFT is less than 50 mils.

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

- E. **Holiday (Pinhole) Testing:** The integrity of interior coated surfaces, including the interior roof, shall be tested for holidays in accordance with NACE Standard SP0188. Inaccessible areas such as the space between rafters and roof plates and lapped roof plates are exempted from this requirement. For dry films less than 20 mils, a non-destructive holiday detector shall not exceed 67.5 volts, nor shall destructive holiday detector exceed the voltage recommended by the manufacturer of the coating system. A solution of 1 ounce non-sudsing type wetting agent, such as Kodak Photo-Flo, and 1 gallon of tap water shall be used to perform the holiday testing. For coating thickness at 20 mils and greater, a high voltage Tinker & Rasor AP/W holiday tester shall be used. Contact coating manufacturer for voltage recommendations and curing parameters.

All pinholes and/or holidays shall be marked and repaired in accordance with the manufacturer's printed recommendations and retested. No pinholes or other irregularities will be permitted in the final coating.

- F. **Inspection Devices:** The contractor shall furnish, until final acceptance of coating and painting is accepted, inspection devices in good working condition for detection of holidays and measurement of dry film thickness of coating and paint. The Contractor shall also furnish U.S. Department of Commerce, National Bureau of Standards certified thickness calibration plates and/or plastic shims, depending upon the thickness gauge used, to test the accuracy of dry film thickness gauges and certified instrumentation to test the accuracy of holiday detectors. Dry film gauges and holiday detectors shall be made available for the Engineer's use at all times until final acceptance of application. Holiday detection devices shall be operated in the presence of the Engineer.
- G. **Inspection:** Inspection for this project shall consist of 'hold point' inspections. The Engineer or his representative shall inspect the surface prior to abrasive blasting, after abrasive blasting but prior to application of coating materials, and between subsequent coats of material. Final inspection shall take place after all coatings are applied, but prior to placing the tank in service. Contractor will insure that sufficient rigging is in place so that the Engineer or his representative shall be able to conduct the required inspections.
- H. **Warranty Inspection:** Warranty inspection shall be conducted during the eleventh month following acceptance of all coating and painting work. All defective work shall be repaired in accordance with this specification and to the satisfaction of the Engineer and/or Owner. The warranty inspection must be scheduled and coordinated by the Owner.

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

1.06 SAFETY AND HEALTH REQUIREMENTS

- A. **General:** In accordance with requirements set forth by regulatory agencies applicable to the construction industry and manufacturer's printed instructions and appropriate technical bulletins and manuals, the Contractor shall provide and require use of personal protective lifesaving equipment for persons working on or about the project site. The Contractor's work forces should comply with the provisions outlined in SSPC-PA-3 "A Guide to Safety in Paint Application".
- B. **Head and Face Protection and Respiratory Devices:** Equipment shall include protective helmets which shall be worn by all persons while in the vicinity of the work. In addition, workers engaged in or near the work during sandblasting shall wear eye and face protection devices and air purifying half-mask or mouthpiece respirators with appropriate filters. Barrier creams shall be used on any exposed areas of skin.
- C. **Ventilation:** Where ventilation is used to control hazardous exposure, all equipment shall be explosion-proof. Ventilation shall reduce the concentration of air contaminants to a degree a hazard does not exist. Air circulation and exhausting of solvent vapors shall be continued until coatings have fully cured.
- D. **Sound Levels:** Whenever the occupational noise exposure exceeds maximum allowable sound levels, the Contractor shall provide and require the use of approved ear protection devices.
- E. **Illumination:** Adequate illumination shall be provided while work is in progress, including explosion-proof lights and electrical equipment. Whenever required by the Engineer, the Contractor shall provide additional illumination and necessary supports to cover all areas to be inspected. The level of illumination for inspection purposes shall be determined by the Engineer.
- F. **Temporary Ladders and Scaffolding:** All temporary ladders and scaffolding shall conform to applicable safety requirements. They shall be erected where requested by the Engineer to facilitate inspection and be moved by the Contractor to locations requested by the Engineer.

1.07 PRODUCT DELIVERY, STORAGE & HANDLING

- A. All materials shall be brought to the jobsite in original sealed containers. They shall not be used until the Engineer has inspected the contents and obtained data from information on containers or label. Materials exceeding storage life recommended by the manufacturer shall be rejected.
- B. All coatings and paints shall be stored in enclosed structures to protect them from weather and excessive heat or cold. Flammable coatings and paints must be

ELEVATED WATER STORAGE TANK REHABILITATION

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stored to conform with City, County, State and Federal safety codes for flammable coating or paint materials. At all times coatings and paints shall be protected from freezing.

PART 2 - MATERIALS

2.01 ACCEPTABLE MANUFACTURERS

- A.** Materials specified are those that have been evaluated for the specific service. Products of the Themec Company, Inc. are listed to establish a standard of quality. Equivalent materials of other manufacturer's may be submitted on written approval of the Engineer. As part of the proof of equality, the Engineer will require at the cost of the Contractor, certified test reports from a nationally known, reputable and independent testing laboratory conducting comparative tests as directed by the Engineer between the product specified and the requested substitution.
- B.** Requests for substitution shall include manufacturer's literature for each product giving name, product number, generic type, descriptive information, solids by volume, recommended dry film thickness and certified lab test reports showing results to equal the performance criteria of the products specified herein. In addition, a list of five projects shall be submitted in which each product has been used and rendered satisfactory service.
- C.** All requests for product substitution shall be made at least 14 days prior to the bid date.
- D.** Any material savings shall be passed to the owner in the form of a contract dollar reduction.
- E.** Manufacturer's color charts shall be submitted to the Engineer at least 30 days prior to coating and/or paint application. General Contractor and Painting Contractor shall coordinate work so as to allow sufficient time (normally seven to ten days) for paint to be delivered to the job site.

2.02 GENERAL REQUIREMENTS

- A.** All materials shall be lead-free as defined by the Consumer Product Safety Act, Part 1303.
- B.** All zinc dust pigment contained in any zinc-rich material shall meet the requirements of ASTM D 520 Type III with regard to zinc content and purity.
- C.** All materials for the interior wetted portion of the tank shall meet the requirements of ANSI/NSF Standard 61 for potable water contact.

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- D. All catalyzed polyurethane products shall meet the minimum requirements of SSPC Paint Specification Number 36, Level 3 Performance Level.
- E. No products containing MOCHA shall be allowed.
- F. No inorganic zinc-rich primers shall be permitted on the tank interior surfaces.

2.03 MATERIAL PREPARATION

- A. Mix and thin materials according to manufacturer's latest printed instructions.
- B. Do not use materials beyond manufacturer's recommended shelf life.
- C. Do not use mixed materials beyond manufacturer's recommended pot life.
- D. Do not split kits of multi-component products.

2.04 TANK INTERIOR COATING SYSTEMS – WETTED AREAS

A. High-Build, Zinc/Epoxy System:

1. **Weld Preparation:** Weld flux and spatter shall be removed by power tool cleaning. Sharp projections shall be ground to a smooth contour. All welds shall be ground to a smooth contour as per NACE Standard SP0178, Designation D.
2. **Surface Preparation:** SSPC-SP10/NACE 2 Near-White Metal Blast Cleaning. An angular profile of 2.0 to 3.0 mils as per ASTM D 4417, Method C or NACE Standard RP0287 is required.
3. **Coating System:**
 - First Coat:** Tnemec Series 94-H2O Hydro-Zinc applied at 2.5 to 3.5 dry mils. Thin only with approved thinner, Tnemec 41-3 or 41-49 Thinner.
 - Stripe Coat:** Tnemec Series 20HS -1255 Pota-Pox applied by brush to all weld seams, edges, corners, bolts, nuts and other difficult to coat areas. Thin only with approved thinner, Tnemec 41-4 Thinner.
 - Second Coat:** Tnemec Series 141 Epoxoline applied at 12.0 to 18.0 dry mils. Thin only with approved thinner, Tnemec 41-4 Thinner.

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Total dry film thickness shall be a minimum of 14.5 mils.

For cold weather applications, Series 44-710 Urethane Accelerator may be added to Series 94-H2O.

For cold weather applications, use Series FC20 in lieu of Series 20.

