



**AGENDA
WATAUGA CITY COUNCIL
SPECIAL MEETING
THURSDAY, JULY 7, 2016
CITY HALL COUNCIL CHAMBER, 7105 WHITLEY ROAD
6:00 P.M.**

COUNCIL MEETING

CALL TO ORDER

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.

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 Contract with Southside Bank for Depository Services for a two (2) year term beginning September 1, 2016
Deby Woodard, Assistant Finance Director/Purchasing Manager

WORKSHOP

1. Overview of the City of Watauga Capital Improvement Program
Greg Vick, City Manager
Paul Hackleman, Public Works Director
Sandra Gibson, Director of Finance and Administration, CGFO
 - A. Staff Presentation
 - B. Discussion

2. Overview of Certificates of Obligation for streets and other possible projects
Greg Vick, City Manager
Sandra Gibson, Director of Finance and Administration, CGFO
 - A. Staff Presentation
 - B. Discussion

NEW BUSINESS

1. Discussion and action on approval of amendment to agreement with Haydon Building Corporation, Construction Manager at Risk for the Senior Center Project in an amount of \$146,491; and replenish project contingency in the amount of \$40,000, for a total amount not to exceed \$186,491
Greg Vick, City Manager
Paul Hackleman, Public Works Director
Sandra Gibson, Director of Finance and Administration, CGFO
Deby Woodard, Assistant Finance Director/Purchasing Manager

2. Discussion and action on approval to change health insurance to Cigna and maintain dental insurance with Aetna for all eligible employees
Marcia Reyna, Human Resources/Civil Service Director
Deby Woodard, Assistant Finance Director/Purchasing Manager

EXECUTIVE SESSION

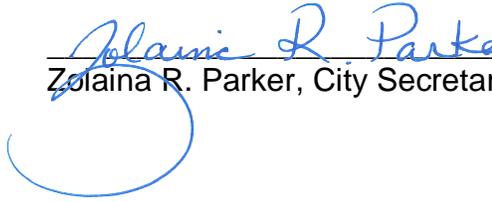
The City Council may announce that it will adjourn the public meeting and convene in Executive Session pursuant to Chapter 551 of the Texas Government Code to discuss any matter as specifically listed on this agenda and/or as permitted by Chapter 551 of the Texas Government Code.

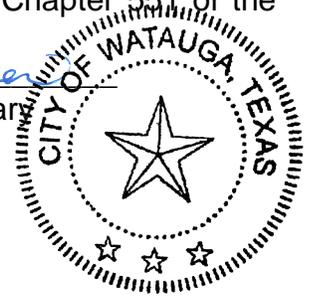
ADJOURNMENT

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, Texas, hereby certify that this agenda was posted on the bulletin boards at City Hall, 7105 Whitley Road, Watauga, Texas, on Friday, July 1, 2016 before 6:00 p.m., in accordance with Chapter 551, of the Texas Government Code.


Zolaina R. Parker, City Secretary





AGENDA MEMORANDUM

DATE: June 13, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Deby Woodard, Assistant Finance Director/Purchasing Manager *D Woodard*

THROUGH: Greg Vick, City Manager *Gv*

SUBJECT: Approval of Contract with Southside Bank for Depository Services

BACKGROUND/INFORMATION:

The City recently requested bank depository Request for Applications per Texas Local Government Code Chapter 105 with the assistance of the City's investment advisor, Valley View Consulting.

Applications were received from:

- American National Bank
- BBVA Compass Bank
- Frost Bank
- JPMorgan Chase Bank (incumbent)
- Southside Bank

A committee consisting of Sandra Gibson, Director of Finance, Lou Ann Scherer, Senior Accountant, and Deby Woodard, Assistant Finance Director was established to review all applications. The evaluation criteria was based on, but not limited to, the following:

- Financial strength and stability of the institution
- Completeness of application and agreement to points in the RFA
- Ability to perform and provide the required and provide the required and requested services
- Reputation of respondent and quality of services
- Cost of services
- Earnings credit calculation on compensating balances
- Transition cost, retention and transition offers and incentives
- Funds availability
- Interest paid on interest bearing accounts and deposits
- Convenience of locations
- Previous service relationship with the City and references

BBVA Compass Bank and Southside Bank were invited to meet with City staff for demonstrations and further evaluation. After considering all factors it was decided that Southside Bank provides the "best value" for the City. The City currently utilizes Southside Bank for some investments. Valley View Consulting concurs with staff recommendation of Southside Bank for Depository Bank Services.

This Depository Bank Services Agreement with Southside Bank will be for a term of two years beginning on September 1, 2016 and extending through August 31, 2018. The agreement allows the option of three one-year renewal terms each under the same terms and conditions by giving Southside Bank written notice of intent to extend prior to expiration of the then-current term.

FINANCIAL IMPLICATIONS:

Bank charges are appropriated annually in various funds.

RECOMMENDATION/ACTION DESIRED:

Staff recommends approval of the contract with Southside Bank as the City's Bank Depository Service provider.

ATTACHMENTS/SUPPORTING DOCUMENTATION:

- 1) Letter from Mark Daniel, City Attorney
- 2) Letter from Valley View Consulting, LLC
- 3) Bank Depository Service Agreement with Southside Bank
- 4) Platinum Advantage Investment Account Addendum
- 5) Addendum to Southside Bank Business Services Terms & Conditions
- 6) Southside Bank Business Services Terms & Conditions

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

June 13, 2016

Ms. Deby Woodard
Assistant Finance Director/Purchasing Manager
City of Watauga
7105 Whitley Road
Watauga, Texas 76148

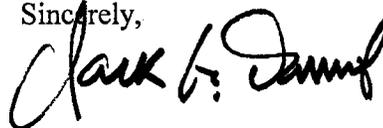
Re: Depository Bank Services Agreement

Dear Ms. Woodard:

I am in receipt of the Depository Bank services Agreement between the City of Watauga and Southside Bank designating Southside Bank as its primary depository bank from September 1, 2016 through August 31, 2018.. I have also reviewed the pertinent documents attached to this Agreement. I approve of the Agreement and would recommend presenting the same at the next City Council meeting for Council consideration and approval.

Thank you for your attention to the above and the opportunity to be of assistance.

Sincerely,



MARK G. DANIEL

MGD:tp

cc: Mayor Hector Garcia
Mr. Greg Vick, City Manager
Ms. Zolaina Parker, City Secretary



June 1, 2016

Ms. Sandra Gibson
Director of Finance
City of Watauga
7105 Whitley Road
Watauga, TX 76148

Dear Ms. Gibson:

As part of the services provided under the current Investment Advisory Agreement, we welcome the opportunity to assist the City of Watauga (the "City") with this Primary Depository Bank Services Request for Applications (the "RFA") project.

The objective of this engagement was to select a primary depository bank following the expiration of the current contract with incumbent, JPMorgan Chase Bank, on August 31, 2016. At the optional extension period following the current contract expiration, the incumbent chose to alter the terms of the agreement, and it was decided to conduct a new solicitation for primary depository bank services. This agreement when approved will commence on September 1, 2016 and terminate on August 31, 2018 with three additional one-year extension options.

Procedure

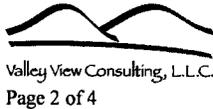
The project began with the establishment of a calendar of events to ensure that the required project steps were performed in a timely and sequential manner.

The process for selecting a Primary Depository Bank is governed by the State of Texas Local Government Codes: Chapter 105 Municipal Depository Act; Chapter 176 Conflict of Interest Act; Chapter 2256 Public Funds Investment Act; and Chapter 2257 Public Funds Collateral Act.

In addition to complying with these State statutory requirements, it was necessary to understand and comply with the City's financial and purchasing policies and Investment Policy.

The RFA project was conducted as follows:

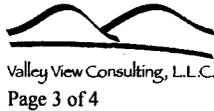
1. Analyzed historical bank service usage and balance records.
2. Reviewed the minimum banking services and potential additional services.



3. Developed a list of eligible financial institutions within the City's service area parameters:
 - a. American National Bank
 - b. Bank of America
 - c. BB&T Bank
 - d. BBVA Compass Bank
 - e. Capital One Bank
 - f. Frost Bank
 - g. JPMorgan Chase Bank (incumbent)
 - h. Southside Bank
 - i. Wells Fargo Bank
4. Contacted the financial institutions to confirm distribution information, describe the process, and identify the designated recipient.
5. Drafted the RFA for City staff review and approval.
6. Posted the notice and advertised as required.
7. Distributed RFAs to the identified and receptive financial institutions.
8. Held a non-mandatory pre-application conference that was attended by representatives of:
 - a. American National Bank and
 - b. BBVA Compass Bank
9. No additional RFA requests were received as a result of the advertisement.
10. By the closing deadline, applications were received from:
 - a. American National Bank
 - b. BBVA Compass Bank
 - c. Frost Bank
 - d. JPMorgan Chase Bank (Incumbent), and
 - e. Southside Bank

The evaluation of the applications was based on, but not limited to, the following criteria, in no particular order of priority:

1. Financial strength and stability of the institution,
2. Completeness of application and agreement to points in the RFA,
3. Ability to perform and provide the required and requested services,
4. Reputation of respondent and quality of services,
5. Cost of services,
6. Earnings credit calculation on compensating balances,
7. Transition cost, retention and transition offers and incentives,
8. Funds availability,
9. Interest paid on interest bearing accounts and deposits,



- 10. Convenience of locations, and
- 11. Previous service relationship with the City.

Application Analysis

The analysis began with an overall review of each bank’s general financial strength and ability to provide the bank services necessary to meet the City’s current and future service needs. Each of the responding banks exhibited acceptable financial strength and adequately passed the bank service test. The attached Bank RFA Analysis highlights each response.

Fees

Each bank’s fee schedule was analyzed based on the City’s banking service needs and estimated activity levels. Some banks offered a variety of conversion/retention credits and incentives (including waived fees and supplies). Where quantifiable and appropriate, the estimated service fees were adjusted for any incentives:

	<u>Est. Monthly Fees</u>	<u>Est. 5 Year Fees</u>
American National Bank	(\$1,230)	(\$73,799)
BBVA Compass Bank	(\$1,222)	(\$73,333)
Frost Bank	(\$1,842)	(\$102,474)
JPMorgan Chase Bank	(\$2,255)	(\$135,300)
Southside Bank	(\$921)	(\$55,248)

Earnings Credit and Interest Earnings

The average balance the City has maintained over the last year has been approximately \$2,600,000. Each bank’s potential earnings credit and interest bearing account earnings were considered and used to calculate the net 5 year cost to the City. The estimated five-year financial impact of the combination of earnings credit and hard dollar interest income on the overall proposals submitted by the five banks are provided below:

	American National Bank	BBVA Compass Bank	Frost Bank	JPMorgan Chase Bank	Southside Bank
Fees 5 Year	(\$73,799)	(\$73,333)	(\$102,474)	(\$135,300)	(\$55,248)
Earnings Credit	29,250	49,400	65,000	32,500	4,950
Hard Interest Earned	-	-	-	-	61,677
Net 5 Year Income/(Cost)	(\$44,549)	(\$23,933)	(\$37,474)	(\$102,800)	\$11,379
Net Monthly Income/(Cost)	(\$742)	(\$399)	(\$625)	(\$1,713)	\$190



Recommendation

The proposed fees and earnings credit comparisons highlight the range of bank responses and confirm the competitive environment of the RFA process.

BBVA Compass Bank and Southside Bank were invited to meet City staff, provide a demonstration of their online banking platforms, and discuss the transition planning and approach they would take if they were selected.

As a result of the demonstrations and transition discussions, the City staff believes the “best value” to the City is provided by Southside Bank. Valley View Consulting concurs with the staff’s recommendation that the City Council authorize the City Manager to negotiate and execute a contract with Southside Bank.

Please contact Dick or me to discuss any questions or additional information needs. Thank you for this opportunity to serve the City.

Sincerely,



T. H. Ross
Valley View Consulting, L.L.C.

Attachments

DEPOSITORY BANK SERVICES AGREEMENT

THIS DEPOSITORY BANK SERVICES AGREEMENT ("Agreement") is made and entered into by and between the City of Watauga, Texas, a home-rule municipality ("City"), and **Southside Bank**, a banking association, organized under the laws of the United States and authorized by law to do banking business in the State of Texas ("Bank"). City and Bank are sometimes referred to collectively as the "parties" or individually as a "party."

1. **Designation of Depository**. The City, through action of the City Council on June 20, 2016, hereby designates Bank as its primary depository bank for the period beginning September 1, 2016, and continuing through August 31, 2018. City shall have the option to extend this Agreement for three (3) additional terms of one (1) year each under the same terms and conditions by giving Bank written notice of its intent to extend prior to the expiration of the then-current term.

2. **General**. All services rendered to City by Bank under this Agreement shall be performed in accordance with accepted commercial banking standards for public fund organizations and under the overall direction and instructions of City pursuant to Bank's standard operations, policies, and procedures.

3. **Scope of Services**. Bank agrees to provide those services as described in the City of Watauga Request for Application for Depository Bank Services released on April 1, 2016 ("RFA"). The RFA and Bank's response to the RFA (the "Application") are incorporated herein by reference. Bank acknowledges that all services performed by Bank are subject to the approval of City.

4. **City Representatives**. During the term of this Agreement, City will, through appropriate action of its City Council, designate the officer, or officers, who singly or jointly will be authorized to represent and act on behalf of City in any and all matters of every kind arising under this Agreement and to (a) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment or transfer on behalf of City in accordance with the electronic funds or funds transfer agreement and addenda, and (b) make withdrawals or transfer by written instrument.

5. **Custodian**. City and Bank, by execution of this Agreement, hereby designate the **Federal Home Loan Bank** as custodian ("Custodian"), to hold in trust, according to the terms and conditions of this Agreement, the collateral described and pledged by Bank in accordance with the provisions of this Agreement.

6. **Custodian Fees**. Any and all fees associated with Custodian's holding of collateral for the benefit of City shall be paid by Bank and City will have no liability therefore.

7. **Entire Agreement**. The entire agreement between Bank and City shall consist of this Agreement, City's RFA (except to the extent Bank took specific exceptions in the Bank's Application), Bank's Application, the Custodial Agreement with Custodian, and other such bank service agreements, policies and documents as may be required and approved by the parties (collectively, the "Banking Agreements"), each incorporated by reference as they presently exist and each listed in governing order of precedence in the event of conflict among the documents. This Agreement supersedes any and all prior representations, statements, and agreements, whether written or oral. The terms and provisions of this Agreement may not be amended, altered, or waived except by mutual agreement evidenced by a written instrument signed by duly authorized representatives of both parties.

8. **Collateralization**. All funds on deposit with Bank to the credit of City shall be secured by collateral as provided for in the Public Funds Investment Act (Chapter 2256 of the Government Code, as amended), the Public Funds Collateral Act (Chapter 2257 of the Government Code, as amended), City's Investment Policy, and Bank's Application.

If marketable securities are pledged, the total market value of the securities securing such deposits shall be in an amount at least equal to the minimum required amount as per City's Investment Policy. The market value of any pledged securities (collateral) must be obtained from non-Bank-affiliated sources. Bank shall monitor and maintain the required collateral margins and levels at all times.

Bank has heretofore, or will immediately hereafter, deliver to Custodian collateral of the kind and character above mentioned of sufficient amount and market value to provide adequate collateral for the funds of City deposited with Bank. Custodian shall accept said collateral and hold the same in trust for the purposes herein stated. Said collateral or substitute collateral, as hereinafter provided for, shall be kept and retained by Custodian in trust so long as deposits of City remain with Bank. Bank hereby grants a security interest in such collateral to City.

If at any time the collateral in the hands of Custodian shall have a market value in excess of the required balances, City may authorize the withdrawal of a specified amount of collateral, and Custodian shall deliver this amount of collateral (and no more) to Bank.

If surety bonds or letters of credit are utilized, City shall agree as to the issuer and form of contract prior to the pledge. The amount of surety bonds or letters of credit will be at least equal to the minimum required amount as per City's Investment Policy. The termination or expiration of any surety bond or letter of credit shall be a minimum of two (2) business days after City anticipates withdrawing the secured deposit.

9. **Pledge Receipts**. Custodian shall promptly forward to City copies of pledge receipts covering all such collateral held for Bank, including substitute collateral as provided for herein.