PART 3 - EXECUTION

3.01 GENERAL

- A.** All surface preparation, coating and painting shall conform to applicable standards of the Society for Protective Coatings, NACE International and the manufacturer's printed instructions. Materials applied to the surface prior to the approval of the Engineer shall be removed and re-applied to the satisfaction of the Engineer at the expense of the contractor.
- B.** All work shall be performed by skilled craftsmen qualified to perform the required work in a manner comparable with the best standards of practice. Continuity of personnel shall be coordinated with the Engineer.
- C.** The Contractor shall provide a supervisor at the work site during cleaning and application operations. The supervisor shall have the authority to sign change orders, coordinate work and make decisions pertaining to the fulfillment of the contract.
- D.** Dust, dirt, oil, grease or any foreign matter that will affect the adhesion or durability of the coating or paint must be removed by washing with clean rags dipped in an approved cleaning solvent and wiped dry with clean rags.
- E.** Coating and painting systems include surface preparation, prime coating and finish coatings. Unless otherwise approved in writing by the Engineer, prime coating shall be field applied. Where prime coatings are shop applied, the Contractor shall instruct suppliers to provide the prime coat compatible with the specified finish coat. Any off-site work which does not conform to this specification, is subjected to damage during transportation, construction or installation shall be thoroughly cleaned and touched-up in the field as directed by the Engineer. The Contractor shall use repair procedures which insure the complete protection of all adjacent primer. The specified repair method and equipment may include wire-brushing, hand or power tool cleaning, or dry air blast cleaning. In order to prevent injury to surrounding painted surfaces, blast cleaning may require use of lower air pressure, smaller nozzle and/or abrasive blast particles, or shorter blast nozzle distances from surface shielding and

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

masking. If damage is too extensive or uneconomical to touch-up, the entire item shall be blasted and then coated or painted as directed by the Engineer.

- F. The Contractor's coating and painting equipment shall be designed for application of materials specified and shall be maintained in first class working condition. Compressors shall have suitable traps and filters to remove water and oils from the air. Contractor's equipment shall be subject to approval of the Engineer.
- G. Application of the first coat shall follow immediately after surface preparation and cleaning and stripe coat, if applicable, before rust bloom occurs or the same day, whichever is less. Any cleaned areas not receiving first coat within this period shall be re-cleaned prior to application of first coat. Use of dehumidification equipment shall be first reviewed by the Engineer and coatings manufacturer prior to deviating from this provision.
- H. Prior to assembly, all surfaces made inaccessible after assembly shall be prepared as specified herein and shall receive the coating or paint system specified.

3.02 SURFACE PREPARATION

- A. The latest revision of the following surface preparation specifications of the Society for Protective Coatings (SSPC) shall form a part of this specification. The summaries listed below are for informational purposes; consult the actual SSPC specification for full detail.
 - 1. **Solvent Cleaning (SSPC-SP1):** Removal of oil, grease, soil and other contaminants by use of solvents, emulsions, cleaning compounds, steam cleaning or similar materials and methods which involve a solvent or cleaning action.
 - 2. **Hand Tool Cleaning (SSPC-SP2):** Removal of loose rust, loose mil scale and other detrimental foreign matter to a degree specified by hand chipping, scraping, sanding and wire-brushing
 - 3. **Power Tool Cleaning (SSPC-SP3):** Removal of loose rust, loose mil scale and other detrimental foreign matter by power wire-brushing, power impact tools or power sanders.
 - 4. **White Metal Blast Cleaning (SSPC-SP5/NACE No. 1):** Air blast cleaning to a gray-white uniform metallic color until each element of surface area is free of all visible residues.
 - 5. **Commercial Blast Cleaning (SSPC-SP6 NACE No. 3):** Air blast cleaning until at least two-thirds of each element of surface area is free of all visible residues.

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

6. **Brush-Off Blast Cleaning (SSPC-SP7 NACE No. 4):** Air blast cleaning to remove loose rust, loose mil scale and other detrimental foreign matter to a degree specified.
 7. **Near-White Metal Blast Cleaning (SSPC-SP10 NACE No. 2):** Air blast cleaning until at least 95% of each element of surface area is free of all visible residues.
 8. **Power Tool Cleaning to Bare Metal (SSPC-SP11):** Differs from SSPC-SP3 in that it requires more thorough cleaning and a surface profile not less than 1 mil.
- B.** Slag, weld metal accumulation and spatters not removed by the Fabricator, Erector or Installer shall be removed by chipping and/or grinding. All sharp edges shall be peened, ground or otherwise blunted as required by the Engineer. All grinding and finishing of welds, edges, etc. shall be performed prior to solvent cleaning and abrasive blasting. Welds shall be prepared as per NACE Standard SP0178 for all interior and exterior surfaces:
1. **Butt Welds:** Shall be ground smooth and free of all defects, designation "D".
 2. **Lap Welds:** Shall be ground smooth and blended, designation "D".
 3. **Fillet Welded Tee Joint:** Shall be ground smooth and blended, designation "D".
- C.** Field blast cleaning for all surfaces shall be by dry method unless otherwise directed. Blast nozzles shall be venturi-type nozzles with a minimum pressure at the nozzle of 90 psi.
- D.** Particle size of abrasives used in blast cleaning shall be that which will produce the specified surface profile or in accordance with recommendations of the manufacturer of the specified coating or paint system to be applied.
- If the profile of the blasted steel exceeds the profile specified above, the Contractor shall be required to do one or both of the following:
1. Re-blast the surface using a finer aggregate in order to produce the required profile.
 2. Apply a thicker prime coat, if possible given the limitations of the products being applied, in order to adequately cover the blast profile

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

- E.** Abrasive used in blast cleaning operations shall be new, washed, graded and free of contaminants that would interfere with adhesion of coating or paint and shall not be reused unless specifically approved in writing by the Engineer.
- F.** During blast cleaning operations, caution shall be exercised to insure that existing coatings or paint are not exposed to abrasion from blast cleaning.
- G.** The Contractor shall keep the area of his work and the surrounding environment in a clean condition. He shall not permit blasting materials to accumulate as to constitute a nuisance or hazard to the accomplishment of the work, the operation of the existing facilities or to the surrounding environment.
- H.** Blast cleaned surfaces shall be cleaned prior to application of specified coatings or paint. All surfaces shall be free of dust, dirt, and other residue resulting from the abrasive blasting operation. No coatings or paint shall be applied over damp or moist surfaces.
- I.** All welds shall be neutralized with a suitable chemical compatible with the specified coating or paint.
- J.** Pitted areas on the tank interior shall be repaired by either filling with Tnemec Series 215 Surfacing Epoxy or Tnemec Series FC22 Epoxoline (floor) or by welding. Epoxy filler shall be feathered smooth. Filler shall be applied between the prime coat and the succeeding coat. No protrusions or spatter will be allowed. Pits deeper than 1/8" shall be filled by welding.
- K.** **Specific Surface Preparation:** Surface preparation for the specific system shall be as noted in Section 2.04.

3.03 NON-VISIBLE CONTAMINANTS

- A.** Surface shall be checked in three locations for the presence of chlorides, free iron and sulfates. New tanks shall be tested prior to abrasive blasting, tanks being rehabilitated shall be tested prior to blasting. If blisters are present in existing tank, testing shall also be performed after abrasive blasting. These tests are an Iron Test (Fe^{2+}), Chloride Test and Sulfate Test. Testing shall be carried out as per SSPC Technology Guide 15 "Field Methods for Retrieval and Analysis of Soluble Salts on Steel and Other Nonporous Substrates". The maximum limits for these contaminants shall be:
 - 1.** The maximum level of chlorides is 30 milligrams per square meter or 3 micrograms per square centimeter.
 - 2.** The maximum level of sulfates is 100 milligrams per square meter or 10 micrograms per square centimeter.

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

3. The maximum level of ferrous ions (Fe^{2+}) is 50 milligrams per square meter or 5 micrograms per square centimeter.
 4. Contamination levels above these limits will require washing and retesting in accordance with Item 2 (below) until the surface is under the allowable limits.
- B. If testing shows amounts present in the test solution to be greater than the limits listed herein, the Contractor shall clean the surface of the entire tank interior with a 5,000 psi water blast with fine entrained abrasive until the levels in the test solutions are below the maximum acceptable level. Alternate cleaning methods may be allowed with prior approval of the Engineer. Surface shall be reblasted as specified in 2.04 at no additional cost to the Owner.
- C. Contractor shall provide a written statement from paint manufacturer stating that the maximum acceptable levels are not less than those listed herein. Results of the testing shall be provided to the Owner before any coatings are applied.
- D. The following test kits are approved for use on this project:
 - a. Chlor*Rid Chor*Test Kit
 - b. KTA SCAT Test Kit
 - c. Test kits from other vendors shall be submitted to the Engineer for prior approval before use.