10. **Substitution of Collateral**. If Bank shall desire to sell or otherwise dispose of any one or more of said securities so deposited with Custodian, with the advance written approval of City, it may substitute for any one or more of such securities other securities of the same market value and of the character authorized herein. Such right of substitution shall remain in full force and may be exercised by Bank as often as it may desire; provided, however, that the aggregate market value of all collateral pledged hereunder, shall be at least equal to the amount of collateral required hereunder. If at any time, the aggregate market value of such collateral so deposited with Custodian be less than the total sum of City's funds on deposit with Bank, Bank shall immediately deposit with Custodian such additional collateral as may be necessary to cause the market value of such collateral to equal the total amount of required collateral. Bank shall be entitled to income on securities held by Custodian, and Custodian may dispose of such income as directed by Bank without approval of City.

11. **Withdrawal of Collateral**. If at any time the collateral in the hands of Custodian shall have a market value in excess of the sum of the balances due City by Bank as required by City's Investment Policy, City shall authorize the withdrawal of a specific amount of collateral. Custodian shall deliver this amount of collateral (and no more) to Bank, taking its receipt therefore, and Custodian shall have no further liability for collateral so redelivered to Bank.

12. **Default**. Should Bank fail at any time to pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any deposits and the interest on such deposits or in any manner breach the Banking Agreements with City, City shall give written notice of such failure or breach to Bank, and Bank

shall have one (1) business day to cure such failure or breach. In the event Bank shall fail to cure any such failure or breach within one (1) business day or should Bank be declared insolvent by a Federal banking regulatory agency, it shall be the duty of Custodian, upon demand of City, to surrender the above described collateral to City, or it shall be the duty of the surety bond or letter of credit provider to perform under the terms of their respective contract.

City may sell any part of such collateral, or receive all or any part of a surety bond or letter of credit settlement, and out of the proceeds thereof, pay City all damages and losses sustained by it, together with all expenses of any and every kind incurred by it on account of such failure or insolvency, or sale, and account to Bank for the remainder, if any, of said proceeds or collateral remaining unsold.

13. **Sale of Collateral.** Any sale of such collateral, or any part thereof, made by City hereunder may be either at public or private sale, provided however, it shall give both Custodian and Bank two (2) hours' notice of the time and place where such sale shall take place, and such sale shall be to the highest bidder therefore for cash. City and Bank shall have the right to bid at such sale.

14. **Release of Collateral.** When the relationship of City and Bank shall have ceased and when Bank shall have properly paid out all deposits of City, it shall be the duty of City to give Custodian notice to that effect; whereupon Custodian shall, with the approval of City, redeliver to Bank all collateral then in its possession belonging to Bank. An order in writing to Custodian by City and a receipt for such collateral by Bank shall be a full and final release of Custodian of all duties and obligations undertaken by it by virtue of these presents.

15. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

16. **Compensation.** City and Bank agree that any compensation for the performance of all duties and services is set forth in the Application accepted by City. Except as may otherwise be provided in the Banking Agreements, said compensation shall constitute full payment for all services, liaison, products, materials, and equipment required to provide the professional banking services, including services, materials, training, equipment, travel, overhead, and expenses. Fees shall be fixed for the term of the Banking Agreements, including all extensions.

17. **Consideration.** The Banking Agreements are executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

18. **Counterparts.** The Banking Agreements shall be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature shall also be deemed to constitute an original if properly executed.

19. **Authority to Execute.** The individuals executing the Banking Agreements on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing the Banking Agreements to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute the Banking Agreements in order for the same to be an authorized and binding on the party for whom the individual is signing and that each individual affixing his or her signature hereto is authorized to do so.

20. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Texas. Tarrant County, Texas shall be the venue for any lawsuit arising out of this Agreement.

21. **Notices.** Except as may otherwise be specified in the applicable service-level agreements and/or set-up forms, any demand, notice, request, instruction, designation, or other communication(s) required in writing under this Agreement shall be personally delivered or sent certified mail, return receipt requested, to the other party as follows:

Bank: _____

City: Ms. Sandra Gibson, Director of Finance & Administration
City of Watauga
7105 Whitley Road
Watauga, Texas 76148
sgibson@wataugatx.org

Changes to notice information may be made by either party with written notification to the other party.

22. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties, shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the illegal, invalid, or unenforceable provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall remain valid and in full force and effect for the term remaining.

23. **Binding Commitment.** Bank hereby acknowledges itself duly and firmly bound for the faithful performance of all the duties and obligations required by applicable law, including the Government Code and Local Government Code, such that all funds deposited with it as depository shall be faithfully kept by it and accounted for according to law.

24. **Continuation.** Unless this Agreement is terminated sooner, Bank’s designation as the primary City Depository will remain continuously in effect through August 31, 2018, subject to execution of the extension options.

Executed by the undersigned duly authorized officers of the parties hereto:

CITY OF WATAUGA, TX

By: _____
Name: _____
Title: _____
Date: _____

SOUTHSIDE BANK

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:
By: _____
Name: _____
Title: _____

ATTEST:
By: _____
Name: _____
Title: _____

**Platinum Advantage Investment Account
Public Platinum Money Market Addendum
City of Watauga, Texas**

Southside offers an interest bearing alternative to public funds customers.

- Bank Public Funds Money Market account
 - Rate Formula = Current Texpool Rate plus 25 basis points
 - The initial spread of 25 basis points will be effective for a minimum of 90 days from the date of the initial deposit.
 - Thereafter, the spread may not be lowered more than 5 basis points per 30 day period with 30 day advance written notification.
 - Adjusted weekly (every Monday)

Collateralized by Govt. Code 2257 qualified securities

Subject to Federal limitations on number of withdrawals monthly
Southside reserves the right to cancel arrangement with 90 days notification
Maximum amount allowed \$10,000,000.00
Minimum amount \$1,000,000

FOR THE BANK:

Signature

Title

Name (Printed)

Date

FOR CITY OF WATUAGA:

Signature

Title

Name (Printed)

Date

**Platinum Advantage Investment Account
Public Platinum Money Market Addendum
City of Watauga, Texas**

Southside offers an interest bearing alternative to public funds customers.

- **Bank Public Funds Money Market account**
 Rate Formula = Current Texpool Rate plus 20 basis points
 The initial spread of 20 basis points will be effective for a minimum of 90 days from the date of the initial deposit.
 Thereafter, the spread may not be lowered more than 5 basis points per 30 day period with 30 day advance written notification.
 Adjusted weekly (every Monday)

Collateralized by Govt. Code 2257 qualified securities

Subject to Federal limitations on number of withdrawals monthly
Southside reserves the right to cancel arrangement with 90 days notification
Maximum amount allowed \$10,000,000.00
Minimum amount \$1,000,000

FOR THE BANK:

Brian K. McCabe
Signature

BRIAN K. McCabe
Name (Printed)

EVP
Title

3/5/2015
Date

FOR CITY:

Sandra Gibson
Signature

Sandra Gibson
Name (Printed)

Director of Finance
Title

2/26/2015
Date

**DEPOSITORY SERVICES AND COLLATERAL AGREEMENT
BETWEEN THE CITY OF WATAUGA, TEXAS
AND
SOUTHSIDE BANK, TYLER, TEXAS**

The CITY OF WATAUGA, hereinafter referred to as the "CITY", has selected Southside Bank, Tyler, Texas hereinafter referred to as the "BANK", as a depository to receive time or demand deposits from the CITY.

I.

The BANK and the CITY, by execution of this Depository Services and Collateral Agreement (the "Agreement"), hereby designate Federal Home Loan Bank - Dallas as the CUSTODIAN to hold in trust, according to the terms and conditions of this Agreement, any necessary collateral and substitute collateral which may be required under this Agreement.

II.

The CITY shall have the power to determine and designate the character and amount of the funds which will be deposited in the BANK. The CITY's deposits shall never be the subject of any garnishment or attachment, and the BANK shall not recognize any attempt to garnish or attach same or be a party to any action.

III.

During the term of this Agreement period, the CITY will through appropriate action of its Board, designate the Investment Officer or Officers, who singly or jointly will be authorized to represent and act on behalf of the CITY in any and all matters of every kind arising under this Agreement and to (a) execute and deliver to the BANK an electronic funds transfer agreement (and any addenda thereto), (b) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment or transfers on behalf of the CITY, and (c) make withdrawals or transfers by written instrument.

IV.

All funds on deposit with the BANK to the credit of the CITY above the FDIC insurance limit shall be secured by collateral as provided for in the CITY'S Investment Policy and Public Funds Collateral Act (Texas Government Code Chapter 2257) and upon which the CITY shall have first and prior lien.

V.

The total market value of the collateral (which includes accrued interest or income) securing such deposits will be in an amount at least equal to 102% of such deposits plus the amount of any accrued interest thereon and less the amount that such deposits are insured by an agency or instrumentality of the United States Government. The BANK will be liable for the monitoring and maintaining of the required collateral margins and levels at all times. The market price on

such collateral will be obtained from an independent source. The final determination of such value shall be at the discretion of the CITY, whose decision shall be final and binding.

VI.

The CUSTODIAN shall permit the CITY or its independent auditor to examine said securities in the presence of the appropriate officials of said the BANK at any time during normal business hours.

VII.

The BANK shall have the right of substitution of securities, and the lien hereby created thereon may be released by the CITY provided that the securities substituted meet the requirements set forth above and the CITY gives prior written approval which shall not be unreasonably withheld.

VIII.

If at any time the market value of said securities shall be or become more than 102% of the total amount of the CITY funds on deposit with the BANK, the BANK may request written approval from the CITY that certain securities be released from the pledge to bring the total to 102%.

The Custodian shall provide a monthly collateral report stating the full description of the collateral pledged, CUSIP number, the par and market value, and maturity date of all collateral.

IX.

The CUSTODIAN shall promptly provide the CITY with safekeeping or trust receipts covering all collateral and substitute collateral and clearly marked that these securities are "Pledged to the CITY OF WATAUGA".

X.

Should the BANK fail at any time to pay and satisfy, when due, any check, transfer, draft or voucher lawfully drawn against the CITY deposits, or in any manner breach its agreement with the CITY, the CITY shall give written notice of such failure or breach and the BANK shall have one (1) business day to cure such failure or breach. In the event the BANK shall fail to cure such failure or breach within one (1) day or should the BANK be declared insolvent by a Federal bank regulatory agency, it shall be the duty of the CUSTODIAN, upon demand by the CITY to surrender the collateral. The CITY may sell all or any part of such collateral and out of the proceeds thereof, pay the CITY all damages and losses sustained together with any expenses incurred by it of any kind on account of such failure. Collateral may be sold by the CITY at public or private sale provided however that the BANK shall have one business day notice of the time and place of the sale and the BANK and the CUSTODIAN shall have the right to bid at such sale.

XI.

The BANK shall send to the CITY, on an annual basis, audited annual financial statements, or a link to a website containing access to audited financial statements.

XII.

It is the intention of the parties hereto that the covenants and agreements, terms and conditions hereof shall extend to the entire period during which the the BANK shall act as depository for the CITY. Only after the return of all CITY deposits and interest, either the BANK or the CITY shall have the right to terminate this Agreement at any time by advance written to the other of its election to do so and this Agreement shall be void from and after the expiration of ninety (90) days after receipt of such notice, provided all provisions of this Agreement have been fulfilled. When the relationship of the CITY and the BANK shall have ceased to exist, and when the BANK has properly paid out all deposits to the CITY, the CUSTODIAN shall, upon notification by the CITY, release all collateral to the BANK.

XIII.

Notwithstanding any of the provisions hereof, the CITY Council shall have, and does hereby retain the right to utilize other depositories and the right to terminate this contract whenever in its judgement the interest of the CITY may demand.

XIV.

The execution of this agreement has been authorized by resolution of the Board of Directors or Loan Committee of the BANK dated May 1, 2014.

EXECUTED, this 26th day of Feb, 2015 under the provisions of FIRREA.

FOR THE BANK:

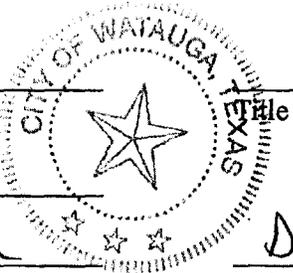
Brian K. McCabe
Signature

EVP
Title

BRIAN K. McCabe
Name (Printed)

FOR THE CITY:

Hector F. Garcia
Signature



Mayor
Title

Hector F. Garcia
Name (Printed)

Sandra Gibson
Signature

Director of Finance
Title

Sandra Gibson
Name (Printed)



**Addendum to the
Southside Bank Business Services Terms & Conditions**

Subsection U. GOVERNING LAW; WAIVER OF JURY TRIAL

Amend Venue from Smith County, Texas to Tarrant County, Texas.

AGREED AND ACCEPTED:

SOUTHSIDE BANK

BY: _____

TITLE: _____

DATE: _____

CITY OF WATAUGA

BY: _____

TITILE: _____

DATE: _____

SOUTHSIDE BANK BUSINESS SERVICES TERMS & CONDITIONS

Thank you for choosing Southside Bank (“Bank”) Business Services. This document, the Business Services Master Authorization Form (“Master Authorization Form”), and all related exhibits shall constitute a single agreement (collectively, the “Business Services Agreement” or “Agreement”). The Agreement provides product information, disclosures and descriptions of the business services that may be provided by the Bank in accordance with the terms herein (collectively, the “Business Services”). Other documents may become part of our Agreement depending on the Business Services you (the “Company” or “Customer,” terms which may be used interchangeably) select. Please read all documents carefully; they will govern the Business Services provided to you.

By signing and returning the required Master Authorization Form, you agree to the terms and conditions outlined herein for all Business Services selected by you. This Agreement will also govern any Business Services you may add in the future, along with other documentation that may be provided to you in connection with such Business Services or any “Additional Services,” as defined more fully in Section I.B., below.

Should you have any questions about the information contained in this document, please contact your Business Services representative.

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Exhibits

- Exhibit A (Wire Transfer Services – Authorized Users)
- Exhibit B (Wire Transfer Services – Authorized Accounts)
- Exhibit C (ACH Origination Forms and Schedules)
- Exhibit D (Lockbox Setup Form)
- Exhibit E (Remote Deposit Capture)
- Exhibit F (Secure Tokens)

Southside Bank BUSINESS SERVICES TERMS & CONDITIONS

I. GENERAL PROVISIONS.

Customer may request certain Business Services of Bank from time to time which Bank is willing to provide on the terms and conditions of this Agreement, which term includes the exhibits and related documentation attached hereto which pertain to the various Business Services to be provided by Bank. In the event of any inconsistency between the general provisions of this Section I, and those of any Business Service-specific section contained in this Agreement, the provisions of the Business Service-specific section shall govern.

A. DEFINITIONS.

The following terms and references shall have the meanings set forth below when used in this Agreement or any exhibits attached hereto:

- 1). "*Agent*" or "*Authorized Agent*" means any director, officer, partner, employee, representative, affiliate, third-party vendor or any other person acting on behalf of Customer with the actual, implied or apparent authority of Customer. Bank may rely on any grant of authority until it receives written notice of its revocation and is given a reasonable amount of time to act upon such notice.
- 2). "*Authorized Account*" means an account of Customer at Bank which is designated by Customer to be subject to this Agreement.
- 3). "*Authorized Instructions*" mean unconditional, immediately executable orders to Bank to transfer Available Funds from an Authorized Account received by Bank from an Authorized User in a manner approved by this Agreement.
- 4). "*Authorized User*" means any director, officer, partner, employee, representative, or any other person designated by Customer acting on behalf of Customer in reference to a specific service offered by Bank and used by Customer. The Company Administrator is also an "Authorized User" for the purposes of this Agreement.
- 5). "*Available Funds*" mean the positive, unrestricted balances in Customer's Authorized Account(s) which are available for withdrawal by Customer, pursuant to Bank's policies which are then in effect and the provisions and requirements of Regulation CC to the federal Expedited Funds Availability Act in effect from time to time.
- 6). "*Business Day*" shall mean Monday through Friday, excluding federal holidays; any reference to time of day shall mean and refer to Central Standard Time or Central Daylight Savings Time, whichever may be in effect on the day in question.
- 7). "*Check*" means all "items" under and as defined in Article 4-104(a)(9) of the U.C.C.
- 8). "*Company Administrator*" means the Customer's Authorized Agent appointed by a Customer signatory to this Agreement as set forth in the Master Authorization Form (as amended from time to time) who has the authority to access Business Services through Internet Services, create proprietary passwords for Customer, and create security profiles for each of Customer's Authorized Users. The Company Administrator is also an "Authorized User" for the purposes of this Agreement.
- 9). "*Cut-off Time*" means the time by which Authorized Instructions must be received by Bank to permit Bank to transfer funds on the same Business Day. The Cut-off Time may be changed from time to time.
- 10). "*Lead Account*" means a direct deposit account at Bank owned by Customer and designated to provide or receive internal funds transfers to or from the Sub Account(s).
- 11). "*NACHA Rules*" means the rules of the National Automated Clearing House Association and Appendices to the rules of the National Automated Clearing House Association, as amended from time to time.
- 12). "*Security Procedures*" mean the measures adopted by Bank and/or the Company, as provided in this Agreement.
- 13). "*Sub Account*" is a direct deposit account at Bank owned by Customer and designated to be brought periodically to a target balance pursuant to this Agreement.
- 14). "*Substitute Checks*" has the same meaning as the term is defined in the Check Clearing for the 21st Century Act and Regulation CC of the Board of Governors of the Federal Reserve System ("Federal Reserve Board").
- 15). "*U.C.C.*" means the Uniform Commercial Code as adopted and amended in the state in which Bank maintains company's Authorized Accounts.
- 16). "*Secure Token*" or "*Token*" means a small battery-powered compact electronic device that displays a string of randomly generated, unique digits displayed on a small screen that change every 60 seconds. The Secure Token is portable, can be carried on a key chain, does not connect to a computer and can be used with any operating system with no additional hardware or software. The token is also available in mobile application form and can be downloaded to mobile devices equipped to access the Apple App Store or the Google Play store. Not all phones are

compatible. Data Rates may apply.

B. BUSINESS SERVICES.

Bank will provide Customer with Business Service(s), upon Customer's and Bank's execution of the Master Authorization Form and any applicable exhibits to this Agreement as are required by Bank for such Business Services.

Bank may provide services that are not specifically included in the definition of Business Services pursuant to this Agreement ("Additional Services"). By accepting and using any such Additional Service(s), Customer agrees that the Additional Service(s) will be governed by this Agreement and any other conditions communicated to Customer by Bank. Certain Business Services included in this Agreement may not be available or may not be provided in certain market areas.

Upon Company's execution and delivery of the Master Authorization Form, Company agrees to the terms and conditions of the Agreement.

C. DESIGNATION OF ACCOUNTS.

Customer will provide Bank with written notice of the Authorized Accounts at Bank to which Customer wishes the Business Services to apply. Any changes in the designation of Authorized Accounts will be in writing and will provide reasonable prior notice of such change to Bank.

D. DESIGNATION OF AUTHORIZED AGENTS.

The persons authorized to initiate a Business Service are designated on the Master Authorization Form and any applicable exhibits. Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by the Authorized Agent and any such communication shall be deemed to have been signed by such person. Any changes in the designation of Authorized Agents will be in writing by the delivery of a new Master Authorization Form and any applicable exhibits and will provide three (3) business days for the Bank to act of such changes.

E. APPLICABILITY OF REGULATION CC.

The availability of funds in Authorized Accounts will be governed by Regulation CC to the federal Expedited Funds Availability Act. In the event of any conflict between the provisions of Regulation CC and the provisions hereof, the provisions of Regulation CC shall be controlling.

F. BANK RULES AND REGULATIONS.

All Business Services to be provided hereunder shall be in accordance with, and further subject to Bank's then applicable rules and regulations which apply to the Authorized Accounts and to such further policies and procedures with regard to the Business Services provided hereunder as may be communicated to Customer from time to time in writing. Any credit given to an Authorized Account is agreed to be provisional until Bank receives final settlement. If Bank does not receive final settlement, Bank is entitled to reverse the entry.

G. FEES AND PAYMENTS.

Customer shall pay Bank for the Business Services provided pursuant to fee schedules or other pricing information provided by Bank from time to time. Any fees for Business Services may be amended by Bank at any time. Bank may, at its option, include fees arising from this Agreement in an analysis statement of Customer's account relationship, bill Customer, or debit Customer's accounts for the Business Services rendered during the immediately preceding billing period. Bank may promptly debit Customer's accounts at Bank in the full amount of any such statement, or bill if the amount shown on the statement bill is not paid when due.

H. AUDITS.

Bank's willingness to provide Business Services to Customer is dependent on Customer's financial condition. Customer's financial condition is subject to review by Bank from time to time, and such reviews must be satisfactory to Bank in its sole discretion and opinion. In addition, Bank may at its sole discretion, and generally upon one Business Day's notice, perform onsite audits with regard to IT infrastructure, hardware and software security, physical security of systems and any other of Customer's systems or records used in conjunction with, or in relation to, Bank-provided products and services. Bank shall make all commercially reasonable efforts to avoid significant disruption of Customer's business operations in conducting such audit or inspection, and shall comply with Customer's reasonable workplace rules that have been communicated to the audit or inspection personnel in writing. Customer understands that Bank

must have these audits, inspection and related termination rights in accordance with the NACHA Rules governing Bank's activity as an Originating Depository Financial Institution ("ODFI"). Customer shall, upon request, provide to Bank any such information or assistance as Bank may require to perform any such review. Customer's failure to provide such information or assistance when requested shall constitute a breach of the Agreement and shall permit Bank to cease providing Business Services upon written notice to Customer.

I. PROPRIETARY INFORMATION.

Customer acknowledges that this Agreement, and all related documentation and systems used in providing Business Services, are the property of Bank. Customer agrees that it shall not acquire any rights or interests therein as a result of its use of the Business Services and shall keep all of Bank's proprietary information strictly confidential.

J. SECURITY PROCEDURES.

1). BANK AND CUSTOMER SHALL AGREE TO ONE OR MORE SECURITY PROCEDURES, TO THE EXTENT REQUIRED FOR A PARTICULAR BUSINESS SERVICE, THAT MUST BE USED BY BANK AND CUSTOMER IN CONNECTION WITH ANY BUSINESS SERVICE. CUSTOMER AGREES TO BE BOUND BY ANY PAYMENT ORDER, TRANSACTION OR SERVICE CHANGE ORDER THAT IS ACTED UPON BY BANK IN ACCORDANCE WITH SUCH SECURITY PROCEDURES. CUSTOMER IS SOLELY RESPONSIBLE FOR MAINTAINING ITS OWN INTERNAL SECURITY AND AGREES TO COMPLY WITH THE TERMS OF EXHIBIT F (SECURE TOKENS) AND TO USE APPROPRIATE CAUTION IN SELECTING ANY COMPANY OR INDIVIDUAL GIVEN ACCESS TO USE ONE OR MORE OF THE BUSINESS SERVICES. CUSTOMER SHALL NOT DISCLOSE ANY INFORMATION REGARDING THE ACCESS TO ALL OR PART OF ANY BUSINESS SERVICE.

2). CUSTOMER AND BANK REPRESENT, WARRANT AND MUTUALLY AGREE THAT ALL CONFIDENTIAL INFORMATION CONCERNING THE OTHER PARTY OR PARTIES THAT COMES INTO ITS POSSESSION IN CONNECTION WITH ANY OF THE BUSINESS SERVICES, INCLUDING, WITHOUT LIMITATION, SECURITY PROCEDURES OR ANY SECURITY CODES, PASSWORDS, LOGIN CREDENTIALS, KEYS, PERSONAL IDENTIFICATION NUMBERS, DIGITAL CERTIFICATES/SIGNATURES OR TEMPLATE NUMBERS ("CODES"), WILL BE MAINTAINED IN STRICTEST CONFIDENCE AND SHALL NOT BE USED OR DIVULGED TO ANY OTHER PARTY EXCEPT AS MAY BE NECESSARY OR ADVISABLE FOR THE DUE PERFORMANCE OF ANY OF THE BUSINESS SERVICES OR AS REQUIRED BY APPLICABLE LAW. CUSTOMER IS SOLELY RESPONSIBLE FOR THE PROCEDURES TO ASSURE THE INTERNAL CONFIDENTIALITY OF ITS OWN SECURITY PROCEDURES AND CODES. **IF CUSTOMER OR ITS AGENTS HAVE REASON TO BELIEVE THAT ANY SECURITY PROCEDURES OR CODES HAVE OR MAY BECOME KNOWN BY UNAUTHORIZED PERSONS (WHETHER OR NOT EMPLOYED BY CUSTOMER), CUSTOMER SHALL IMMEDIATELY NOTIFY BANK BY TELEPHONE AND CONFIRM SUCH VERBAL NOTIFICATION IN WRITING TO BANK WITHIN 24 HOURS.** BANK WILL REPLACE THE CODES IN ACCORDANCE WITH BANK'S SECURITY PROCEDURES. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR FUNDS TRANSFER INSTRUCTIONS AND OTHER COMMUNICATIONS INITIATED BEFORE BANK RECEIVED CUSTOMER'S NOTICE AND HAD A REASONABLE TIME TO ACT ON SUCH NOTICE. BANK RESERVES THE RIGHT TO CHANGE ANY OR ALL OF THE SECURITY PROCEDURES OR CODES BY GIVING VERBAL OR WRITTEN NOTICE TO CUSTOMER. BANK HAS AUTHORITY TO MANDATE SPECIFIC INTERNAL CONTROLS AT CUSTOMER'S LOCATION AND AUDIT OPERATIONS IF DEEMED NECESSARY.

3). FOR SOME BUSINESS SERVICES, BANK MAY CHOOSE TO HONOR CUSTOMER'S REQUEST TO GIVE BANK VERBAL INSTRUCTIONS REGARDING THE BUSINESS SERVICES. CUSTOMER AGREES BANK MAY IN GOOD FAITH RELY ON SUCH VERBAL INSTRUCTIONS THAT PURPORT TO COME FROM AN AUTHORIZED AGENT OF CUSTOMER.

4). BANK WILL HONOR CUSTOMER'S TRANSACTIONS AND INSTRUCTIONS (INCLUDING ADJUSTMENTS, AMENDMENTS AND CANCELLATIONS) ONLY WHEN CUSTOMER HAS COMPLIED WITH THIS AGREEMENT AND RELATED POLICIES AND PROCEDURES. BANK WILL BE UNDER NO OBLIGATION TO HONOR, EITHER IN WHOLE OR IN PART, ANY TRANSACTION OR INSTRUCTION THAT:

A) EXCEEDS CUSTOMER'S COLLECTED OR AVAILABLE FUNDS ON DEPOSIT WITH BANK;

- B) BANK HAS REASON TO BELIEVE MAY NOT BE AUTHORIZED BY CUSTOMER;
- C) INVOLVES FUNDS SUBJECT TO A HOLD, DISPUTE OR LEGAL PROCESS PREVENTING THEIR WITHDRAWAL;
- D) VIOLATES ANY PROVISION OF ANY APPLICABLE FEDERAL, STATE, OR LOCAL STATUTE OR REGULATION; OR
- E) BANK HAS REASONABLE CAUSE NOT TO HONOR, FOR THE PROTECTION OF EITHER BANK OR CUSTOMER.

5). CUSTOMER ACKNOWLEDGES, AGREES, AND CONSENTS ON BEHALF OF ITSELF AND ITS AGENTS THAT BANK MAY MONITOR AND RECORD TELEPHONE CONVERSATIONS AT ANY TIME WITHOUT FURTHER NOTICE TO THE PARTIES TO SUCH CONVERSATIONS. THE DECISION TO RECORD ANY CONVERSATION SHALL BE SOLELY AT BANK'S DISCRETION, AND BANK SHALL HAVE NO LIABILITY FOR FAILING TO DO SO.

K. ELECTRONIC COMMUNICATIONS.

Customer may elect to send or receive instructions or reports from Bank related to Business Services via electronic means, including, without limitation, facsimile transmission, voice mail, unsecured e-mail, pager or other telephonic methods ("Electronic Transmission"). Customer acknowledges that such Electronic Transmissions are an inherently insecure communication method due to the possibility of error, delay and observation or receipt by unauthorized personnel. Bank may rely in good faith on Customer's instructions regarding how and to what number or e-mail address Electronic Transmissions should be sent and may rely on any Electronic Transmission that it reasonably believes to have been initiated by Customer. Should Customer elect to send or receive Electronic Transmissions to or from Bank, Customer assumes all risks and Bank shall not be liable for any loss that results from the non-receipt, disclosure or alteration of any such Electronic Transmission.

L. COMPUTER EQUIPMENT AND SOFTWARE.

Many Business Services require the use of computer hardware and software. Customer is solely responsible for maintaining its computer equipment in good working order, with the necessary compatibility and format to interface with Bank's systems, including, without limitation, the ability to support Bank's security measures. Customer agrees to install upgrades and other system enhancements within a reasonable time of being requested to do so by Bank. License agreements for necessary software shall either be embedded in the software or separately documented. Customer agrees to comply with all applicable software license agreements, whether or not such agreements have been executed by Customer. Customer has no rights or ownership in any software provided by or through Bank and shall not transfer, copy, alter, modify, reverse engineer, reproduce, or convey in any manner, in whole or in part, any such software. Customer shall return all software and user manuals associated with any software upon request. Bank makes no representations or warranties with respect to any equipment or software provided by Bank.

Some Business Services are provided by Bank through access to a third-party network. Such Business Services are dependent upon the availability of the third-party network on conditions acceptable to Bank. Bank reserves the right to discontinue the Business Service or provide the Business Service through an alternative third-party network and shall have no liability should such network become unavailable. Bank does not warrant and shall not be responsible for Business Services received by Customer from any third-party network.

M. TERMINATION.

Either party may terminate this Agreement in its entirety, or any Business Services provided hereunder, upon 30-days' written notice to the other party. Bank, at its option, may terminate this Agreement or any Business Services provided to Customer at any time without notice to any party after the commencement of (a) any voluntary or involuntary bankruptcy by Customer; (b) any dissolution or liquidation by or against Customer; or (c) any merger or acquisition of Customer into or by any other entity; (d) upon the breach by Customer of the terms or conditions of this Agreement or any other agreement or obligation it has entered into with Bank or any of Bank's affiliates; (e) upon any event evidencing to Bank a material deterioration in the financial status or condition of Customer or that the likelihood that the credit risks undertaken by Bank in furnishing Business Services hereunder may be materially increased, including, but not limited to, insufficient Available Funds to pay items presented for payment or other return item risks; or (f) if Bank has reasonable cause to believe Customer is engaged in any fraudulent or criminal activity. All sums or fees Company owes to Bank for any Business Services shall be due and payable in full immediately upon the termination of the Business Services.

N. BANK LIABILITY.

EXCEPT AS MAY BE MODIFIED BY ANY EXHIBITS TO THIS AGREEMENT, BANK SHALL ONLY BE LIABLE TO THE CUSTOMER UNDER THIS AGREEMENT FOR BANK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN PERFORMING BUSINESS SERVICES FOR CUSTOMER. BANK SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO CUSTOMER WITH REGARD TO ANY OTHER MATTER, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR BREACH OF CONTRACT, ANY ACT OR OMISSION BY ANY CLEARING HOUSE, ANY OTHER FINANCIAL INSTITUTION, A FEDERAL RESERVE BANK, OR ANY OTHER PERSON OR ENTITY. BANK SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY NONPERFORMANCE, DAMAGES OR LOSSES DUE TO CAUSES OR CIRCUMSTANCES OUTSIDE OF BANK'S REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION, STRIKE, BREAKDOWNS, NON-FUNCTIONING OF EQUIPMENT, INCOMPATIBLE SOFTWARE OR HARDWARE, ELECTRONIC DATA CORRUPTION, LEGAL CONSTRAINT, INTERRUPTION OF TRANSMISSION OR COMMUNICATION FACILITIES, WAR, ACTS OF TERROR, EMERGENCY CONDITIONS, OR CYBER ATTACKS (INCLUDING DENIAL OF SERVICE (DOS), ETC.). IN ADDITION, UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, BANK WILL NOT BE LIABLE FOR ANY LOSS OR LIABILITY CUSTOMER MAY INCUR RESULTING IN WHOLE OR PART FROM ANY FAILURE OR MISUSE OF CUSTOMER'S EQUIPMENT; THIRD-PARTY SOFTWARE; OR ANY FAILURE BY CUSTOMER TO IMPLEMENT APPROPRIATE SECURITY PROCEDURES.