3.04 APPLICATION, GENERAL

- A. Coating and paint application shall conform to the requirements of the Society for Protective Coatings Paint Application Specification SSPC-PA1, latest revision, for "Shop, Field and Maintenance Painting".
- B. Thinning shall be permitted only as recommended by the manufacturer and approved by the Engineer, and utilizing the thinners stated in Sections 2.04, 2.05 and 2.06.
- C. Each application of coating or paint shall be applied evenly, free of brush marks, sags, runs, with no evidence of poor workmanship. Care shall be exercised to avoid lapping on glass or hardware. Coatings and paints shall be sharply cut to lines. Finished surfaces shall be free from defects or blemishes.
- D. Protective coverings or drop cloths shall be used to protect floors, fixtures and equipment. Care shall be exercised to prevent coatings or paints from being

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

spattered onto surfaces which are not to be coated or painted. Report to the Engineer surfaces from which materials cannot be satisfactorily removed.

- E.** When two coats of coating or paint are specified, where possible, the first coat shall contain sufficient approved color additive to act as an indicator of coverage or the two coats must be of contrasting color.
- F.** Film thickness per coat as specified in Sections 2.04, 2.05 and 2.06 are the minimum required. If roller application is deemed necessary, the Contractor shall apply additional coats as to achieve the specified thickness.
- G.** All material shall be as specified.

3.05 COATING SYSTEMS APPLICATION

- A.** After completion of surface preparation as specified for the specific system, materials shall be applied as noted in Sections 2.04, 2.05 and 2.06.
- B.** Care shall be taken so as to eliminate overspray and dry spray on the tank interior. Where such conditions are encountered, the surface shall be cleaned of all over spray and dry spray prior to the application of the succeeding coat.
- C.** Areas rendered inaccessible after tank erection such as the spaces between roof plates and rafters shall receive the full coating system prior to erection and/or assembly.
- D.** Full prime coat may be applied directly over stripe coat while stripe coat is wet.

3.06 REPAIRS

- A.** After the interior coating system has been installed and holiday tested, repair pinholes and voids as follows:
 - 1.** Abrasive blasting shall be in accordance with SSPC-SP10/NACE No.2 Near White Blast Cleaning obtaining a minimal surface profile as specified herein.
 - 2.** Power tool cleaning shall be in accordance with SSPC-SP11 Power Tool Cleaning to Bare Metal. Surface profile shall be angular and not less than the surface profile as specified herein.
 - 3.** All edges of remaining sound, tightly adhering coating shall be feathered back (beveled) to create a smooth transition from the substrate to the coatings surface. The coating may be considered tightly adhering if an edge cannot be lifted with a dull putty knife.

ELEVATED WATER STORAGE TANK REHABILITATION

COATING & PAINTING FOR STEEL WATER STORAGE TANKS

- 4.** Install the coating system as specified herein to provide a complete and monolithic system, free of voids and pinholes.

3.07 DISINFECTION

- A.** Disinfection of interior surfaces shall be performed in the presence of the Engineer in accordance with all the requirements of applicable AWWA Standards and regulatory agencies.
- B.** Disinfection shall be performed after protective coatings have been applied to the interior surfaces and allowed to thoroughly cure.
- C.** Prior to disinfecting, the complete interior shall be washed down with clean water and thoroughly flushed out.
- D.** All interior surfaces shall be thoroughly washed with a solution having a minimum chlorine content of 50 PPM. Chlorine solution accumulated on the bottom shall be drained to waste. Rinsing with clean water is not required.

3.08 SOLVENT VAPOR REMOVAL

- A.** All solvent vapors shall be completely removed by suction-type exhaust fans and blowers before placing tank in operating service.
- B.** All solvent vapors will be exhausted both during and after coating application as per AWWA D 102 to allow the proper curing of the coating material.
- C.** Ventilation shall be continued until such time as the coating has reached “full cure” as specified by the coating manufacturer.

3.09 CLEAN UP

- A.** Upon completion of the work, all staging, scaffolding and containers shall be removed from the site or destroyed in a manner approved by the Engineer. Coating or paint spots or oil stains upon adjacent surfaces shall be removed and the jobsite cleaned. All damage to surfaces resulting from the work of this section shall be cleaned, repaired or refinished to the satisfaction of the Engineer at no cost to the Owner.

END OF SPECIFICATION

TECHNICAL SITE CIVIL

All construction shall be in accordance with the City of Watauga Standard Details, the North Texas Council of Governments or the Texas Department of Transportation as applicable.

BURGESS & NIPLE

3950 Fossil Creek Blvd., Suite 210 | Fort Worth, TX 76137 | 817.306.1444

February 7, 2018

Mr. Paul Hackleman, PE
Public Works Director
City of Watauga
7800 Virgil Anthony Blvd.
Watauga, TX 76148-2456

Re: **CITY PROJECT NO. 18-008**
2.0 M.G. ELEVATED STORAGE TANK
REHABILITATION
RECOMMENDATION OF CONSTRUCTION CONTRACT AWARD
PR54259

Dear Mr. Hackleman:

In accordance with the contract documents, we received ten (10) bids for the construction of the referenced project at 2:00 P.M., Wednesday, January 31, 2018, at the City of Watauga City Council Chambers. For your reference, we enclose a tabulation of the bids received at that time.

This project repaints the interior of the 2.0 M.G. Elevated Storage Tank in the City of Watauga, Texas, together with the necessary appertaining work.

We requested that Contractors bid the number of construction days in the Bid Form. The bids received are as follows:

Contractor	Total Amount Bid	Days Bid
M.K. Painting, Inc.	\$248,000.00	45
SES Infrastructure Services, LLC.	\$251,050.00	60
Utility Service Co, Inc.	\$294,600.00	90
Tank Pro, Inc.	\$307,108.00	60
J. R. Stelzer Company	\$310,575.00	90
Blastco Texas	\$317,000.00	180
Tankez Coatings, Inc.	\$334,500.00	90
Premier Worldwide, Inc.	\$335,946.50	42
N.G. Painting, L.P.	\$370,000.00	60
TMI Coatings	\$426,000.00	90

CITY PROJECT NO. 18-008
2.0 M.G. ELEVATED STORAGE TANK
REHABILITATION
RECOMMENDATION OF CONSTRUCTION CONTRACT AWARD
PR54259
Page 2

M.K. Painting, Inc. of Wyandotte, Michigan, submitted the lowest responsive bid for the rehabilitation of the elevated water tank. We have spoken to several of M.K. Painting's references. In my opinion, M.K. Painting is qualified to perform this contract and I recommend that the City of Watauga award this construction contract to **M.K. Painting, Inc.** in the amount of **\$248,000.00**.

Please call if we may provide additional assistance or information in this regard.

Respectively submitted,

BURGESS & NIPLE, INC.
TBPE FIRM REGISTRATION NO. F-10834



William D. Wendland, P.E.
Associate
Director, Fort Worth Public Sector

Enclosure



2.0 M.G. ELEVATED STORAGE TANK REHABILITATION BID TABULATION

Bid Opening: January 31, 2018
2:00 PM

				#① M. K. PAINTING, INC.		#② SES INFRASTRUCTURE SERVICES, LLC.		#③ UTILITY SERVICE CO, INC.	
ITEM NO.	DESCRIPTION OF UNIT	UNIT	BID QUANTITY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Project Preparation, Abrasive Blasting and Cleaning According to SSPC-SP10 and Notes on Plan Sheet 2, Near White Metal Blast, and Painting all INTERIOR Surfaces of Tank Including Appurtenances.	LS	1	\$ 230,000.00	\$ 230,000.00	\$ 231,400.00	\$ 231,400.00	\$ 258,300.00	\$ 258,300.00
2	Site Cleanup Including Handling, Hauling and Disposal of Paint, Residue, Chips or Spent Abrasives to Appropriate Off-Site Landfill Unless Required Otherwise By Owner.	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00	\$ 5,000.00	\$ 20,000.00	\$ 20,000.00
3	Spot Repairing Leaks and Deep Pits by Welding as Ordered, Including Operator, Unit Equipment and Materials	Unit Hours	20	\$ 150.00	\$ 3,000.00	\$ 75.00	\$ 1,500.00	\$ 120.00	\$ 2,400.00
4	Spot Repairing Shallow Pitted Areas with Epoxy Patching Paste as ordered, Including Operator, Equipment, Paste Material and Smooth Finishing	Unit Hours	20	\$ 100.00	\$ 2,000.00	\$ 30.00	\$ 600.00	\$ 120.00	\$ 2,400.00
5	Water Testing and Sterilization of Tank, Complete	LS	1	\$ 1,000.00	\$ 1,000.00	\$ 2,550.00	\$ 2,550.00	\$ 1,500.00	\$ 1,500.00
6	Miscellaneous Allowance (only if authorized)	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
TOTAL AMOUNT BID					\$ 248,000.00		\$ 251,050.00		\$ 294,600.00

NUMBER OF CONSTRUCTION DAYS BID:

45 DAYS

60 DAYS

90 DAYS

				#④ TANK PRO, INC.		#⑤ J. R. STELZER COMPANY		#⑥ BLASTCO TEXAS	
ITEM NO.	DESCRIPTION OF UNIT	UNIT	BID QUANTITY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Project Preparation, Abrasive Blasting and Cleaning According to SSPC-SP10 and Notes on Plan Sheet 2, Near White Metal Blast, and Painting all INTERIOR Surfaces of Tank Including Appurtenances.	LS	1	\$ 285,508.00	\$ 285,508.00	\$ 288,075.00	\$ 288,075.00	\$ 295,000.00	\$ 295,000.00
2	Site Cleanup Including Handling, Hauling and Disposal of Paint, Residue, Chips or Spent Abrasives to Appropriate Off-Site Landfill Unless Required Otherwise By Owner.	LS	1	\$ 4,600.00	\$ 4,600.00	\$ 4,000.00	\$ 4,000.00	\$ 2,500.00	\$ 2,500.00
3	Spot Repairing Leaks and Deep Pits by Welding as Ordered, Including Operator, Unit Equipment and Materials	Unit Hours	20	\$ 150.00	\$ 3,000.00	\$ 150.00	\$ 3,000.00	\$ 200.00	\$ 4,000.00
4	Spot Repairing Shallow Pitted Areas with Epoxy Patching Paste as ordered, Including Operator, Equipment, Paste Material and Smooth Finishing	Unit Hours	20	\$ 175.00	\$ 3,500.00	\$ 75.00	\$ 1,500.00	\$ 150.00	\$ 3,000.00
5	Water Testing and Sterilization of Tank, Complete	LS	1	\$ 500.00	\$ 500.00	\$ 4,000.00	\$ 4,000.00	\$ 2,500.00	\$ 2,500.00
6	Miscellaneous Allowance (only if authorized)	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
TOTAL AMOUNT BID					\$ 307,108.00		\$ 310,575.00		\$ 317,000.00

NUMBER OF CONSTRUCTION DAYS BID:

60 DAYS

90 DAYS

180 DAYS

BURGESS & NIPLE
Engineers ■ Planners



2.0 M.G. ELEVATED STORAGE TANK REHABILITATION BID TABULATION

Bid Opening: January 31, 2018
2:00 PM

				#⑦ TANKEZ COATINGS, INC		#⑧ PREMIER WORLDWIDE, INC.	
ITEM NO.	DESCRIPTION OF UNIT	UNIT	BID QUANTITY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Project Preparation, Abrasive Blasting and Cleaning According to SSPC-SP10 and Notes on Plan Sheet 2, Near White Metal Blast, and Painting all INTERIOR Surfaces of Tank Including Appurtenances.	LS	1	\$ 300,500.00	\$ 300,500.00	\$ 279,096.50	\$ 279,096.50
2	Site Cleanup Including Handling, Hauling and Disposal of Paint, Residue, Chips or Spent Abrasives to Appropriate Off-Site Landfill Unless Required Otherwise By Owner.	LS	1	\$ 16,000.00	\$ 16,000.00	\$ 6,500.00	\$ 6,500.00
3	Spot Repairing Leaks and Deep Pits by Welding as Ordered, Including Operator, Unit Equipment and Materials	Unit Hours	20	\$ 150.00	\$ 3,000.00	\$ 160.00	\$ 3,200.00
4	Spot Repairing Shallow Pitted Areas with Epoxy Patching Paste as ordered, Including Operator, Equipment, Paste Material and Smooth Finishing	Unit Hours	20	\$ 125.00	\$ 2,500.00	\$ 250.00	\$ 5,000.00
5	Water Testing and Sterilization of Tank, Complete	LS	1	\$ 2,500.00	\$ 2,500.00	\$ 32,150.00	\$ 32,150.00
6	Miscellaneous Allowance (only if authorized)	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
TOTAL AMOUNT BID					\$ 334,500.00		\$ 335,946.50

NUMBER OF CONSTRUCTION DAYS BID:

90 DAYS

42 DAYS

				#⑨ N.G. PAINTING, L.P.		#⑩ TMI COATINGS	
ITEM NO.	DESCRIPTION OF UNIT	UNIT	BID QUANTITY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Project Preparation, Abrasive Blasting and Cleaning According to SSPC-SP10 and Notes on Plan Sheet 2, Near White Metal Blast, and Painting all INTERIOR Surfaces of Tank Including Appurtenances.	LS	1	\$ 350,000.00	\$ 350,000.00	\$ 388,000.00	\$ 388,000.00
2	Site Cleanup Including Handling, Hauling and Disposal of Paint, Residue, Chips or Spent Abrasives to Appropriate Off-Site Landfill Unless Required Otherwise By Owner.	LS	1	\$ 5,000.00	\$ 5,000.00	\$ 20,000.00	\$ 20,000.00
3	Spot Repairing Leaks and Deep Pits by Welding as Ordered, Including Operator, Unit Equipment and Materials	Unit Hours	20	\$ 100.00	\$ 2,000.00	\$ 170.00	\$ 3,400.00
4	Spot Repairing Shallow Pitted Areas with Epoxy Patching Paste as ordered, Including Operator, Equipment, Paste Material and Smooth Finishing	Unit Hours	20	\$ 50.00	\$ 1,000.00	\$ 115.00	\$ 2,300.00
5	Water Testing and Sterilization of Tank, Complete	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 2,300.00	\$ 2,300.00
6	Miscellaneous Allowance (only if authorized)	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
TOTAL AMOUNT BID					\$ 370,000.00		\$ 426,000.00

NUMBER OF CONSTRUCTION DAYS BID:

60 DAYS

90 DAYS

BURGESS & NIPLE
Engineers ■ Planners

City Council Meeting February 26, 2018



2.0 Million Gallon Elevated Storage Tank Rehabilitation Project #18-008



Agenda Item—Construction of Whitley Rd Phase I

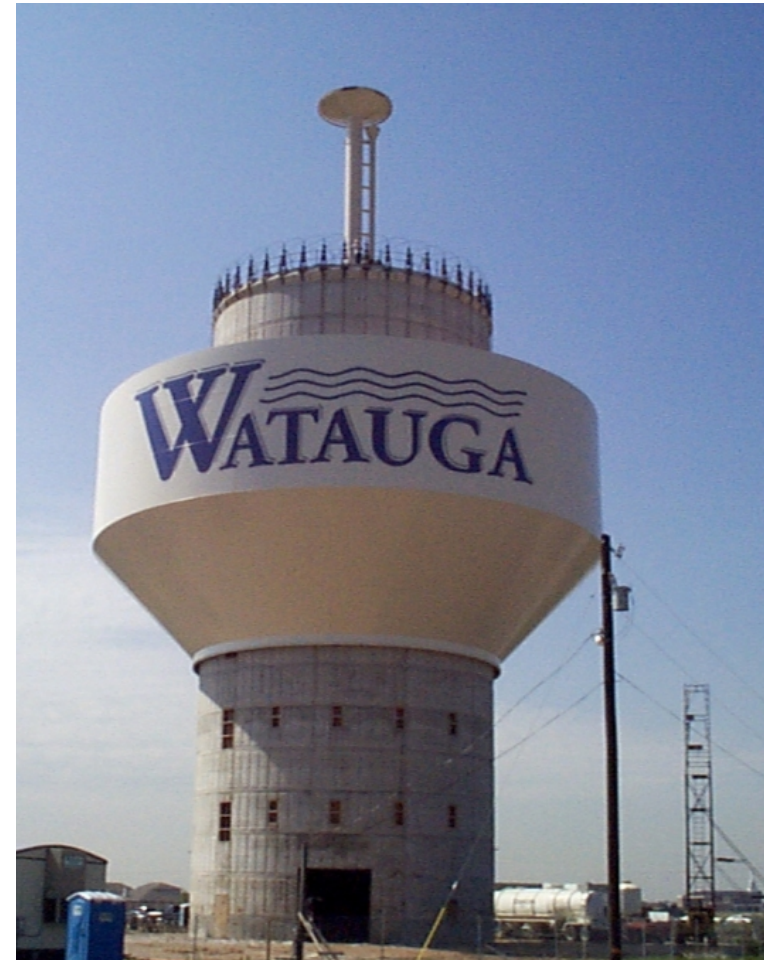


Discussion and Approval of the 2.0 Million Gallon Elevated Storage Tank Rehabilitation, Project 18-008 with M.K. Painting Inc. in the amount of \$248,000.



Rehabilitation of Water Storage Tank

1. Abrasive blasting and cleaning
2. Repairing leaks and deep pits
3. Epoxy patching shallow pitted areas
4. Painting
5. Water Testing & Sterilization of Tank
6. Delayed Start Fall 2018



Questions??



Recommendation/Action Desired



Authorize the City to enter into a Rehabilitation Contract with M.K. Painting, Inc. in the amount of \$248,000 for the rehabilitation of the 2.0 Million Gallon Elevated Storage Tank.





AGENDA MEMORANDUM

DATE: February 10, 2018

TO: Honorable City Council Members

FROM: Sandra Gibson, Director of Finance
Shawn Fannan, Fire Chief

THROUGH: Greg Vick, City Manager

SUBJECT: Discussion and action on approval of a renewal agreement between the City of Watauga and Advanced Data Processing, Inc., a Subsidiary of Intermedix Corporation, for Ambulance Billing, Collection, and Related Professional Services and Addendum regarding participation in the Texas Ambulance Supplemental Payment Program and Amendment No. 1 to provide for upgraded Tablet Units and related fees

BACKGROUND/INFORMATION:

The City of Watauga has contracted with Advanced Data Processing, Inc., a Subsidiary of Intermedix Corporation since September 2006 for ambulance billing and related professional services. The current contract has been in place since January, 2015 and the term of this agreement was for an initial three (3) year period, and is renewable for two one-year periods. Under the current agreement, Advanced Data Processing, Inc. charges a fee of 5.00% of all monies collected by Intermedix for EMS billing plus 1.30% of all monies collected for use of Intermedix provided field data capturing reporting system.

Staff wishes to utilize the first one-year renewal option with Intermedix extending the contract through January, 2019 with the following changes to the Agreement:

- Addendum for the City of Watauga to participate in the Texas Ambulance Supplemental Payment Program which is designed to help fill the gap, or loss, between the cost of providing services to Medicaid patients and the payment received for government EMS providers. Established in 2009, the Texas Ambulance Supplemental Payment Program (TASPP) offers EMS providers in the state the potential opportunity to receive additional funds above the standard Medicaid rate to supplement transport costs for Medicaid and uninsured patients. Intermedix will charge 13% of revenues received by the City as a result



AGENDA MEMORANDUM

of participating in this program. The fees are charged for Intermedix and their partner, PCG to collect and provide Watauga's data to the state for the program and preparation of the application to be accepted into the program. The estimated potential revenue to the City is estimated to be approximately \$110,000. This amount is estimated, not guaranteed and no fees are due if the City does not receive supplemental payments.

- Amendment No. 1 to allow for Intermedix to provide two (2) CF26 Pen-based Panasonic Toughbook Tablet Units, Field Automation Software, Administrative Reporting System, including training and support. As part of this amendment, the City agrees to compensate Intermedix with 2.10% (increase from 1.30%) of all monies collected for the use of the field-data capturing and reporting system and agree to an early termination fee of \$4,250.00 per product unit if the City terminates services within 18 months of agreement.

FINANCIAL IMPLICATIONS:

- Expense: General Fund, Ambulance Service Fees 01-020-74690. Approximately \$27,000 annual fee for EMS billing and services (increase of \$3,000 from previous Agreement).
- Revenue: Potential for additional revenues after successful enrollment in the Texas Ambulance Supplemental Payment Program (TASPP). Supplemental payments under this program are received annually.

RECOMMENDATION/ACTION DESIRED:

Staff recommends the approval of the first one-year renewal option through January, 2019 with Advanced Data Processing, Inc., a Subsidiary of Intermedix Corp and approval of the proposed amendments:

- Addendum to service agreement to participate in the Texas Ambulance Supplemental Payment Program (TASPP) and;
- Amendment No. 1 for Advanced Data Processing to provide two (2) upgraded Panasonic Toughbook Tablet Units for a fee of 2.1% of all monies collected and agreement to early termination of services fee.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Letter From Mark Daniel, City Attorney
2. Addendum to Service Agreement for Ambulance Supplement
3. Watauga TX_Amdt No. 1 (rev TT Fees)

REVIEWED BY:



AGENDA MEMORANDUM

Sandra Gibson
Deby Woodard
Shawn Fannan
Greg Vick
Zolaina Parker

Created/Initiated - 02/12/2018
Approved - 02/14/2018
Approved - 02/15/2018
Approved - 02/15/2018
Final Approval - 02/15/2018

LAW OFFICES
EVANS, DANIEL, MOORE, EVANS, BIGGS & DECKER
(NOT A PARTNERSHIP)

MARK G. DANIEL

BOARD CERTIFIED - CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

CRIMINAL TRIAL SPECIALIST-BOARD CERTIFIED
NATIONAL BOARD OF TRIAL ADVOCACY

SUNDANCE SQUARE
115 WEST SECOND STREET, SUITE 202
FORT WORTH, TEXAS 76102

(817) 332-3822
FACSIMILE (817) 332-2763

OF COUNSEL:
TIM EVANS
TIM MOORE
LANCE T. EVANS
WILLIAM R. BIGGS
ANDREW J. DECKER

February 19, 2018

Ms. Sandra Gibson
Director of Finance and Administration
City of Watauga
7105 Whitley Road
Watauga, Texas 76148

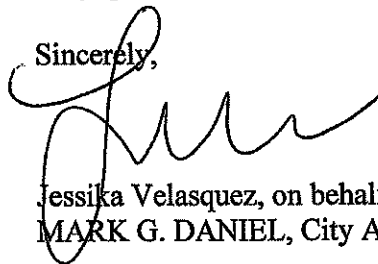
Re: *Advanced Data Processing, Inc. (Intermedix Corporation)*
Addendum to Service Agreement re Option of Ambulance
Supplemental Payment Program
Amendment No. 1 to Ambulance Billing and Related Professional
Services Agreement

Dear Ms. Gibson:

I am in receipt of the Addendum to Service Agreement re Option of Ambulance Supplemental Payment Program and Amendment No. 1 to the Ambulance Billing and Related Professional Services Agreement between the City of Watauga and Advanced Data Processing, Inc. I have reviewed both the Addendum and the Amendment and I approve of the same. I would recommend that these be presented at the next City Council meeting for consideration and approval.

Thank you for your attention to the above and the opportunity to be of assistance. Please do not hesitate to contact me should you have any questions.

Sincerely,



Jessika Velasquez, on behalf of
MARK G. DANIEL, City Attorney

JV:tp

cc: Mayor Pro tem Pat Shelbourne
Mr. Greg Vick, City Manager
Ms. Zolaina R. Parker, City Secretary

Addendum to Service Agreement
Option of Ambulance Supplemental Payment Program

This Addendum ("Addendum") is made and entered into this 1st day of February, 2018 (the "Addendum Effective Date") by and between City of Watauga, TX a Texas Municipality, with principal offices located at 7105 Whitley Rd, Watauga, TX 76148 ("Client") and Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation, a Delaware Corporation with principal offices located at 6451 North Federal Highway, Suite 1000, Fort Lauderdale, Florida 33308 ("Intermedix").

WHEREAS, Client and Intermedix are parties to the Agreement for Ambulance Billing and Related Professional Services (the "Agreement") as of its Effective Date; and

WHEREAS, The Centers for Medicare and Medicaid Services (CMS) allows States to establish alternative payment methodologies (herein referred as the "Ambulance Supplemental Payment Program") for certain classes of providers pursuant to 42 CFR 447.321, section 1902 (a)(30) of the Social Security Act, and

WHEREAS, Client has elected to partner with Intermedix and Intermedix's Consultant, Public Consulting Group, Inc., to develop, for a fee, an Ambulance Supplemental Payment Program.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Agreement as follows:

1. A new section 5.01.1 will be added to the Agreement to read as follows:

"5.01.1 Settlement Fee (Ambulance Supplemental Payment Program). Intermedix will charge to Client a Settlement Fee as follows:

Thirteen percent (13%) of the Revenues received by Client, as a result of Texas Ambulance Supplemental Payment Program consulting provided by Intermedix, will be invoiced by Intermedix to the client, at the agreed upon contract rate. Intermedix will be due its fee for services provided even if the client revenues are received after the contract terminates."

2. Capitalized terms not otherwise defined in this Amendment shall have the meanings ascribed to such terms in the Agreement. All terms and conditions of the Agreement are hereby ratified and shall remain in full force and effect except to the extent this Amendment expressly modifies or is inconsistent with the terms and conditions of the Agreement, in which case the terms of this Amendment shall be controlling.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date written above.

Client:
City of Watauga

By: _____
Name: _____
Title: _____
Date: _____

Intermedix:
Advanced Data Processing, Inc., a subsidiary
of Intermedix Corporation, a Delaware
corporation

By: _____
Name: _____
Title: _____
Date: _____

**AMENDMENT NO. 1
TO
AMBULANCE BILLING AND RELATED PROFESSIONAL SERVICES AGREEMENT**

THIS AMENDMENT NO. 1 ("Amendment") is made and entered into this ____ day of February, 2018 (the "Effective Date") by and between **City of Watauga, Texas**, a Texas municipal corporation ("Client") and **Advanced Data Processing, Inc., dba ADPI-Intermedix**, a Delaware corporation ("Intermedix").