IN THE EVENT BANK SHALL BECOME LIABLE TO CUSTOMER FOR ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH LIABILITY WILL BE LIMITED TO ACTUAL DAMAGES PROVED. IN NO EVENT SHALL THE BANK HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES THE COMPANY MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE BANK AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY THE COMPANY MAY ASSERT. CUSTOMER SHALL PROMPTLY FURNISH TO BANK WRITTEN PROOF OF ANY LOSS ATTRIBUTABLE TO A BUSINESS SERVICE AND SHALL PROVIDE ALL REASONABLE ASSISTANCE TO BANK IN RECOVERING THE LOSS. IF CUSTOMER IS REIMBURSED FOR ANY LOSS BY BANK, BANK SHALL BE SUBROGATED TO ALL RIGHTS OF CUSTOMER RELATED THERETO. NOTWITHSTANDING THE PROVISIONS SET FORTH ABOVE, ANY LIABILITY OF BANK FOR A TRANSFER INCORRECTLY MADE SHALL BE LIMITED TO THE AMOUNT OF SUCH TRANSFER WHICH IS NOT RECOVERED WITHIN A REASONABLE PERIOD OF TIME.

O. CUSTOMER LIABILITY.

Customer shall be responsible for compliance with all rules and regulations of any local, state or federal entity, and with the Security Procedures and all operating procedures of Bank which are communicated to Customer to the extent the same are applicable to Customer. Customer shall indemnify and hold Bank harmless from and against any and all claims, demands, loss, liability or expenses (including attorneys' fees and costs) resulting directly or indirectly from (a) a breach or noncompliance of such rules, regulations, Security Procedures or operating procedures by Customer; (b) the delay of any clearing house or any financial institution other than Bank in crediting, or the failure of such institution to credit the amount of any transaction; or c) the claims of any third party arising from the Business Services provided hereunder. Customer may utilize a courier, armored or otherwise, to deliver or receive banking transactions, and in so doing, agrees at all times and in all respects that the (a) courier is the Agent of Customer and not of Bank; (b) Bank makes no representation or warranty regarding, and assumes no responsibility with respect to, any services performed or promised by courier; and (c) Customer assumes all risk of loss (including loss or theft by third parties or employees of Customer or courier) prior to Bank's acceptance of deliveries from courier and subsequent to courier's acceptance of deliveries from Bank. Customer agrees it and courier will be responsible for all loss recovery procedures and processes, although Bank will undertake reasonable efforts to facilitate loss recovery.

COMPANY WILL INDEMNIFY AND HOLD BANK, ITS OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, ATTORNEYS, AND CONTRACTORS, HARMLESS FROM ANY CLAIM, LOSS, PENALTY, ASSESSMENT, COST OR DAMAGE, WHETHER IN CONTRACT OR IN TORT (INCLUDING REASONABLE ATTORNEYS' FEES), AND ARISING OUT OF ANY ERRORS, NEGLIGENCE, ACTION, NON-ACTION OR INVOLVEMENT BY COMPANY OR BANK OR THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, CONTRACTORS, AND ATTORNEYS, UNDER THIS AGREEMENT OR IN CONNECTION WITH THE BUSINESS SERVICES PROVIDED UNDER THIS AGREEMENT OR OTHERWISE,

INCLUDING, BUT NOT LIMITED TO, THOSE ASSERTED BY THIRD PARTIES FOR REIMBURSEMENT OR DAMAGES AND THOSE WHICH ARISE OUT OF OR UNDER THE ELECTRONIC FUND TRANSFER ACT, ANY APPLICABLE STATE ELECTRONIC FUND TRANSFER RULES OR REGULATIONS OR ANY RULES OR GUIDELINES OF ANY AUTOMATED CLEARING HOUSE (“ACH”).

P. NO IMPLIED WAIVER.

No failure by either party to insist upon strict performance of any term or obligation in this Agreement, or any exhibit hereto, or to exercise any right or remedy under this Agreement, or any exhibit hereto, shall constitute a waiver of any such term, obligation, right or remedy.

Q. INFORMATION SHARING.

Customer agrees Bank may share information with Bank’s affiliates about Authorized Accounts or Business Services for regulatory compliance, credit decision-making, marketing Company’s products and services, administrative and other banking purposes.

In the event Customer requests Bank to provide Business Services to a parent company, subsidiary, affiliate, or other commonly-owned company, Customer agrees it shall be jointly and severally liable for such company’s obligations under this Agreement. Customer hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Business Service or requested by Customer, and all other aspects of the performance hereby by Bank and Customer, have been duly authorized by all necessary parties, including, without limitation, the accountholder of each Authorized Account, and that Customer has obtained and shall maintain in its regular business records and make available to Bank upon reasonable demand, for a period of seven years after termination of the Business Service(s), adequate documentary evidence of such authorization from the accountholder of each Authorized Account, executed by the duly authorized officer(s) of each accountholder, and further represents and warrants that each transfer or commingling of funds authorized hereunder is not in violation of any agreement, by law or board resolution of Customer or any of its affiliates or subsidiaries, nor is it in violation of any applicable federal, state, or local law or regulation, or any decree, judgment, or order of any judicial or administrative authority. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon Bank’s performing each transfer and commingling of funds authorized hereunder.

If Bank receives an adverse claim against any Authorized Account, and Bank reasonably believes that it will not be protected if the claim is ignored, Customer agrees Bank may place a hold on the affected Authorized Account or move the disputed funds to a holding account. Any such action will remain in place only so long as reasonably necessary to resolve the claim or employ legal remedies to allow a court to decide such claim. Bank shall have no liability for dishonored transactions which result from such action, and Customer agrees to reimburse Bank for all costs, including attorneys’ fees, incurred due to such adverse claim.

R. SEVERABILITY.

Should any provision of this Agreement, or any exhibit hereto, contravene any applicable law or regulation of any regulatory agency, or should any provision be held invalid or unenforceable by a court or regulatory body of competent jurisdiction, then each such provision shall be void, and all other provisions of this Agreement, and any exhibit hereto, shall remain in full force and effect.

S. GOVERNING LAW.

This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas, except to the extent the federal law is controlling or provides greater rights or remedies to Bank. ACH services shall also be governed by NACHA Rules. It shall be the responsibility of Customer to ensure that each ACH transaction, wire transfer, and check conversion complies with all applicable laws, rules, and regulations. This includes, but is not limited to, the Electronic Fund Transfer Act and its implementing Regulation E, Check Clearing for the 21st Century Act, Bank Secrecy Act, and sanctions enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). It shall further be the responsibility of Customer to obtain information regarding such OFAC enforced sanctions (OFAC compliance Hotline 1-800-540-OFAC).

T. ASSIGNMENT.

Neither party hereto shall assign or delegate any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, Bank shall be permitted without the prior consent of Customer, to assign some or all of its obligations hereunder to a processor or servicing agent designated

by Bank who shall be subject to the terms for provision of the subject Business Service. This Agreement shall be binding upon and benefit the respective successors and assigns of Customer and Bank, subject to the provisions above.

U. GOVERNING LAW; WAIVER OF JURY TRIAL

This Agreement shall be governed by and construed under the laws of the State of Texas, and the parties agree to subject themselves to the jurisdiction of the federal and state courts to the maximum extent permitted by law. You hereby agree to accept service of process by certified mail, return receipt requested, and as an independent covenant, hereby expressly waive trial by jury in any action brought with respect to this Agreement. Venue for any action against the Bank shall be in Smith County, Texas.

V. ATTORNEYS' FEES.

In the event of any conflict pertaining to the subject matter of this Agreement in addition to any remedies provided herein or by applicable law, the prevailing party shall be entitled to recover all costs and expenses incurred by the prevailing party in defending itself or in enforcing its rights, including, without limitation, court costs, fees of consultants, and reasonable attorneys' fees.

W. AMENDMENTS.

The Bank may alter or amend this Agreement at any time upon thirty (30) days' notice to Customer. Notice by Bank of any changes to this Agreement shall automatically become effective **30 days after the date** of such notice unless rejected by the Company, in writing, within 10 days after the date of such notice. If the Company rejects any such change, then affected Business Services shall automatically terminate.

1. In the event performance of the Business Services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which the Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and the Bank shall incur no liability to the Company as a result of such violation or amendment.
2. No course of dealing between the Bank and the Company will constitute a modification of this Agreement or constitute an agreement between the Bank and the Company regardless of whatever practices and procedures the Bank and the Company may use.
3. Notwithstanding the foregoing, a change to the terms and conditions of this Agreement made by Bank based upon its determination that the change is necessary (a) to avoid a potential loss to Bank or the Company, or (b) due to circumstances that substantially affect Bank's operations, shall be effective immediately upon receipt of notice by Company.
4. Any changes or modifications requested by Company to the Business Services provided by Bank are subject to the written approval of Bank. If Bank so elects, price changes may be implemented concurrently with the requested changes or modifications.

X. ENTIRE AGREEMENT.

Each party has read this Agreement and agrees to be bound by its terms and conditions. This Agreement supersedes all prior verbal or written agreements and now together with its Master Authorization Form and all related exhibits constitute the complete agreement between the parties with regards to its subject matter and cannot be altered or amended except pursuant to Section I(W). No representation or statement not expressly contained in this Agreement or in any amendment shall be binding upon Bank or Customer.

Y. FURTHER ASSURANCES.

The parties agree to execute and deliver all additional documents and give all further assurances reasonably necessary to carry out the intent of the parties with respect to these Business Services. The Customer agrees to deliver to Bank, such additional executed documents required by the Bank from time to time to obtain and to continue to receive the specific Business Services requested by the Customer, including deposit account signature cards, declarations, authorizations, resolutions, enrollment forms and updated financial statements. In addition, if there is an occurrence of a material change in the customer's credit and/or risk analysis criteria, the Bank may determine, in its sole and absolute discretion, to either refuse to enter into this Agreement, refuse to provide specific Business Service(s) to Customer or discontinue providing specific Business Service(s) and/or immediately terminate existing agreement with Customer per Section I(M) above.

Z. EXECUTION AUTHORITY.

The individual(s) executing the Master Authorization Form hereby represents and warrants that he/she/they have full right, power and authority to execute this Agreement on behalf of Customer and that execution and performance of this Agreement by Customer has been authorized by all necessary corporate, membership, or partnership documentation as the case may be.

AA. REPRESENTATIONS AND WARRANTIES.

Customer represents, warrants, and covenants to and with Bank:

- 1). Customer is duly organized, validly existing and in good standing in the state of its organization;
- 2). The execution, delivery and performance of all documents or agreements provided in connection with any Business Services are within Customer's powers, have been duly and validly authorized and do not contravene its charter, by-laws or any indenture, agreement, undertaking, law, regulation or order binding it;
- 3). No approval, consent or authorization of any government authority is necessary for Customer to obtain any Business Services from Bank; and
- 4). The terms and conditions contained in this Agreement are valid and binding obligations of Customer, enforceable in accordance with their terms.

EXCEPT AS REQUIRED BY LAW, BANK MAKES NO REPRESENTATIONS, WARRANTIES, AGREEMENTS OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION: (1) ANY REPRESENTATIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO ANY ITEMS OR BUSINESS SERVICES PROVIDED BY BANK TO COMPANY; (2) ANY WARRANTIES ARISING UNDER THE U.C.C. AS ADOPTED IN THE STATE IN WHICH BANK MAINTAINS COMPANY'S ACCOUNTS; (3) ANY WARRANTIES WITH RESPECT TO COMPLIANCE WITH THE ELECTRONIC FUND TRANSFER ACT OR REGULATION E OF THE CONSUMER FINANCIAL PROTECTION BUREAU; (4) ANY RULE OR REGULATION OF ANY AUTOMATED CLEARING SYSTEM; OR (5) ANY STATE ELECTRONIC FUND TRANSFER STATUTE OR REGULATION.

BB. NOTICES.

Notices and communications from Bank to Company regarding any Business Services may be in writing, postage prepaid by first class mail or hand-delivered, or may be delivered electronically by e-mail or, if a Business Service is provided by access to an internet website, via the internet website.

Except as otherwise expressly provided herein, the Bank shall not be required to act upon any notice or instruction received from Customer or any other person, or to provide any notice or advice to Customer or any other person with respect to any matter. Except as otherwise provided herein, any notice to the Bank under this Agreement must be in writing and delivered by express carrier, faxed, or sent by United States registered or certified mail and addressed to:

Southside Bank
1201 S. Beckham Ave.
Tyler, TX 75701
ATTN: Business Services
Phone: (903) 531-7111
Fax: (903) 535-4422

And if correspondence is sent to the Customer, it will be sent to the current account address as it appears on file at Southside Bank, unless another address is substituted by notice delivered or sent as provided herein.

CC. ELIGIBLE ACCOUNTS.

Bank will provide Company with Business Services through and using the following designated types of account:

- 1) SMART Business Checking
- 2) Regular Business Checking
- 3) Value Business Checking
- 4) Premier Checking

Bank will provide Company with limited Business Services on the following designated types of Accounts:

- 1) Advantage Investment Checking
- 2) Platinum Advantage Investment Checking

The following accounts are not eligible for Business Services without one of the above referenced checking accounts:

- 1) IOLTA Account
- 2) Business Savings
- 3) The Bank reserves the right to restrict additional account types

Account eligibility requirements may be reviewed for exceptions.

DD. MISCELLANEOUS.

- 1) Bank is an independent contractor and not Company's agent, partner or employee.
- 2) Bank will use reasonable efforts to hold in confidence and not disclose to a third-party, other than its affiliates, employees, agents and independent contractors, all confidential information received by Bank in the course of rendering its Business Services, except to the extent disclosure is required by legal process or by any regulatory or supervisory agency. The Company acknowledges and agrees that Bank may employ third-party servants, agents, independent contractors or other persons or entities to perform such Business Service, and that Bank will not be liable for disclosure by any third-party servants, agents, independent contractors or other persons or entities.
- 3) Absent manifest error, the records of Bank shall be conclusive evidence with respect to the matters governed by this Agreement.
- 4) Company expressly warrants that Company is not a "Consumer" as defined in section 1005.2(e) of Regulation E of the Consumer Financial Protection Bureau pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*), and that Business Services are for business accounts only and not personal, family or household purposes. Account eligibility may be reviewed for exceptions.
- 5) All of Bank's obligations, responsibilities and covenants set forth in this Agreement, whether express or implied, shall be suspended if at any time Bank's compliance is prevented by, or is in conflict with, any federal or state law, regulation or rule, the order of any court of competent jurisdiction, acts of God or of the public enemy, war, epidemic, strike, lockout, riot, weather condition, equipment failure or malfunction, material shortage, electric power disruption or shortage, communication failure or other condition or circumstance not wholly controlled by Bank.
- 6) Nothing in this Agreement nor any course of dealing between the Company and Bank constitutes a commitment or obligation to lend money or extend credit to the Company or to otherwise advance money to the Company for any reason, including payment of any item contrary to Bank's published availability schedules.
- 7) The General Provisions, as set forth in Section I of this Agreement, apply to any Business Services obtained by Company from Bank, whether or not that particular Business Service is provided for specifically in this Agreement or in other agreements between the Company and Bank and further apply to any Additional Services, including new services introduced by Bank and obtained by Company after the date on which this Agreement is delivered to Company.
- 8) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

EE. INTERNET GAMBLING.

The Unlawful Internet Gambling Enforcement Act prohibits gambling businesses from knowingly accepting payments through card systems, ACH, wires, or checks to transmit any bet or wager by any means involving the use of the internet that is unlawful under any applicable federal or state law in the state or tribal lands in which the bet or wager is made. Such restricted transactions are prohibited from being processed through this account or relationship.

II. INTERNET SERVICES.

Upon Company's execution and delivery of a set-up or service instruction form for any Business Services or upon its use of a Business Service, whichever occurs first, Company agrees as follows:

Bank has agreed to provide information reporting systems as defined herein to allow Customer to access information and utilize Business Services over the internet ("Internet Services"). From time to time, Bank may add additional features or services to its Internet Services, and those additional features or services will be governed by the terms of this Agreement, its exhibits, and other applicable agreements, including account agreements, between Bank and Customer.

A. INTERNET SERVICES.

Bank will provide Customer with access to Bank's information reporting systems as agreed by Bank and Customer, for Customer's Authorized Accounts, subject to the terms and conditions of this Agreement. Information reporting systems permit the Customer to view balances, transactions, and statements, and to initiate stop payment orders, wire transfers, internal transfers, ACH entries, and such future services as are provided by Bank.

Customer agrees to run antivirus software before transmitting data to or through any Bank website. Customer may use any commercially available, industry recognized Antivirus software of the type that detects and disinfects viruses automatically, without the need for the Customer to execute virus scanning for each file manually. Customer shall update its antivirus software on a regular basis to maintain a commercially reasonable level of security.

Customer is required to maintain system Security Procedures including, but not limited to, antivirus software, firewalls and data security protection and is solely responsible for securing, encrypting, protecting and otherwise safeguarding Customer-owned data, software and hardware.

Customer understands, acknowledges and agrees that the Bank is not responsible for any loss or damages resulting from any errors or failures of the Customer's computer or data processing systems, including, but not limited to, any computer virus or malware attack such as a keystroke logging program or similar malware, any attack by a person attempting or actually gaining unauthorized access to Customer-owned data or any internet-related problems that may be associated with the Customer's access and use of a Business Service.

Customer agrees and acknowledges that the threat of fraud resulting from theft of electronic data is a serious potential threat to Customer's business and, accordingly, Customer will take reasonable steps to make certain that its computers and data security systems are protected from unauthorized access or use, and, in the event of any unauthorized access or use, Customer will take reasonable steps to immediately inform Bank of such security breach. Customer further agrees to and acknowledges that Bank may restrict in part or in whole access to all Business Services systems until reasonable evidence that all threats and unauthorized access have been removed.

B. SECURITY.

Customer acknowledges the importance of maintaining the various passwords and security devices in the strictest confidence. Customer is solely responsible for the misuse, theft or misappropriation of passwords. The Authorized Accounts must be owned by the same company or family of companies, and the signatories to this Agreement must be authorized to act for all of the Authorized Accounts, as provided in the Account Agreements and any authorizing resolutions. Customer shall not resell, assign, or otherwise provide for the benefit of a third party any information reporting services, and Customer shall not permit any third party to obtain access to the information reporting systems.

C. LIABILITY.

Bank shall only be liable to the Customer under this Agreement as described in Section I(N) above.

Bank shall have no responsibility to verify Authorized Instructions received through the information reporting system if the Authorized Instructions are made in compliance with this Agreement. As long as Bank complies with its current applicable Security Procedures, Customer shall be responsible for unauthorized Entries and Transfer Orders, and shall hold Bank harmless there from. Bank may recognize deviations from stated Security Procedures, if Customer has by custom and practice routinely ratified Entries or Transfer Orders representing a standard deviation from Security Procedures. Customer acknowledges and agrees that the Security Procedures established by Bank are commercially reasonable.

D. TRANSACTION PROCESSING.

Wire Transfers: Wire transfers initiated through Bank's electronic platform and received by Bank from 8:00 am to 4:00 pm Central Time on a Business Day will be processed same day. If received after Cut-Off Time, Bank will process the wire on the next Business Day. International wire cutoff time is 2:00 pm Central Time. International wires are not processed by Bank's electronic platform and must be initiated in a branch.

ACH Transactions: ACH transactions initiated through Bank's electronic platform and received by Bank before 4:00 pm Central Time on a Business Day will be processed same day. If received after Cut-Off Time, Bank will process the ACH transaction on the next Business Day.

Book Transfers: Book transfers initiated through Bank's electronic platform and received by 11:30 pm Central Time on a Business Day will be processed same day.

Stop Payment Requests: Stop-payment requests initiated through Bank's electronic platform and received by Bank from 8:00 am to 4:00 pm Central Time on a Business Day will be filed in relation to the Authorized Account the same day. Reasonable notice of a stop-payment request must be given to Bank at least 24 hours prior to item being presented for payment.

E. TERMINATION.

Notwithstanding any other provision regarding termination set forth herein or in any other agreement between Bank and Company, Bank may terminate Company's access to and its ability to transact Business Services through Bank's Business Services at any time, effective immediately. Bank shall use reasonable efforts to give notice of the termination to Company promptly, and will then provide written confirmation of the termination if the initial notice of termination was not communicated in writing. If access is terminated, Bank may require execution of additional documents or agreements to resume the use of Bank's Business Services. The terms and provisions of such additional documents or agreements will remain in effect upon termination of Internet Services.

F. TEMPORARY LIMIT INCREASES.

Customer agrees that limits will be established with regards to transaction amounts, daily limits and approval limits for ACH origination, Wire Transfer origination and Remote Deposit Capture Services. Periodically, limits may need to be increased in order to accommodate transactions that would exceed Customer's daily limits. Customer agrees that the Bank may act on a temporary limit increase received via email, in writing or by phone from the designated Company Administrator or Authorized User for the Authorized Account that the transaction will be performed on. Customer agrees that authentication procedures may be required on temporary limit increases.

III. WIRE TRANSFER SERVICES.

Upon Company's execution and delivery of the Master Authorization Form for Wire Transfer Service, Exhibit A (Wire Transfer Agreement – Authorized Users), and Exhibit B (Wire Transfer Agreement – Authorized Accounts), or upon Company's use of the Wire Transfer Service, whichever occurs first, Company agrees as follows:

Customer desires to enter into an agreement to authorize the wire transfer of funds from Authorized Accounts at Bank at such times, and in such amounts as Customer may from time to time direct. Bank has agreed to provide the Wire Transfer Services as set forth herein.

Bank is hereby authorized to honor, execute and charge to the Authorized Account(s) of Customer any and all wire transfer payment orders initiated electronically, in writing, or by telephone (a) from Customer, or (b) from an Authorized User as designated in Exhibit A, which is attached hereto and incorporated herein for all purposes, or as designated by Customer through Bank's electronic platform. When authorizations and instructions are made in accordance with the Security Procedures set forth below, Bank may transfer funds from the Authorized Account(s) of Customer authorized in Exhibit B, which is attached hereto and incorporated herein for all purposes based upon one or more payment orders initiated by draw down request or another financial institution to transfer funds on behalf of Customer to such financial institution.

Terms in this Section III which are not defined in this Agreement shall have the same meanings as defined by the U.C.C. Article 4A.

A. PAYMENT ORDERS AND WIRE TRANSFERS.

- 1). Bank shall be under no obligation to comply with any payment order or make any wire transfer which would exceed the available collected balance of funds on deposit in the Customer's Authorized Accounts at Bank, as determined by Bank.
- 2). Customer shall have no right to cancel or amend a payment order after it is accepted by Bank, except under mutual agreement. In the case of an erroneous or otherwise irregular wire transfer, Bank may, but shall not be obligated to, on its own initiative, request a receiving bank, beneficiary's bank or a beneficiary to return the funds previously transferred on behalf of Customer. A payment order issued by Customer is paid at the time the payment order is executed, at the time the transfer is credited to the beneficiary's account on the books of Bank, or at the time the advice of credit for such transfer is sent or telephoned to the beneficiary by Bank, whichever occurs first.
- 3). Bank may handle payment orders from Customer and those which it may receive from other Customers in any order selected by Bank, in its sole discretion, and Bank may use any means or routes which it, in its sole discretion, may consider suitable for executing a payment order.
- 4). Bank may establish a Cut-Off Time(s) on a wire-transfer Business Day for the receipt and processing of payment orders and communications canceling or amending payment orders. Any payment order or communication received after such Cut-Off Time or on a Saturday, Sunday or Bank holiday shall be deemed received on the next wire-transfer Business Day.
- 5). Bank and any subsequent receiving bank may execute payment orders for the transfer of funds to a beneficiary in the name of the beneficiary and/or the account number of the beneficiary furnished to Bank by Customer. In the event there is a discrepancy between the name of the beneficiary and the account number, the payment order may be executed by use of the account number.
- 6). If the Customer requests a payment order be made in other than U.S. dollars, Bank may transfer payment in the currency of the beneficiary bank's country at Bank's buying rate of exchange for U.S. dollars. If the funds transfer is returned or cancelled, the Customer agrees to accept the refund in U.S. dollars in the amount of the foreign money settlement, based on the current buying rate of the bank converting the currency to U.S. dollars on the date of the refund or cancellation, less all fees, charges and expenses incurred by Bank.

B. SECURITY PROCEDURES.

- 1). Customer agrees to comply with these Security Procedures, which Customer acknowledges and agrees are commercially reasonable, when Customer requests a Wire Transfer from Bank. The purpose of these Security Procedures is only to verify that Customer initiated the Wire Transfer request, not to detect any error in the content or transmission of such a request. Customer is responsible for any error in the content or transmission of such a request, as described in the terms of this Agreement.

- 2). Customer must designate Authorized Users and Authorized Accounts before Bank may transfer any funds pursuant to Customer's Wire Transfer request.
- i). Customer shall designate Authorized Users by delivering a fully completed and executed copy of Exhibit A to Bank. Additional Authorized Users may be subsequently designated by the Company Administrator electronically on Bank's electronic platform. Authorized Users designated electronically will not be permitted to initiate wire transfer instructions until Bank has reviewed the designation and issued a corresponding Secure Token to the Company Administrator. All Secure Tokens are issued at the sole discretion of the Bank, and the Bank reserves the right to not approve any requested designation. Authorized Users designated electronically are only permitted to initiate wire transfer instructions electronically. Only Authorized Users designated on a fully completed and executed copy of Exhibit A may initiate wire transfer instructions in person, by fax, or by telephone.
 - ii). Customer shall designate Authorized Accounts by delivering a fully completed and executed copy of Exhibit B to Bank.
- 3). Wire Transfer requests may only be initiated (a) electronically on the Bank's electronic platform; (b) in writing on a Bank Wire Transfer Request Form, submitted to the Bank in person or by fax; or (c) by telephone. Wire Transfer requests submitted in writing must contain an Authorized User's signature. The submission of a Wire Transfer request by telephone is only permitted when Customer is sending a Wire Transfer to a beneficiary to whom Customer has previously sent a Wire Transfer using Bank's Wire Transfer Service. Customer accepts all risks and liabilities arising from the use of fax or telephone to submit a Wire Transfer request. All Wire Transfers will be processed at the sole discretion of the Bank.
- 4). *Single Authorization.* **Bank recommends the use of Dual Authorization;** Customer may instead choose Single Authorization by indicating that choice on a completed and executed Master Authorization Form. Bank will attempt to verify that a payment order or communication amending or canceling a payment order is that of Customer according to the following procedures ("Single Authorization"):
- i). For a Wire Transfer initiated electronically, the Authorized User initiator is required to successfully enter login credentials to gain access to and use of the Bank's electronic platform and required to successfully enter the Secure Token security number to initiate the Wire Transfer request.
 - ii). For a Wire Transfer initiated in person, the Bank will review the Authorized User's government-issued photo identification and compare the Authorized User's signature against the signature on file.
 - iii). For a Wire Transfer initiated by fax, the Bank will compare the Authorized User initiator's signature against the signature on file.
 - iv). For a Wire Transfer initiated by telephone, the Authorized User initiator is required to successfully provide a Personal Identification Number ("PIN")
- 5). Regardless of method of initiating a Wire Transfer request and regardless of whether Single Authorization or Dual Authorization is chosen by Customer, Bank may, *at Bank's option*, call Customer at a telephone number specified by Customer to verify any Wire Transfer request. Such a callback may occur solely at Bank's discretion and is not required.
- 6). Customer agrees that these Security Procedures govern the verification of Wire Transfer requests initiated by Customer pursuant to this Agreement and that these Security Procedures constitute a commercially reasonable method of providing security against unauthorized payment orders. Each time Customer initiates a Wire Transfer request, Customer represents, warrants, and agrees that, in view of Customer's then-present requirements, these Security Procedures are satisfactory for Customer's business purposes and are commercially reasonable under the circumstances; if Customer has selected Single Authorization, Customer further represents, warrants, and agrees that Customer has been offered the opportunity to use Dual Authorization and Customer, by executing the Master Authorization Form, expressly agrees in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by Bank in compliance with the security procedure chosen by the Customer.
- 7). Customer acknowledges and agrees that Bank may execute such Wire Transfer request if Bank acts in good faith according to these Security Procedures, even if such request is, in fact, unauthorized.
- 8). Bank may elect not to act upon a Wire Transfer request, for Customer's protection, if the request is not initiated in accordance with these Security Procedures, if Bank is unable to obtain proper verification of such payment order satisfactory to Bank, or if there is any inconsistency between a Wire Transfer request and information previously supplied to Bank.

C. REVIEW OF STATEMENTS AND ADVICES.

Customer will review promptly and reconcile Customer's statements of account sent by Bank and shall report to Bank's Wire Transfer Department any discrepancies between Bank records and Customer records within a reasonable time, not to exceed thirty (30) calendar days from the date the statement of account is received by Customer. The failure of Customer to notify Bank of any discrepancies within the specified time period will relieve Bank of any liability with respect to any compensation provided for in Section III(D) below.

D. COMPENSATION.

Subject to Section III(C) above, compensation, if any, for the loss of interest or use of funds due Customer as a result of a Bank's error or Bank's failure to execute a transfer request on the date received (if such request was received prior to Bank's deadline) and when such execution or error was within Bank's control, will be for a period not exceeding the lesser of sixty (60) days of the period between the date of the request and the date of actual transfer or error correction, and will be either of the following forms at the option of Bank:

- 1) adjusting Customer's account balance(s) at Bank to reflect properly the average balances that would have occurred; or
- 2) reimburse Customer an amount equal to interest at a rate not exceeding the average Federal Funds rate computed on a daily basis for the period and amount in question. In any event, Bank shall not be liable for payment or of damages arising out of or in connection with a payment order or wire transfer after one year from the date of such payment order or wire transfer.

E. RESPONSIBILITY OF THE BANK.

- 1). Bank shall have no responsibility or liability for any inaccuracy, interruption or delay in transmission and for claims occasioned by any circumstances, including any act or failure to act by a third person or entity, beyond Bank's reasonable control.
- 2). Customer will hold Bank harmless and indemnify Bank for any and all claims, demands, expenses (including but not limited to attorney's fees and costs), loss or damage of any nature whatsoever arising directly or indirectly from any payment order initiated pursuant to this Agreement, or other matters related to this Agreement, including but not limited to any election made by Bank pursuant to this Agreement, except for liability to Customer caused by gross negligence or willful misconduct of Bank. In no event shall Bank be liable for any punitive, special, consequential or incidental damages, even if Bank has been informed of the possibility of such damages, except as allowed by law.
- 3). Customer will assume full responsibility for all transfers executed by Bank in good faith and in accordance with these procedures, agrees that Bank shall be conclusively deemed to have discharged its duty to act in good faith if it has followed the transfer procedures as contained in Sections III(A)-(E) or other documents of similar purport, and agrees that Bank assumes no responsibility beyond its duty to exercise ordinary care.
- 4). This Agreement is governed by the provisions of Regulation J, 12 C.F.R. Part 210, Subpart B, including the Appendices, ("Fedwire Regulation") to the extent that any wire transfer request is carried out. This Agreement is also subject to all applicable Operating Circulars of the Federal Reserve Bank in the district in which the Bank is located and any other applicable provisions of federal or state law. To the extent that the Fedwire Regulation does not apply to this Agreement, this Agreement shall be governed by the laws of the State of Texas.

F. CONFIDENTIAL INFORMATION.

Customer will keep confidential all repetitive transfer numbers of Customer and all the names of Authorized Users, and Bank shall have no liability for losses occasioned by unauthorized access to such information.

G. AMENDMENT

In the event there is a change by Customer to any exhibit, such change shall be in writing, signed by Customer and shall not be effective until such time as it is received and accepted by Bank and Bank has had a reasonable opportunity to act on it.