WHEREAS, Client and Intermedix are parties to the Ambulance Billing and Related Professional Services Agreement (the "Agreement") effective as of January 26, 2015.

NOW THEREFORE, Client and Intermedix agree to amend the Agreement as follows:

1. Subsection 5.01 (b) of Fees of Section 5 (Compensation and Method of Payment) of the Agreement is deleted in its entirety and replaced with the following:

“(b) Two and ten hundredths percent (2.10%) of all monies collected for use of Intermedix-provided field data capturing and reporting system consisting of two (2) CF20 Pen-based Panasonic Toughbook Tablet Units, Field Automation Software, Administrative Reporting System, including training and support (referred heretofore as “TripTix®”), less refunds (“Net Collections”), plus”.

2. Section 14.01 (Term) is deleted in its entirety and replaced with the following:

“14.01 Term. This Agreement shall be effective for an initial three-(3) year period, commencing on the Effective Date (effective as of January 26, 2015) unless terminated as provided in Section 14.02 below (the “Initial Term”). Following the expiration of the Initial Term, subject to the payment of all fees due hereunder, as a result of new Product Units provided to Client, this Agreement will have a mandatory renewal for successive, automatically renewable one (1) year periods (“Renewal Terms”; collectively, the Initial Term together with any Renewal Terms are the “Term”). All terms and conditions hereof shall remain in full force and effect during the Term unless this Agreement is amended in a writing executed by each Party hereto.”

3. Schedule 2.01 (Early Termination Fees) is deleted in its entirety and replaced with the new Schedule 2.01 attached herewith and made part of the Agreement.

4. Capitalized terms not otherwise defined in this Amendment shall have the meanings ascribed to such terms in the Agreement. All terms and conditions of the Agreement are hereby ratified and shall remain in full force and effect except to the extent this Amendment expressly modifies or is inconsistent with the terms and conditions of the Agreement, in which case the terms of this Amendment shall be controlling.

IN WITNESS OF, the parties have executed this Amendment to the above-referenced Agreement effective as of the Effective Date.

Client:
CITY OF WATAUGA, TEXAS

Intermedix:
ADVANCED DATA PROCESSING, INC.
DbA ADPI-INTERMEDIX, a DELAWARE
CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SCHEDULE 2.01
EARLY TERMINATION FEE

The Initial Term Early Termination Payments with respect to each Product Unit are as follows:

	Period	Amount
(1)	For an Early Termination during the first eighteen (18) months from the Effective Date of Amendment No. 1:	\$4,250.00
(2)	For an Early Termination after the first eighteen (18) months of Amendment No. 1:	\$0.00



AGENDA MEMORANDUM

DATE: February 6, 2018

TO: Honorable City Council Members

FROM: Paul Hackleman, P.E., CFM, Director of Public Works

THROUGH: Greg Vick, City Manager

SUBJECT: Discussion and action on proposed ordinance amending the City of Watauga Code of Ordinances, Article VII, Occasional or Garage Sales within Chapter 22 - Licenses, Permits and Business Regulations of the Code of Ordinances, updating Chapter 12 - Fee Schedule, Chapter 111 - Signs, and Chapter 28 - Offenses and Miscellaneous Provisions, Article IV -Special Events allowing for Estate Sales

BACKGROUND/INFORMATION:

Currently, there is not a requirement within the Watauga Code of Ordinances to regulate estate sales. Mayor Pro Tem Shelbourne requested that staff review the occasional or garage sale ordinance to clearly define estate sales and resolve any misinterpretations. This ordinance shall allow the City to license and regulate this form of residential merchandise sale which in the past has operated as a garage sale.

The key provisions of the changes in Chapter 22 (Licenses, Permits, and Business Regulations, Article VII - Occasional or Garage Sales) are:

1. Recognize estate sales
2. Allow sales of new merchandice
3. Allow limited sales of merchandize not owned by person holding estate sale
4. Sale conducted mostly inside residence
5. Duration extend from 3 days to 4 days for all occasional, estate, and garage sales
6. Estate sales may use their commercial signs
7. Limited to two sales per year at each residence

Chapter 12 (Fee Schedule) shall add estate sales and apply a flat fee of \$20 per sale and \$2 for each sign supplied by the City.

Within Chapter 28 (Offenses and Miscellaneous Provisions, Article VI - Special Events), we are proposing to change the authority of who may waive the fee for community or



AGENDA MEMORANDUM

nonprofit events from the City Council to the Director of Public Works. Usually, the party applying for a special event to sell items that may benefit a City Department does not realize the need to request an agenda item to waive the \$25 fee in a timely manner.

Chapter 111 (Signs) has an old reference to garage sales signs from when the residents used homemade or store bought signs. This shall be deleted from the chapter. The regulations related to placement are already contained in Chapter 22 (Licenses, Permits, and Business Regulations). The only outlying potential issue would be the size of Estate Sale Signs and we desire to allow the estate sale companies to use their existing signs without limiting the size.

FINANCIAL IMPLICATIONS:

Minor impact on budget. Estate sales were previously allowed as garage sale.

RECOMMENDATION/ACTION DESIRED:

Recommend approval of the Ordinances allowing for estate sales, updating fee schedule, removing garage sale sign redundancies, and special events fee waiver authorization.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. Estate Sale Ordinances - Attorney Approval
2. Estate Sales - Agenda PP - Feb 2018

REVIEWED BY:

Paul Hackleman, P.E., CFM
Paul Hackleman, P.E., CFM
Sandra Gibson
Greg Vick
Zolaina Parker

Created/Initiated - 02/15/2018
Approved - 02/16/2018
Approved - 02/16/2018
Approved - 02/16/2018
Final Approval - 02/20/2018

LAW OFFICES
EVANS, DANIEL, MOORE, EVANS & BIGGS
(NOT A PARTNERSHIP)

MARK G. DANIEL

BOARD CERTIFIED - CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

CRIMINAL TRIAL SPECIALIST-BOARD CERTIFIED
NATIONAL BOARD OF TRIAL ADVOCACY

SUNDANCE SQUARE
115 WEST SECOND STREET, SUITE 202
FORT WORTH, TEXAS 76102

(817) 332-3822
FACSIMILE (817) 332-2763

OF COUNSEL

TIM EVANS
TIM MOORE
LANCE T. EVANS
WILLIAM R. BIGGS

February 6, 2018

Mr. Paul Hackleman
Director of Public Works
City of Watauga
7800 Virgil R. Anthony Sr. Blvd.
Watauga, Texas 76148

VIA E-MAIL

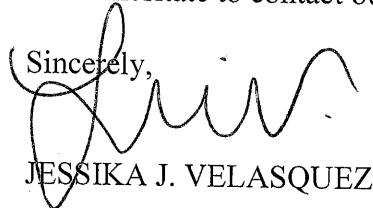
Re: Ordinance regarding amendments to Chapters 22, 12, 28 and 111 of the Watauga Code of Ordinances

Dear Mr. Hackleman:

Please find attached an Ordinance prepared by our office amending Chapters 22, 12, 28 and 111 of the Code of Ordinances for the City of Watauga. These amendments have been made to allow for the use of estate sales within the City and also to provide clarification and consistency in the application of Sections of the Code concerning occasional, estate and garage sales. You may submit this Ordinance to the City Council for consideration and possible approval.

Thank you for your attention to the above and the opportunity to be of assistance. If you have any questions regarding this matter, please do not hesitate to contact our office.

Sincerely,



JESSIKA J. VELASQUEZ

MGD/jjv

cc: Greg Vick, City Manager
Zolaina Parker, City Secretary
Patrick Shelbourne, Mayor Pro Tem

CITY OF WATAUGA, TEXAS
ORDINANCE NO. _____

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF WATAUGA AMENDING CHAPTER 22, ARTICLE VII OF THE CODE OF ORDINANCES FOR THE CITY OF WATAUGA, TEXAS REGARDING OCCASIONAL, ESTATE OR GARAGE SALES; AMENDING CHAPTER 12, SECTION 12-22 REGARDING PERMIT FEES FOR OCCASIONAL, ESTATE AND GARAGE SALES; AMENDING CHAPTER 28, SECTION 28-236 REGARDING THE FILING OF APPLICATIONS FOR PERMITS; DELETING CHAPTER 111, SECTION 111-92 REGARDING GARAGE SALE SIGNS; PROVIDING THAT ALL ORDINANCES IN CONFLICT HERewith ARE HEREBY REPEALED TO THE EXTENT THEY ARE IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Watauga, Texas recognizes the need to amend various sections of the Code of Ordinances for the City of Watauga pertaining to occasional, estate and garage sales in order to provide clarification and consistency in application and whereas the amendments now provide for the inclusion of estate sales within the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Watauga, Texas that:

I.