H. NOTICES.

- 1). Any notice to be given under this Section III, if by Customer shall be in writing, signed by Customer and shall be considered to be given when received and accepted by an appropriate person in Bank's Wire Transfer Department and Bank has had a reasonable opportunity to act on it and, if by Bank, except as provided in Section I(W)(2) above, may be oral or in writing and shall be effective when given.
- 2). Bank shall be protected in acting upon any form of notice which it in good faith believes to be genuine and what it purports to be.

I. ADDITIONAL PROVISIONS.

- 1). The accounts with Bank affected by this Section III shall continue to be governed by the deposit agreement issued by Bank on such types of accounts, as it may be amended from time to time, except to the extent such agreement may be inconsistent with these terms.
- 2). This Section III shall be governed by and construed in accordance with the laws of the State of Texas, and venue for any action brought pursuant to this Agreement shall be in County selected by Bank.

IV. AUTOMATED CLEARING HOUSE SERVICES.

A. DEFINITIONS.

Unless otherwise defined in Section I or Section IV of this Agreement, capitalized terms in this Section IV shall have the meanings provided in the NACHA Rules.

- 1). “*Effective Entry Date*” means the date included in any Entry as the date upon or after which such Entry is to be effective.
- 2). “*Entry*” has the meaning given in the NACHA Rules, except that it shall also include an “On-Us Entry.”
- 3). “*On-Us Entry*” means a debit or credit Entry to an account maintained at the Bank.
- 4). “*On-Line*” refers to use of the internet website or mobile application designated by the Bank used to transmit or receive electronic transactions, instructions, notices or other communication but does not include transmissions by telephone, fax, in person, regular mail, express mail or e-mail.

B. APPLICABLE AGREEMENTS.

This Section IV governs Company’s use of ACH Origination. Company’s access to and use of the Bank’s On-Line services shall be governed by this Agreement, as amended from time to time. In the event of conflict between the terms of this Section IV and any other provisions in the Agreement with the Bank, this Section IV shall prevail, unless otherwise provided herein.

C. COMPLIANCE WITH THE NACHA RULES AND APPLICABLE LAW.

The Company’s rights and obligations with respect to any Entry are governed by the NACHA Rules, this Agreement and applicable law. The Company acknowledges receipt of a copy of the NACHA Rules. The Company agrees to be bound by the NACHA Rules. The Company represents and warrants that it will comply with the NACHA Rules and applicable laws, regulations and regulatory requirements and that it will not transmit any Entry or engage in any act or omission that violates or causes the Bank to violate the NACHA Rules, applicable laws, regulations or regulatory requirements, including, without limitation, OFAC regulations, sanctions or executive orders.

D. TRANSMITTAL OF ENTRIES AND SECURITY PROCEDURES.

- 1). The Company shall transmit any and all debit or credit Entries to the Bank in accordance with the NACHA Rules and this Agreement. The Company shall comply with the Security Procedures described in Exhibit C’s Schedule 2. The Company acknowledges that the purpose of these Security Procedures is only to verify that Customer initiated the request, not to detect any error in the content or transmission of such a request. Customer is responsible for any error in the content or transmission of such a request, as described in the terms of this Agreement. No security practice or procedure for the detection of any such error has been agreed upon between the Bank and the Company.
- 2). The Company shall prevent and safeguard against unauthorized transmissions, disclosures and access to the following (all of which are referred to herein as “Security-related Items”): information (including but not limited to Security Procedures, instructions, passwords and user identifications), systems and equipment that interface with, connect to or allow access to the Bank, its information, systems and equipment. The Company shall establish, maintain and enforce physical and logical commercially reasonable security practices, techniques and procedures with respect to access, storage and maintenance to safeguard against unauthorized transmissions and unauthorized access to Security-related Items. Such practices, techniques and procedures shall be no less than the security-related requirements set forth in this Agreement and in the NACHA Rules.
- 3). Without limiting the foregoing, the Company warrants that no individual will be allowed to initiate transfers without proper supervision. If the Company suspects, knows, believes or has reason to believe that an unauthorized individual has transmitted or attempted to transmit one or more Entries or that the Security Procedures or other Security-related Items have otherwise been compromised, the Company agrees to immediately notify the Bank and agrees that any Entry received by the Bank before or within a reasonable time after such notice to the Bank shall be treated as authorized by the Company.
- 4). The Company hereby authorizes the Bank to transmit any Entry received by the Bank from the Company in accordance with the NACHA Rules and the terms of this Agreement and to credit or debit the amount of such Entry to the accounts specified by the Company.

E. COMPANY’S REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

The Company represents and warrants that each Entry provided to the Bank complies in all respects with the NACHA Rules and this Agreement. The Company acknowledges and agrees that, pursuant to the NACHA Rules, the Bank makes certain warranties to the ACH Operator and other financial institutions and that such warranties are made in

reliance on: (i) the representations and warranties of the Company, including but not limited to those contained in this section of this Agreement and (ii) Company's agreement to be bound by the NACHA Rules and applicable law. The Company shall indemnify the Bank against any claims, alleged claims, loss, liability or expense (including attorneys' fees and expenses) resulting directly or indirectly from, related to or arising out of: (i) any breach of the Company's warranties or this Agreement; (ii) Company's failure to exercise ordinary care in connection with its duties hereunder; (iii) any action by the Receiving Depository Financial Institution ("RDFI") upon an unauthorized or erroneous Entry initiated by the Company; (iv) any actions by a service provider or agent of the Company that results in a breach of this Agreement by the Company; (v) to the extent that it involves the Bank, any litigation by an ACH Operator, an RDFI or any Company Receivers asserting noncompliance on the Company's part with the NACHA Rules, laws, regulations or regulatory requirements. The Company represents and warrants that, for each Entry, the Company has obtained the Receiver's authorization and the Entry conforms to the authorization. The Company acknowledges and agrees that it will cooperate with the Bank fully to facilitate the Bank's adherence to any applicable regulatory guidance. Without limiting the foregoing, the Company warrants:

- 1) Each Entry is authorized pursuant to the NACHA Rules and the authorization has not been revoked;
- 2) Each credit Entry is timely and accurate;
- 3) Each debit Entry is for a sum which, on the Settlement Date will be due and owing to the Company from the party whose account will be debited, is for a sum specified by such party or is to correct a previously transmitted erroneous credit Entry;
- 4) No Entry has been reinitiated in violation of the NACHA Rules;
- 5) If the company generates IAT, RCK, POP, BOC, ARC, WEB, TEL, or any other format as defined by NACHA Rules, all applicable special warranties in the ACH Rules have been complied with; and
- 6) The Company has used commercially reasonable procedures to verify that all information contained in an Entry, including but not limited to routing numbers, is accurate and valid.

F. BANK OBLIGATIONS.

Subject to Section IV(H) of this Agreement, the Bank shall, in accordance with the NACHA Rules, process, transmit and settle for any Entry. The Bank shall have no obligation to transmit an Entry if the Company fails to comply with the NACHA Rules or any terms of this Agreement. The Bank shall rely on any and all information it receives from an Authorized User of the Company, as set forth in Exhibit C's Schedule 4, and any person the Bank, in good faith, reasonably believes to be acting on behalf of the Company, whether or not such person was authorized by the Company.

G. COMPANY'S ACCOUNT.

The Company will maintain a deposit account with the Bank at all times during the term of this Agreement. The Company shall at all times maintain a balance of available funds in the account sufficient to cover the Company's obligations under this Agreement. If collected balances in the account are insufficient to cover the aggregate amount of Entries, the Bank shall have no obligation to transmit such Entries. The Company authorizes the Bank to debit its Account or any other account maintained at the Bank for any amount it owes the Bank as a result of this Agreement.

- 1). Credit Entries - Origination by the Company requires that the Company have sufficient collected Funds on deposit the day the credit Entries are transmitted to the Bank, two business days prior to the effective date of the Entries. The collected funds are placed on hold for two business days prior to the effective date of the Entries, when the Company's account is debited.
- 2). Debit Entries - Origination of debit Entries by the Company shall be in accordance with the limits established by the Bank as shown in the ACH Debit Origination Application included in Exhibit C. Absent a completed ACH Debit Origination Application approved by the Bank, the limit established will be zero (\$0.00). Debit Entries are transmitted by the Company to the Bank one business day prior to the effective date of the Entries. The Company's account is credited on the effective date of the Entries.

H. EXPOSURE LIMITS.

The Company shall comply with the exposure limits as set forth in Exhibit C's Schedule 1. Such limits may be modified from time to time by Bank at its sole discretion with notice to the Company.

I. DUE DILIGENCE.

The Company will supply the Bank with due diligence information when requested. This information may include, but is not limited to, financial data, names and other information concerning the principles of the Company, information about the business in which the Company participates, information regarding the creditworthiness of the Company, projected return rates, and payment history. THE BANK MAY, IN ITS REASONABLE DISCRETION, CONDUCT A LIMITED REVIEW OF THE COMPANY'S OPERATIONS TO ENSURE COMPLIANCE WITH THE

PROVISIONS OF THIS AGREEMENT. Where the Bank reasonably believes that Company's financial condition is impaired or deteriorating, the Bank may refuse to process any Entries or may require prefunding of all Entries.

J. CANCELLATION OR AMENDMENT OF AN ENTRY.

The Company shall have no right to cancel or amend any Entry after its receipt by the Bank. However, the Bank shall use reasonable efforts to act on a request by the Company to cancel an Entry before transmitting it to the ACH Operator or crediting or debiting an On-Us Entry. Any such request shall comply with this Agreement, including the Security Procedures described on Schedule 2 to Exhibit C. The Bank shall have no liability if it fails to effect the cancellation. Company shall reimburse the Bank for any expenses, losses or damages the Bank incurs in effecting or attempting to effect Company's request for the cancellation of an Entry.

K. REJECTION OF ENTRIES.

The Bank may reject any Entry, including an On-Us Entry, that does not comply with the requirements of the NACHA Rules or this Agreement, specifically including Schedule 1 and Schedule 2 of Exhibit C, and may reject any Entry if the Company is not otherwise in compliance with the terms of this Agreement or the NACHA Rules. The Bank shall notify the Company in accordance with Exhibit C's Schedule 1 of such rejection no later than the business day such Entry would otherwise have been transmitted by the Bank to the ACH Operator or, in the case of an On-Us Entry, the day before its Effective Entry Date. Notices of rejection shall be effective when given. The Bank shall have no liability to Company by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

L. PROVISIONAL CREDIT NOTICE.

In the case of a credit Entry, credit given by the RDFI for the Entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or has otherwise received payment. If the RDFI does not receive such payment for the Entry, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver's account, and Company will not be considered to have paid the amount of the credit Entry to the Receiver.

M. REVERSALS.

The Company may reverse a File or Entry pursuant to the NACHA Rules. If the Company reverses an Entry or File, the Company shall indemnify the Bank against any claim, alleged claim, demand, loss, liability or expense resulting directly or indirectly from such reversal.

N. NOTICE OF RETURNED ENTRIES AND NOTIFICATIONS OF CHANGE.

The Bank shall notify the Company in accordance with Exhibit C's Schedule 1 of the receipt of a returned Entry or Notification of Change from the ACH Operator no later than one business day after the business day of such receipt. The Bank shall have no obligation to retransmit a returned Entry if the Bank complied with the terms of this Agreement with respect to the Entry.

O. ENTRIES RETURNED AS UNAUTHORIZED.

In the event that an Entry is returned as unauthorized or authorization revoked, the Company will contact the necessary parties and resolve any dispute. During this process the Company may ask the Bank to request from the RDFI a copy of the "Written Statement Under Penalty of Perjury." The Bank will make its best effort to obtain the form and will deliver it to the Company when received. Company agrees not to re-originate any transaction returned as unauthorized or as authorization revoked unless the customer reauthorized the Entry or Entry stream.

P. UNAUTHORIZED RATE IN EXCESS OF 1%.

In the event the rate of unauthorized transactions exceeds 1% based on the calculations noted in the NACHA Rules the Company will share the data requested by the Bank based on the NACHA Rules and will immediately begin the process of bringing the rate below 1%.

Q. PERIODIC STATEMENT.

The periodic statement issued by the Bank for the Company's account will reflect Entries credited and debited to the Company's account. The Company agrees to notify the Bank within a reasonable time not to exceed thirty (30) days after the Company receives a periodic statement of any discrepancy between the Company's records and the information in the periodic statement. If the Company fails to notify the Bank of any such discrepancy within thirty (30) days after receipt of such periodic statement, the Company shall be precluded from asserting any claim against the Bank arising from such discrepancy.

R. LIABILITY.

Bank shall only be liable to the Customer under this Agreement as described in Section I(N) above.

In the performance of the Business Services required by this Agreement, the Bank shall be entitled to rely solely on the information, representations and warranties provided by the Company pursuant to this Agreement and shall not be responsible for the accuracy or completeness of such information. Except as otherwise specifically provided by law, the Bank shall be responsible only for performing the Business Services expressly provided for in this Agreement and shall be liable only in the event of loss due to its gross negligence or willful misconduct in performing those Business Services.

To the extent allowed by law, the Bank shall not be liable for and shall be excused from failing to transmit or any delay in transmitting an Entry (i) if such transmittal would result in the Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve Board guidelines; (ii) if, for any reason, the ACH Operator fails or declines to process an Entry; (iii) if, in the Bank's sole discretion, processing an Entry would violate or contribute to the violation of any present or future risk control program of the Federal Reserve Board or any NACHA Rule, law, regulation or regulatory requirement; or (iv) if processing an Entry, in the Bank's sole discretion, would cause it to engage in an unsafe and unsound practice.

S. RULES ENFORCEMENT.

In the event that a Report of Possible Rules Violation is filed on the Company, the Company will take appropriate steps to correct the problem within the time frames suggested by the Bank. In the event that a fine is levied against the Bank for a violation of the NACHA Rules, the Company agrees to make the Bank whole for the value of the fine.

T. INCONSISTENCY OF NAME AND ACCOUNT NUMBER.

The Company acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry may be made on the basis of the account number even if it identifies a person different from the named Receiver, and the Company's obligation to pay the amount of the Entry to the Bank is not excused in such circumstances.

U. NACHA RULES COMPLIANCE REVIEW.

The Company agrees to review its compliance with the NACHA Rules on a periodic basis. The Bank has a right to request the details of the review at any time.

V. TERMINATION.

Notwithstanding any other provision regarding termination set forth herein or in any other agreement between Bank and Company, the Bank may terminate this Section at any time for any reason, in its sole discretion, without liability, and the Company may terminate this Section upon ten (10) days' written notice to the Bank except that the Company may terminate the Section immediately if the terms of the Section are materially breached by the Bank. Any termination of this Section shall not affect any of the Bank's rights and the Company's obligations with respect to Entries initiated by the Company prior to the effective time of such termination, or the payment of obligations of the Company with respect to Business Services performed by the Bank prior to the effective time of such termination, or any other obligations that shall survive termination. The provisions of this Section that are necessary to give effect to the purposes of this Agreement shall survive its termination.

V. CHECK POSITIVE PAY, ACH POSITIVE PAY, ACH BLOCKING SERVICES.

Upon Company's selection of one or more of Bank's Positive Pay Services or ACH Debit Block Services and execution and delivery of the Master Authorization Form for such Business Services, or upon its use of such Business Services, whichever occurs first, Company agrees as follows:

1. Customer agrees to provide an acceptable formatted file (for either checks, ACH or both) to Bank for testing prior to submission of first live file.
2. Customer agrees to provide to Bank, from time to time, a list of checks initiated by Customer to enable Bank to verify by check number and amount the checks which Bank charges to the account of the Customer.

Company acknowledges and accepts that Bank has agreed to verify the checks which it pays according to the terms of this Agreement.

A. DEFINITIONS.

Unless otherwise defined in Section I of this Agreement, words or phrases in this Section V shall have the meanings set forth in U.C.C. Article 3 (Negotiable Instruments) and Article 4 (Bank Deposits and Collections). Additionally, for the purposes of this Section V only, the terms below are defined as follows:

- 1). "*ACH Blocking*" means a service that will block, except for those ACH entries originated by the Bank on its own behalf, all ACH entries originated by another party either through the Bank's Business Services or received from another ODFI unless an approved identifier for that transaction has been provided to Bank.
- 2). "*ACH Positive Pay*" means a service that allows the Customer to establish ACH transaction rules to monitor ACH items.
- 3). "*Check Issue File*" means a list of checks, described by at least Check number, date written and amount, drawn by the Customer on an Authorized Account, provided by the Customer to Bank by the terms of this Agreement.
- 4). "*Exception Check*" means a Presented Check that does not match a check included in a Check Issue File.
- 5). "*Exception Check Report*" means a list of Exception Checks which is provided by Bank to the Customer by the terms of this Agreement.
- 6). "*Pay Request*" means the instruction of the Customer to Bank ordering Bank to pay an Exception Check.
- 7). "*Presented Check*" means a check drawn on an Authorized Account and presented to Bank for payment through the check collection system.
- 8). "*Positive Pay*" means allowing Customer personnel to manage the related Positive Pay applications and procedures for the purpose of providing fraud prevention services via Positive Pay.
- 9). "*Return Request*" means the instruction of the Customer to Bank ordering Bank not to pay an Exception Check.

B. CHECK ISSUE FILE.

The Customer shall submit a Check Issue File to Bank.

- 1). The Check Issue File shall accurately state the check number and the exact amount of each check written on each Authorized Account since the last Check Issue File was submitted.
- 2). Customer shall send the Check Issue File to Bank in the format and medium, by the deadline(s), at scheduled day(s), and at the place(s) from time to time specified by Bank and agreed to by Customer.

C. REPORTING OF EXCEPTION CHECKS.

Bank shall compare each Presented Check received by Bank. When checks are presented for payment and for charge to the Authorized Account, Bank shall:

- 1). not refuse to pay;
- 2). charge to the Authorized Account by reason of this Agreement, each Presented Check that matches by check number and amount a check shown in any Check Issue File;
- 3). provide to the Customer an Exception Check Report that specifies the check number and amount of any Exception Checks; and
- 4). send the Exception Check Report to the place(s) specified by Customer and in the format and medium, and by the deadline(s), from time to time specified by Bank. The initial format, medium and deadlines are contained on the Master Authorization Form.

D. PAYMENT AND DISHONOR OF EXCEPTION CHECKS.

Bank will pay or return Exception Checks in accordance with the default option selected by Customer for each

Authorized Account.

E. PAY DEFAULT.

- 1). This option is selected automatically if Customer makes no selection or revokes a selection without making a new default selection.
- 2). Where Customer has selected the pay default option to apply to an Authorized Account, Bank shall not refuse to pay and charge to the Authorized Account by reason of this Agreement, any Exception Check provided that Customer has not objected to such payment in a timely Return Request.
- 3). A Return Request shall identify each Exception Check Customer desires not to pay by the check number and amount and shall instruct Bank to return the Exception Check.
- 4). The Return Request shall be sent to Bank in the format and medium, by the deadline(s), and at the place(s) specified by Bank and agreed to by Customer.
- 5). Bank shall return to the depository bank or presenting party any Exception Check Customer instructs Bank to return as provided above.

F. RETURN DEFAULT.

- 1). The return default option may be selected by an Authorized Agent in writing.
- 2). Where Customer has selected the return default option to apply to an Authorized Account, Bank shall return to the depository bank or to the party presenting the check any Exception Check presented for payment on that account, unless Customer instructs Bank to pay the check in a timely Pay Request.
- 3). The Pay Request shall identify each Exception Check that Customer desires to be paid by the check number and amount specified in the Exception Check Report and shall instruct Bank to pay such Exception Check.
- 4). The Pay Request shall be sent to Bank in the format and medium, by the deadline(s), and at the place(s) specified by Bank and agreed to by Customer. Bank shall not refuse to pay and shall charge to the Authorized Account by reason of this Agreement, any Exception Check that Customer directs Bank to pay as provided above.

G. ACH BLOCKING SERVICES. If a Customer requests ACH Blocking Services, except for those ACH entries originated by the Bank on its own behalf, all ACH entries originated by another party either through Bank's Business Services or received from another Originating Depository Financial Institution ("ODFI") will be blocked unless an approved identifier for that transaction has been provided to the Bank. The company ID of the originator or the individual ID of the Receiver are the available identifiers of the transactions. **The ACH Blocking Services do not affect checks converted to ACH transactions.**

H. ACH POSITIVE PAY SERVICES. If a Customer requests ACH Positive Pay Services, then the Customer is allowed to work with the Bank to establish ACH transaction rules to monitor their ACH items. By way of example only, ACH external debits (entries not originated by the Bank) can be compared to certain criteria that the Customer establishes, such as comparing each ACH item by amount, or type, or SEC code or Receiver name, versus the Customer established ACH authorization rules. The Customer shall be responsible for submitting all necessary information to Bank, such as the ACH item origination file for ACH Credit Entries, handling reporting of exception items, and pay and return default issues as required by the Bank. Upon selection of the ACH Positive Pay Services, Bank shall provide Customer additional documentation and instructions on such services.

I. POSITIVE PAY SERVICES. The Positive Pay Service is an application provided by one of Bank's third-party service providers that allows Customer personnel to manage the related application for the purpose of providing fraud prevention services via Positive Pay and barcoded checks. The Positive Pay Service also enables providing account reconciliation services to end-user Customers. If Customer selects the Positive Pay Service, Customer agrees that in order to utilize such service, Customer must meet the technical specifications of Bank's third-party service provider, and those specifications will be provided by Bank to Customer (and may be updated from time-to-time by Bank or the third-party service provider). Customer agrees and acknowledges that if it selects the Positive Pay Services that it must follow any additional security procedures required by Bank, which Bank shall provide to Customer. The Customer also understands and acknowledges that using the Positive Pay Services will require Customer to obtain a separate user name, password and company ID that will be provided by Bank to Customer. Upon selecting the Positive Pay Services, the Customer will receive additional documentation and instructions provided by Bank regarding such services.

J. CUSTOMER AND BANK COMMUNICATIONS.

Customer or Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Section V. The revised communication must (a) be sent in its entirety and not in the form of a partial

amendment to the communication originally sent, (b) identify the original communication, and (c) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke and replace the original communication.

- 1). Bank shall use only Check Issue Files that comply with this Agreement and have not been revoked as provided herein in the preparation of Exception Check Reports.
- 2). Customer shall use only Exception Check Reports that comply with this Agreement and have not been revoked as provided herein in the preparation of Pay Requests and Return Requests.
- 3). Bank shall not be obligated to comply with any Pay Request or Return Request received in a format or medium, after a deadline, or at a place not permitted under this Agreement but may instead treat such a Pay Request or Return Request as though it had not been received.
- 4). Bank is not responsible for detecting any Customer error contained in any Check Issue File, Pay Request or Return request sent by Customer to Bank.
- 5). Company hereby assumes all risk and responsibility for the compilation, accuracy, transmission and delivery of any and all information, or data, including, without limitation, and Check Report or Payment Instructions delivered by Company to Bank. Bank shall have no obligation to insure the receipt or accuracy of any information or data furnished by Company in connection with Positive Pay Services, and shall have no obligation to make any inquiry or initiate any follow-up investigation regarding the receipt or accuracy of any such information or data.

K. REMEDIES.

To the extent applicable, the liability provisions of U.C.C. Articles 3 and 4 shall govern this Section V, except as modified below in this Section V(K).

- 1). It shall constitute wrongful honor by Bank if Bank pays an Exception Check which it failed to list in a timely Exception Check Report, or if Bank pays an Exception Check listed in a timely Exception Check Report if:
 - (a) Customer issued a timely Return Request, or
 - (b) Customer selected the return default option and did not issue a timely Pay Request.
- 2). In the event that there is wrongful honor:
 - a) Bank shall be liable to Customer for the lesser of the amount of the wrongfully paid Exception Check or Customer's actual damages resulting from Bank's payment of the Exception Check.
 - b) Bank expressly waives any right it may have to assert that Customer is liable for the amount of the wrongfully honored Exception Check on the grounds that the Exception Check was properly payable under U.C.C. Article 4-401.
 - c) Bank retains the right to assert Customer's failure to exercise ordinary care under U.C.C. Article 3-406(a) and reasonable care under U.C.C. Article 4-406(c). Bank's wrongful honor shall however constitute a failure of Bank to have exercised ordinary care under the loss allocation provisions of U.C.C. Articles 3-406(b) and 4-406(e).
 - d) Bank retains the right to assert the defense that Customer has sustained no actual damages because Bank's honor of the Exception Check discharged for value a valid indebtedness to Customer.
 - e) Customer has the duty to mitigate its damages.
 - f) If Bank credits the Authorized Account for a check wrongfully honored, Bank may at its option be subrogated to the rights and claims of Customer to recover the wrongfully paid amount from the payee or transferee of the check.

L. WRONGFUL DISHONOR.

Except as provided below in paragraph 2 of this Section V(L), it shall constitute wrongful dishonor by Bank if Bank by reason of this Agreement dishonors a check which was not an Exception Check, or if Bank by reason of this Agreement dishonors an Exception Check if: (a) Customer issued a timely Pay Request, or (b) Customer selected the pay default option and did not issue a Return Request.

- 1). Bank's liability for wrongful dishonor of an Exception Check shall be limited to the damages for wrongful dishonor recoverable under U.C.C. Articles 3 and 4.
- 2). Notwithstanding the above, Bank shall have no liability to Customer for wrongful dishonor when Bank, acting in good faith, returns an Exception Check:
 - a) that it reasonably believed was not properly payable;
 - b) if there are insufficient Available Funds on deposit in the Authorized Account;
 - c) if required to do so by the service of legal process on Bank or the instructions of regulatory or government authorities or courts; or
 - d) is otherwise in conformance with Bank's rules, regulations and policies.

M. RIGHTFUL PAYMENT AND DISHONOR.

Except as provided below:

- 1). If Bank honors an Exception Check in accordance with a Pay Request issued by Customer, such honor shall be rightful, and Customer waives any right it may have to assert the Exception Check was not properly payable under U.C.C. Article 4-401.
- 2). If Bank dishonors an Exception Check in accordance with the return default option selected by Customer or in accordance with a Return Request issued by Customer, the dishonor shall be rightful and Customer waives any right it may have to assert that the dishonor was wrongful under U.C.C. Article 4-402.
- 3). Customer agrees Bank exercises ordinary care whenever it rightfully pays or returns an Exception Check consistent with the provisions of the Agreement.

N. LIABILITY.

Bank shall only be liable to the Customer under this Agreement as described in Section I(N) above.

Bank shall be liable for any actual losses, other than consequential damages, approximately caused by its honor of a check that was not properly payable or its dishonor of a check that was properly payable if the honor or dishonor occurred because Bank, in accordance with the provisions of this Agreement:

- 1). Should have shown the check as an Exception Check but failed to do so; or
- 2). Showed the check on an Exception Check Report but referenced the wrong check number unless Bank provided Customer with timely correct information, or unless Customer had actual knowledge of the error.

In no event shall Bank be liable for any incidental, consequential, special, punitive, or indirect loss or damage which Customer may incur or suffer in connection with this Agreement including without limitation loss or damage from subsequent wrongful dishonor resulting from Bank's acts or omissions pursuant to this Agreement. Bank's liability for loss of interest shall be calculated by the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved. To the extent that Customer suffers a loss under the Agreement, Bank assigns to Customer any claim that Bank would have against a depository or collecting bank to recover the loss, including any claim of breach of warranty under U.C.C. Articles 4-207, 4-208, and 4-209.

O. SECURITY PROCEDURES.

Customer shall comply with the Security Procedures established by Bank as described in Exhibit C's Schedule 2, and Bank may reject Check Issue Files, Pay Requests or Return Requests which are provided to Bank in violation of the Security Procedures. If Bank reasonably complies with the applicable Security Procedures, Customer shall be responsible for any unauthorized reports or requests originating from Customer and shall hold Bank harmless there from.

P. NO EXTENSION OF CREDIT.

Nothing herein nor any course of dealing between the Company and Bank constitutes a commitment or obligation of Bank to lend money to the Company or obligates Bank to extend any credit to the Company, to make a loan to the Company, or otherwise to advance funds to the Company to pay for any check contrary to Bank's published availability schedules. If Bank pays a check or an ACH transaction when Company has insufficient funds in a designated Authorized Account, Company shall immediately pay and reimburse Bank for the resulting overdraft.

Q. POSITIVE PAY SERVICES.

Bank will provide the selected Positive Pay Services for the designated Authorized Accounts specified by Company. On each banking day, Company agrees to provide Bank a Check Issue File" by 6:00 p.m. Central Time. Company agrees to provide a Check Issue File before disbursing checks to payees. Failure to send a Check Report prior to disbursement could result in checks presented for payment that do not have a corresponding issue on file, thus these checks will be treated as "exception items" and be included in the Exception Report as "paid no issues" (PNI). There is a fee levied by Bank for every exception item reported. Bank shall compare each Presented Check by check number and amount (as encoded) against all Check Reports received through that day. Bank shall (a) finally pay and charge to the applicable Authorized Account all Presented Checks which match checks on the Check Reports as to check number and amount, provided that the Authorized Account has sufficient Available Funds; and (b) unless service is disrupted or delayed for operational reasons, provide Company with an Exception Report by 10:00 a.m. Central Time on the following Business Day. Company shall provide Bank with payment Instructions regarding the Exception Checks by 12:00 p.m. Central Time on the same day. If the Company fails to meet this deadline, Company authorizes and directs Bank to pay the Exception Checks according to the pay default decision made by the Company on the Positive Pay Services Agreement. If Company sends in payment Instructions after the deadline and would like a particular check returned, Bank will attempt to honor the return but if the presenting bank fails to honor the return, the Company must reimburse Bank for the amount of the item and hold Bank harmless from any cost, suits, expenses, liabilities, damages and attorneys' fees

related to the return of the item.

R. WARRANTIES AND REMEDIES.

With respect to any check paid by Bank in accordance with this agreement:

- 1). Company waives and releases any claim that the check is not properly payable, with respect to any drawer's signature(s) on, or alteration of the amount of the check; and
- 2). If the name of the payee of the check is altered or the check is not properly payable based on a forged endorsement, Bank, without waiving any defenses under the U.C.C., shall be accountable for the amount of the check to the extent required by applicable provisions of the U.C.C., including U.C.C. Article 4-401.
- 3). With respect to any check dishonored and returned by Bank in accordance with this Agreement, the Company waives and releases any claim that the check is properly payable and any claim against Bank for wrongful dishonor under U.C.C. Article 4-402, and any other account agreement between Bank and Company or otherwise.

S. OTHER AGREEMENTS.

Checks presented to Bank over-the-counter may not be subject to these terms and conditions regarding Positive Pay Services. Except as specifically provided in the Agreement, all other account agreements and all fees and charges relating to Authorized Accounts remain applicable to the Authorized Accounts, and Bank's remedies set forth in those agreements are cumulative.

VI. LOCKBOX SERVICES.

Upon Company's execution and delivery of the Master Authorization Form for Lockbox Services and Exhibit D (Lockbox Setup Sheet) or upon its use of the service, whichever occurs first, Company agrees as follows:

Customer desires Bank to process payments and credit Customer's Authorized Accounts for payments received in Customer's designated Lockbox to which the Customer agrees to allow Bank to access to receive payments, or the Customer may utilize a Bank-owned post office box. If the Customer chooses to utilize a Bank-owned post office box, the Bank will provide the Customer with the post office box number.

A. DEFINITIONS.

Unless otherwise defined in Section I of this Agreement, the following terms shall have the meanings set forth below when used in this Section VI:

- 1). "*Lockbox*" means a post office box or caller box for which Bank will have unrestricted, exclusive access for the purpose of receiving the Payments from Customer's obligators.
- 2). "*Lockbox Address*" means the address, which Bank may change from time to time by written notice to Company, provided by Bank to Customer in Exhibit D.
- 2). "*Payments*" mean checks, drafts, money orders, or other instruments evidencing payment which Bank receives from Customer's obligators.

B. LOCKBOX INSTRUCTIONS.

These terms and conditions for Lockbox Services are supplemented by Bank's standard Lockbox Operating Instructions, which are included in Exhibit D.

C. LOCKBOX SERVICES.

Bank or designated third-party processor is authorized and instructed by Company to receive, open, and dispose of mail addressed to Company at the Lockbox Address, including, without limitation, registered and certified mail, and to endorse on Company's behalf as its attorney-in-fact remittances for the purposes of collecting and depositing the proceeds to Company's account(s) designated on the executed Exhibit D. Bank will receive mail in accordance with the schedule for mail pickup established by Bank (which Bank may change from time to time without the necessity of consent of or notice to Company). Except as otherwise provided in the Agreement or in the executed Exhibit D, the credit and collection of all such remittances shall be subject to the normal terms and conditions applicable to deposits received by Bank directly from Company.