Chapter 22, Article VII of the Code of Ordinances for the City of Watauga is hereby amended to read as follows:

Chapter 22- Licenses, Permits and Business Regulations

Article VII. – Occasional, Estate or Garage Sales

Sec. 22-276. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Estate sales means any sale of tangible personal or other property at retail in a residential district or residence by a person or company to dispose of a substantial portion of property from a residence held mostly inside the residential structure.

Occasional sales means any sale of tangible personal property at retail, including, but not limited to, garage sales, patio sales, yard sales and all other on-site sales in a residential district or residence as herein provided, by a person who does not hold himself out as engaged in or does not habitually engage in the business of selling tangible personal property at retail.

Retail sales means all retail sales, except occasional sales, estate sales and garage sales, as that term is herein defined, are expressly prohibited in residential zoning districts by the zoning regulations for the city.

(Code 2001, § 4.501; Code 2010, § 4.04.001)

Sec. 22-277. - Penalty.

Any person failing to comply with the requirements of this article, and acts in violation hereof, commits an offense and shall be subject to a penalty as outlined in Section 1-7.

(Code 2001, § 4.506; Code 2010, § 4.04.002)

Sec. 22-278. - Registration.

Any individual desiring to conduct an occasional sale, estate sale or garage sale shall, not less than one business day prior to the sale, file with the Department of Public Works, an application of intent to conduct an occasional sale, estate sale or garage sale. Such application shall set forth the name, age (must be at least 18 years of age) and address of the registrant and shall contain a statement that the provisions of this article have been read by the registrant and that he agrees to comply with all provisions contained therein, and all other ordinances and regulations, including but not limited to Section 22-281 regulating signs announcing an occasional sale, estate sale or garage sale. Such statement shall further contain the address and location of the proposed site where the occasional sale or garage sale is to be conducted, and the proposed dates and times of the sale.

(Code 2001, § 4.504; Code 2010, § 4.04.003)

Sec. 22-279. - Permit.

- (a) *Required.* No individual may conduct an occasional sale, estate sale or garage sale unless a permit allowing such a sale is issued by the director of public works, or his duly

authorized representative. The sign for occasional sales and copy of permit application for estate sales issued by the city shall serve as a permit.

- (b) *Fees.* Permit fees for the occasional sale or garage sale are set forth in the fee schedule found in Section 12-22(b)(1). Permit fees for estate sales are set forth in the fee schedule found in Section 12-22(b)(2).

(Code 2001, § 4.505; Code 2010, § 4.04.004)

Sec. 22-280. - Location; conditions of operation.

Occasional sales, including garage sales, patio sales and yard sales, and estate sales are hereby permitted in city zoning districts SF6, SFA, D and MF or other districts as approved by the Director of Public Works, provided that:

- (1) The number of such occasional sales or garage sales shall not exceed four during any calendar year (January 1 to December 31);
- (2) The number of such estate sales shall not exceed two during any calendar year (January 1 to December 31) for each residence;
- (2) Such occasional sales or garage sales are not conducted by any person or group of persons holding themselves out as engaged in or who do in fact habitually engage in the business of selling tangible personal property at retail;
- (3) The tangible personal property shall be sold only on the premises of the owner or lessee of the property where the sale is conducted and said owner or lessee must be the legal owner of eighty (80) percent of such tangible personal property at the time of such sale;
- (4) The occasional or garage sale shall be confined to the garage, patio and yard on such premises. The estate sale shall mostly be held inside the residential structure;
- (5) No new merchandise (i.e., merchandise acquired solely for the purpose of resale, three or more offerings of the same or similar new items) shall be sold at such occasional sale, estate sale or garage sale. New merchandise (i.e., collectible sets, one copy of an unopened gift or purchased item, usually referred to as new old stock) that was not acquired for the purpose of resale shall be allowed; and
- (6) The duration of each sale shall not exceed four calendar days.

(Code 2001, § 4.502; Code 2010, § 4.04.005)

Sec. 22-281. - Signs.

One temporary unlighted sign for occasional sale or garage sale issued by the city and one temporary sign supplied by the estate sale person or company or purchased from the city

announcing the holding of a sale shall be permitted to be posted at the place of residence of the sale. Up to four additional signs may be issued by the city or estate sale person or company announcing the holding of an occasional sale, estate sale or garage sale and shall be allowed to be posted in any zoning district subject to the following restrictions:

(1) Signs shall be located on private property only. Signs shall not be permitted on any public property or right-of-way, or on any utility, light, traffic signal or sign pole;

(2) Signs shall be issued by the city, and no other sign shall be utilized to advertise the occasional or garage sale. Estate sales may provide their own signs or purchase signs from the city. The director of public works may require estate sale signs to include an attached permit or permit sticker;

(3) No more than five signs may be posted in connection with each occasional sale, estate sale or garage sale;

(4) Each sign shall contain the address and date of the occasional sale or garage sale. Estate sale signs shall contain the name, logo, and phone number of the estate sale company and may or may not contain the address and date of estate sale;

(5) Signs shall not be posted more than 24 hours prior to the beginning of the sale and shall be removed within 24 hours following the end of the sale. Failure to comply with this section is an offense and the offender shall be subject to a penalty as outlined by Section 22-277;

(6) When registering an occasional sale, estate sale or garage sale as required by Section 22-278, the registrant must specifically list and designate the location of each sign that the registrant intends to post in connection with the occasional sale, estate sale or garage sale. If any sign is designated to be posted on another person's property, written permission from that person must be obtained prior to registration and provided to the city prior to the issuance of a permit; and

(7) The person conducting the occasional, estate sale or garage sale shall pay a permit fee as set forth by Section 22-279. One temporary sign shall be issued by the city when this fee is paid and the permit is issued for occasional and garage sales. In order for additional signs to be issued by the city, the individual obtaining the permit must submit a fee in the amount fixed in Section 12-22(b)(3) up to the maximum of four additional signs. Estate sales may supply their own signs or purchase the maximum of five signs from the city in the amount fixed in section 12-22(b)(3).

II.

Chapter 12, Section 12-22 of the Code of Ordinances for the City of Watauga is hereby amended to read as follows:

Sec. 12-22. – Chapter 22, Licenses, Permits, and Business Regulations.

(a) *Fee for release of sealed coin-operated machine.* A fee of \$15.00 is hereby levied for the release of any machine or table sealed as provided in Chapter 22, Article VIII for the nonpayment of tax.

(b) Occasional, Estate and *Garage sales.*

(1) *Permit.* The occasional and garage sale permit fee shall be \$8.00 per application.

(2) *Permit.* The estate sale permit fee shall be \$20.00 per application.

(3) *Additional city issues signs.* \$2.00 per sign. Estate sales may use their own signs at no additional cost or purchase up to five signs from City.

III.

Chapter 28, Section 28-236 of the Code of Ordinances for the City of Watauga is hereby amended to read as follows:

Sec. 28-236. – Filing of application.

(a) *Special events.* A person desiring to hold a special event shall apply for a permit by filing with the director of the department of public works one written application on a form provided for that purpose. A separate permit is required for each location where a special event will be conducted. The application must be filed not less than 21 days before the first special event is to begin.

(1) The director of the department of public works may waive the 21-day filing requirement if the director determines that the application can be processed in less than 21 days, taking into consideration the applicable requirements to be imposed, the number of agencies and other departments involved, and whether a similar event has previously been permitted.

(2) The director of the department of public works shall send to the applicant, by personal delivery or by certified mail, return receipt requested, written notice of whether the 21-day filing requirement will be waived. The applicant may appeal the director of the department of public

works' refusal to waive the 21-day filing requirement pursuant to the procedure set forth in Section 28-243.

(b) *Parades*. A person desiring to hold a parade shall apply for a permit by filing with the director of the department of public works one written application on a form provided for that purpose. An application for a parade with 25 or more persons must be filed not less than five working days prior to the date and time the parade is to begin. An application for a parade with ten to 24 persons must be filed not less than 48 hours prior to the date and time the parade is to begin.

(c) *Fee*. An application for a special event or parade permit must be accompanied by a nonrefundable application fee of \$25.00. The director of public works shall have authority to waive application fees for community or nonprofit events.

IV.

Chapter 111, Section 111-92 of the Code of Ordinances for the City of Watauga is hereby deleted as follows, and all text shall be removed from the Code:

~~Sec. 111-92. —Garage sale signs.~~

~~Temporary unlighted signs announcing the holding of a sale of household possessions at a place of residence shall be allowed in any zoning district without permit subject to the following restrictions:~~

~~(1) Garage sale signs shall be located on private property only. Garage sale signs shall not be permitted on any public property or right of way, nor on any utility, light, traffic signal or sign pole;~~

~~(2) Sign area shall not exceed six square feet; and~~

~~(3) Signs shall not be posted more than five days prior to the beginning of the sale, and shall be removed within 24 hours following the end of the sale.~~

~~(Code 2001, § 4.112; Code 2010, § 3.07.049)~~

V.

This Ordinance shall be and is hereby cumulative of all other ordinances of the City of Watauga, Texas, and this Ordinance shall not operate to repeal or affect any of such other ordinances, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance(s) are hereby repealed.

VI.

If any section, sub-section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

VII.

This Ordinance shall become effective and be in full force and effect from and after the date of passage and adoption by the City Council and upon approval thereof by the Mayor of the City of Watauga, Texas and publication hereof as prescribed by law.

PASSED AND ADOPTED by the City Council of the City of Watauga, Texas on the _____ day of _____, 2018.

APPROVED:

PATRICK SHELBOURNE, Mayor Pro Tem

ATTEST:

ZOLAINA R. PARKER, City Secretary

APPROVED AS TO FORM AND LEGALITY:

MARK G. DANIEL, City Attorney

City Council
February 26, 2018



Estate Sales Ordinance Revisions



What is an Estate Sale?

An Estate Sale, is a way of liquidating the belongings of a family or estate. These are usually much more than garage or yard sales. They are used when someone is in need of a way to sell items due to downsizing, moving, divorce, bankruptcy, or death. The public is invited into the home and given the opportunity to purchase any item that is priced for sale. Estate Auctions are where everything is auctioned instead of being marked with a selling price.



Key Provisions of Ordinance Changes



- Recognize Estate Sales
- Allow limited sales of new merchandize
- Allow limited sales of merchandize not owned by person holding estate sale
- Sale conducted mostly inside of residence
- Duration of extended from 3 days to 4 days for all occasional, estate, and garage sales
- Estate sales may use their own commercial signs
- Limited to two estate sales per year at each residence
- Fee shall be \$20
- Special Events fees (\$25) for community or nonprofit events may be waived at a staff level
- Deleted duplicate and conflicting sign regulations in Chapter 111

Questions ???



Recommendation/Action Desired

Recommend approval of the Ordinances allowing for estate sales, updating fee schedule, removing garage sale sign redundancies, and special events fee waiver authorization.





AGENDA MEMORANDUM

DATE: February 7, 2018

TO: Honorable City Council Members

FROM: Greg Vick, City Manager

THROUGH: Greg Vick, City Manager

SUBJECT: Discussion and action on proposed resolution approving the 2018-2019 Strategic Plan

BACKGROUND/INFORMATION:

On January 31, 2018, City Council Members and Staff met during a Workshop Session to discuss the upcoming 2018-2019 Strategic Plan. During the session, the Council and Staff addressed goals and action items. Action items were compiled and prioritized for approval during the February 26, 2018 Regular Meeting.

FINANCIAL IMPLICATIONS:

N/A

RECOMMENDATION/ACTION DESIRED:

Respectfully recommend approval of the proposed resolution regarding the 2018-19 Strategic Plan.

ATTACHMENTS/ SUPPORTING DOCUMENTATION:

1. City Attorney Letter of Approval and Proposed Resolution
2. Proposed Strategic Plan

REVIEWED BY:

Zolaina Parker
Greg Vick
Zolaina Parker

Created/Initiated - 02/12/2018
Approved - 02/14/2018
Final Approval - 02/14/2018

LAW OFFICES
EVANS, DANIEL, MOORE, EVANS, BIGGS & DECKER
(NOT A PARTNERSHIP)

MARK G. DANIEL

BOARD CERTIFIED - CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

CRIMINAL TRIAL SPECIALIST-BOARD CERTIFIED
NATIONAL BOARD OF TRIAL ADVOCACY

SUNDANCE SQUARE
115 WEST SECOND STREET, SUITE 202
FORT WORTH, TEXAS 76102

(817) 332-3822
FACSIMILE (817) 332-2763

OF COUNSEL:
TIM EVANS
TIM MOORE
LANCE T. EVANS
WILLIAM R. BIGGS
ANDREW J. DECKER

February 8, 2018

Via Email

Ms. Zolaina Parker, City Secretary
City of Watauga
7105 Whitley Road
Watauga, Texas 76148

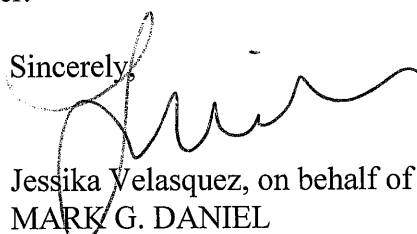
Re: Resolution for the City of Watauga, Texas re Strategic Plan 2018-2019

Dear Ms. Parker:

Per your request, I have reviewed the Resolution by the City Council of the City of Watauga for the purpose of approving the goals and action items discussed during the January 31, 2018 planning session. I approve of the Resolution and would recommend that the same be included on the next City Council meeting agenda for consideration and approval.

Thank you for the opportunity to be of assistance. Please do not hesitate to contact me should you have any questions concerning this matter.

Sincerely,



Jessika Velasquez, on behalf of
MARK G. DANIEL

JJV/tp

cc: Mayor Pro tem Pat Shelbourne
Mr. Greg Vick, City Manager

CITY OF WATAUGA, TEXAS
RESOLUTION NO. _____

A RESOLUTION BY THE CITY COUNCIL OF THE
CITY OF WATAUGA, TEXAS FOR THE PURPOSE
OF APPROVING THE GOALS AND ACTION ITEMS
DISCUSSED DURING THE JANUARY 31, 2018,
PLANNING SESSION; PROVIDING THAT ALL
RESOLUTIONS IN CONFLICT HERewith ARE
HEREBY REPEALED TO THE EXTENT THAT THEY
ARE IN CONFLICT; PROVIDING A SAVINGS
CLAUSE; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Watauga, Texas, met on January 31, 2018 in a public Planning Session to discuss and set forth goals and action items; and

WHEREAS, the City Council of the City of Watauga, Texas, understands the importance of providing a clear direction and path for the City Manager and staff to follow.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Watauga, Texas that:

I.

The City of Watauga, Texas hereby adopts and approves the goals, and action items outlined in Exhibit "A" as a guide for the City Manager and staff to utilize.

II.

This resolution shall be and is hereby cumulative of all other resolutions of the City of Watauga, Texas, and this resolution shall not operate to repeal or affect any of such other resolutions, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this resolution, in which event such conflicting provisions, if any, in such other resolution or resolutions are hereby repealed.

III.

If any section, subsection, sentence, clause or phrase of this resolution shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this resolution.

IV.

This resolution shall become effective and be in full force and effect from and after the date of passage and adoption by the City Council of the City of Watauga, Texas and upon approval thereof by the Mayor of the City of Watauga, Texas to become effective immediately.

PASSED AND ADOPTED by the City Council of the City of Watauga, Texas, on this the 26th day of February, 2018.

APPROVED:

Patrick Shelbourne, Mayor Pro Tem

ATTEST:

Zolaina R. Parker, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Mark G. Daniel, City Attorney



VISION: “A Community that meets the needs of citizens by offering a high quality of life through transparent governance.”

STRATEGIC PLAN 2018-2019

GOALS	ACTION ITEMS
1. Establish an environment conducive to strong and sustainable economic development	A. Develop policies and plans to reinvest, revitalize, and improve aging shopping center sites B. Creative ways to enhance Denton Highway
2. Enhance a secure and safe city	A. Strive to enhance manpower and retention of Public Safety personnel B. Identify additional citizen and volunteer opportunities and education
3. Enhance quality of life through recreational, cultural, and educational services	A. Continue to advocate Capp Smith Park area for activities and economic impact B. Increase community event usage of existing venues, July 4 th Event C. Continue to improve Parks and Library
4. Enhance responsible fiscal management and excellent governance	A. Continue efforts to maintain and improve our single family tax base B. Evaluate greater uses of technology for operations and citizens
5. Sustain and enhance infrastructure network	A. Continue city wide plans for Capital Improvement programs including equipment B. Enhance Code Compliance and Education
6. Commitment to maintain a highly skilled, well trained, fairly compensated, customer service oriented workforce	A. Continue ongoing evaluation of hiring needs, retention, benefits, and compensation B. Personnel Improvement Plan, Succession Planning, Efficiency and Responsiveness C. Continue Customer Service Initiative