- 1) All envelopes containing checks to be processed under this Agreement shall be mailed to the Lockbox Address.
- 2) In the event a check to be processed under the Agreement is to be delivered by hand delivery, the delivery should be made to the address provided by Bank.

D. LIABILITY OF BANK.

Bank shall only be liable to the Customer under this Agreement as described in Section I(N) above.

Bank does not guarantee specific receipt or collection of Payments within a specific time frame. Bank cannot be responsible for specialized processing of Payments bearing restrictive endorsements, postdated Payments, Payments incorrectly drawn or containing incomplete or ambiguous provisions. Such Payments will be processed or rejected according to Bank's standard operating procedures unless other procedures are agreed to in writing by Bank and Customer.

E. RETURNED PAYMENTS.

If any of the Payments are returned to Bank unpaid after Bank has forwarded the same for payment and if the Payment can be re-presented, Bank has the authority to forward the item for payment a second time unless otherwise specified by Customer. If the item is not paid after being forwarded for payment the second time, the Payment shall be sent to Customer and the unpaid amount shall be charged back to the Deposit Account.

F. COMMUNICATION.

Subject to Bank's then existing capabilities and requirements, and for such additional fees as Bank's then existing schedule of fees and services may provide, Bank will forward the daily deposit totals to Customer as indicated on the attached schedules.

G. RECORD MAINTENANCE.

Bank will create an image of all checks, drafts and other instruments processed in connection with Lockbox Services. Bank will retain the image for seven years or for such other period, whether longer or shorter, if any, required by law. Bank will provide photocopies to Company upon request. Company shall provide the date, the total amount of the deposit and the amount of the item in question as indexing information for photocopies requested. Also upon request, Bank will capture images of checks and/or related documents and provide them via web access via Bank's third-party processor's website described in more detail within Exhibit D. The Customer will be able to access retained images for a rolling 6-month period.

H. HOLIDAYS.

No processing activity will be conducted and no deposits will be made by Bank on holidays officially recognized by Bank. Lockbox activity will be resumed the following Business Day.

VII. TARGET BALANCE AND ZERO BALANCE ACCOUNT SERVICES.

A. GENERAL.

Upon Company's execution and delivery of the Master Authorization Form or upon its use of the service, whichever occurs first, Company agrees as follows:

Customer desires to transfer balances between Sub Accounts and a Lead Account in the exact amount necessary to maintain a target balance in the Sub Accounts. Customer shall designate a primary demand deposit account as the "Lead Account" and its other accounts with Bank as "Sub Account(s)." Customer authorizes and directs Bank to transfer funds between the Lead Account and Sub Account(s) to bring the balances of all Sub Accounts to a designated amount. Notwithstanding contrary provisions herein, Customer may draw checks against Sub Accounts provided that the aggregate amount of all such checks does not exceed Customer's available or collected funds on deposit in the Lead Account, subject to uncollected funds, negative balance or other charges.

B. TARGET BALANCE TRANSFER SERVICES.

Bank shall transfer funds between the Lead Account and the Sub Accounts to adjust the balances in the Sub Accounts as provided in the Master Authorization Form attached. If the designated balance in a Sub Account exceeds the target balance, then the excess funds will be debited from that account and credited to the Lead Account. If the balance in a Sub Account is less than the target balance, then the required funds will be debited from the Lead Account and credited to the Sub Account.

C. ZERO BALANCE TRANSFER SERVICES.

Bank shall transfer funds between the Lead Account and the Sub Accounts to adjust the balances in the Sub Accounts as provided in the Master Authorization Form. At the close of each Business Day, Bank shall create a zero balance in each Sub Account designated by Company as a zero-balance account ("Zero-Balance Account") by depositing funds from or transferring funds to the Lead Account. Company authorizes and directs Bank, at any time and without prior notice to Company, to transfer to each Zero-Balance Account from the Lead Account, or other deposit accounts of Company maintained at Bank, funds in the amount sufficient to pay any checks, items or charges presented against or payable from each Zero-Balance Account.

D. ACCOUNTS.

Customer designates Lead Account and Sub Account(s) as provided on the Master Authorization Form.

E. FREQUENCY.

Transfers will be made daily as referenced in this Agreement.

F. AMOUNT.

Bank is authorized and directed to transfer funds between the Lead Account and the Sub Accounts as frequently as set forth herein or in the Master Authorization Form, to bring the target balance (as selected on the Master Authorization Form) of the Sub Accounts to the value designated on the Master Authorization Form.

G. CHANGES TO DIRECTIONS.

Customer may change these directions at any time by delivering Authorized Instructions to Bank. Changes to these directions shall be implemented by Bank within a reasonable time after Bank's receipt of the new Authorized Instructions.

H. AVAILABLE FUNDS.

If at any time the Lead Account, after deducting any amounts payable from or chargeable to the Lead Account, fails to contain collected, immediately available funds in the amount required to pay the total aggregate amount of checks, items and charges payable against or chargeable to the Lead Account and each Sub Account, the Company shall be liable for Bank's insufficient funds charges as in effect from time to time and Bank may, in its sole discretion, do any one or more of the following:

- 1). Pay in any order any one or all of the checks, items or charges and charge the amount of any payment to the applicable account thereby causing an overdraft to be created in the account subject to Bank's overdraft policies and charges; or
- 2). Dishonor in any order any one or all of the checks or items and return the same to the presenter, in which case the policies, charges, and rules provided for in Bank's deposit agreement shall apply, including but not limited to,

provisions in the deposit agreement relating to insufficient funds and returns policies or charges.

I. BANK RULES AND REGULATIONS.

All Business Services to be provided hereunder shall be in accordance with, and further subject to, Bank's then applicable rules and regulations which apply to the Authorized Accounts and to such further policies and procedures with regard to the Business Services provided hereunder as may be communicated to Customer from time to time in writing.

VIII. ACCOUNT RECONCILIATION SERVICES.

Upon Company's execution and delivery of the Master Authorization Form for Account Reconciliation Services or upon its use of the service, whichever occurs first, Company agrees as follows:

Bank will assist Company to reconcile and manage the check and deposit activity in Company's demand deposit Authorized Accounts. Use of the Account Reconciliation Services does not affect any of Company's obligations, as described in the deposit agreement, to discover and report unauthorized or missing signatures, alterations or endorsements on checks drawn on Company's accounts.

The Account Reconciliation Services include the following standard features: (a) consolidated listing; (b) activity summary; (c) daily paid register; (d) stop payment listing; and (e) exception reporting. There are also a number of optional features and reports which Company's Bank relationship manager can outline. The reports will depend on the Business Service(s) Company selects. There are also a number of options available for Company's data transmission.

If Company is approved for this Account Reconciliation Service, and Company provides Bank with a list of the serial numbers and the exact amount (dollars and cents) of the checks that Company issues, Bank will compare the list with the information that is encoded on items presented to Bank for payment against Authorized Account(s).

A. CHECKS COVERED BY SERVICE.

The Account Reconciliation Services apply to checks that are presented for payment to Bank through normal interbank clearings. It is not designed to compare Company's list of issued checks against items that are presented in any other manner (e.g., at a teller window, through an automated teller machine, or by mail). At Bank's sole discretion, Bank may attempt to compare Company's list with such items; Bank will not be liable for Bank's failure or refusal to do so, however, even if Bank has done so on previous occasions.

B. SECURITY.

COMPANY REPRESENTS AND WARRANTS THAT IT HAS IMPLEMENTED REASONABLE SECURITY PROCEDURES DESIGNED TO ASSURE THAT ONLY COMPANY'S AUTHORIZED EMPLOYEES HAVE THE ABILITY TO TRANSMIT CHECK INFORMATION TO BANK FOR PURPOSES OF THIS SERVICE.

IX. CONTROLLED DISBURSEMENT SERVICES.

Upon Company's execution and delivery of the Master Authorization Form for Controlled Disbursement Services, or upon its use of the service, whichever occurs first, Company agrees:

A. DISBURSEMENT SERVICES.

Bank is authorized and instructed to establish a demand deposit account in Company's name (the "Disbursement Account") and to transfer collected funds from the Company's demand deposit account located at Bank or any other account of Company, to the Disbursement Account in order to pay checks and items drawn on, and charges against, the Disbursement Account. Company agrees to maintain in the Lead Account at all times in collected, immediately available funds, from whatever source, an amount equal to or greater than the sum of all charges to and checks or other items presented against the Disbursement Account. Company authorizes and directs Bank, at any time and without prior notice to Company, to transfer to the Disbursement Account from the Lead Account funds in the amount needed to pay any checks, items or charges presented against or payable from the Disbursement Account.

B. OVERDRAFTS.

If, at any time, the Lead Account, after deducting any amounts payable from or chargeable to the Lead Account, fails to contain collected, immediately available funds in the amount required to pay the total aggregate amount of checks, items and charges payable against or chargeable to the Disbursement Account, the Company shall be liable for Bank's demand deposit checking account "insufficient funds" charges and any other applicable fees or charges in effect from time to time and Bank may, in its sole discretion, do any one or more of the following, without the necessity of any prior written notice to Company:

- 1). Pay in any order any one or all of the checks, items, or charges and charge the amount of any payment to the Disbursement Account, thereby causing an overdraft to be created in the disbursement account subject to Bank's overdraft policies and charges; or
- 2). dishonor in any order any one or all checks or items and return the checks or items to the presenter, in which case Bank's demand deposit checking account terms shall apply, including, but not limited to, Bank's insufficient funds and returns policies or charges.

C. PRESENTMENT PROCEDURES.

Daily notification of the checks presented against the Disbursement Account will occur no later than 11:00 a.m., Central time. Bank shall make available this information to Company daily by electronic balance reporting or other means acceptable to Bank and Company. Daily notification totals may or may not include over the counter items being presented during banking hours. Bank will make every effort to provide an accurate total to Customer provided them by Federal Reserve Banks or other Correspondent Banks, but is not liable for incorrect totals which may or may not include over the counter items and possible ACH clearings. Should Bank be unable to determine the exact amount of checks presented for payment, then the Company will fund a mutually agreed upon amount. Any excess or deficit between the estimated amount and the amount of actual checks presented will be compensated by (over or under) funding that will achieve a net zero collected balance average over the two Business Day time period. If on any day checks are presented and the Company is closed for business, the Company must make prior arrangements regarding estimated funds to be deposited in the Lead Account for that day's checks. The Company recognizes and agrees that Bank reserves the right at all times to return, unpaid, by the applicable midnight deadline, any checks presented against the Disbursement Account which have not been paid and to close the Disbursement Account should Bank deem advisable. The term "midnight deadline" means the time by which Bank must return an item in order to dishonor it under applicable, local clearing house or other rules. Company agrees that Bank and each of its affiliates where the disbursement Account or the Lead Account is located have a right to set-off any sums owing respectively to Bank by Company in the event of a breach of this Agreement by Company. Nothing in this Agreement shall effect or modify Bank's rights of set-off as allowed under applicable law. Company pledges and grants a security interest in all deposits on deposit at Bank as security for any credit, including payment of items without sufficient funds, extended by Bank.

X. FedEDI (ELECTRONIC DATA INTERCHANGE) SERVICES.

If selected on a setup or service instruction form for any Business Services, Bank will provide Company with Electronic Data Interchange notification services via fax or email, as selected on the Master Authorization Form. Bank will transmit to Company, on a transaction basis, the Electronic Payment text and addenda information for each Electronic transaction conducted under this agreement.

XI. REMOTE DEPOSIT CAPTURE SERVICES.

Upon Company's execution and delivery of the Master Authorization Form and Exhibit E (Remote Deposit Capture) or upon its use of the service, whichever occurs first, Company agrees as follows:

The Company has requested that Bank permit it to use one or more of the services set out in Exhibit E (collectively, the "Remote Item Processing Services"). The Bank is willing to provide the Remote Item Processing Service(s) by acting as converting bank and reconverting bank and processing for ultimate delivery to other financial institutions electronic entries or Substitute Checks by means of its correspondent banks, participating Image Exchange Networks and the Federal Reserve Bank to the accounts at paying banks of checks presented for payment. Bank is willing to provide Remote Item Processing Services, subject to the following terms and conditions.

A. SERVICES.

Subject to the terms and conditions of this Agreement, the Bank hereby grants Company and Company hereby accepts a non-exclusive, non-transferable right to access and use each of the Remote Item Processing Services. The provisions of Exhibit E are incorporated by reference into this Agreement. In the event of a conflict between the provisions of this Agreement and the terms and conditions set forth in Exhibit E, the terms and conditions of Exhibit E shall prevail. Company may at any time, and from time to time, request additional Remote Item Processing Services the Bank may be offering, subject to the Bank's acceptance. Company agrees that the Remote Item Processing Services may be modified from time to time to upgrade or improve functionality. The Bank will provide Company with prior notice of any such modifications or enhancements.

B. COMPANY ACCOUNT.

Company hereby requests that the Authorized Account(s) that it designates for use in connection with the Remote Item Processing Services be made available for access through the Remote Item Processing Services. Company shall make such designation during the Remote Item Processing Services set-up process. Company may request the Bank to include accounts of affiliated companies for access through the service (i.e. companies in which Company or its parent have direct, or indirect majority ownership). Company represents and warrants that it is authorized to give such instructions and to have such accounts included. Company shall provide appropriate authorizations from such companies to the Bank permitting their account(s) to be so included.

C. THE BANK'S OBLIGATIONS.

- 1). The Bank agrees to transmit all the financial data under its control required to utilize the Remote Item Processing Services selected by Company and to act on appropriate instructions received from Company in connection with such service. Company understands and agrees that the Remote Item Processing Services may be provided by the Bank or its designated agent.
- 2). Company understands that service availability is at all times conditioned upon the corresponding operation and availability of those computer services and systems used in communicating Company's instructions and requests to the Bank and the Bank's response. The Bank shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by Company in the event of any failure or interruption of such services or any part thereof, resulting from the act or omission of any third party, or from any other cause not reasonably within the control of the Bank.
- 3). The Bank shall exercise due care in seeking both to preserve the confidentiality of the user number, password, test key, or other code or identifier and to prevent the use of the service by unauthorized persons (and in this connection it is understood and agreed by both Company and Bank that implementation by the Bank of its normal procedures for maintaining the confidentiality of information relating to its customers, and where practicable the obtaining by the Bank from any third parties engaged in the installation, maintenance and operation of the system of similar undertakings, shall constitute fulfillment of its obligation so to exercise due care) but shall not otherwise be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by Company by reason or in consequence of any unauthorized person gaining access to or otherwise making use of the service. Company assumes full responsibility for the consequences of any misuse or unauthorized use of or access to the service or disclosure of any confidential information or instructions of Company by Company's employees, agents, or other third parties.
- 4). As relates to the Bank's provision of service, Company agrees to the following:
 - (i) Company will facilitate timely cooperation between any necessary third parties in order for the Bank to provide the

service.

(ii) Company is, and shall remain, solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds, associated with accessing the service.

(iii) Company will use the service in accordance with such reasonable rules as may be established by the Bank from time to time as set forth in any materials furnished by the Bank to Company.

(iv) Company assumes exclusive responsibility for the consequences of any instructions it may give to the Bank, for Company's failures to access the service properly in a manner prescribed by the Bank, and for Company's failure to supply accurate input information, including, without limitation, any information contained in an application.

(v) Company will designate a bank settlement account to be used for the purposes of settling, in aggregate, the financial transactions requested via the service. The Bank shall provide Company with details of the specific transactions, reported similarly as other transactions may be done, that were a result of access to the service. Company shall be responsible for auditing and balancing of any settlement accounts.

(vi) Company will verify and reconcile any out-of-balance condition, and promptly notify the Bank of any errors in the foregoing within the time periods established in Exhibit E after receipt of the applicable detail report(s) from the Bank. If notified within such period, the Bank shall correct and resubmit all erroneous files, reports, and other data at the Bank's then standard charges, or at no charge, if the erroneous report or other data directly resulted from the Bank's error.

(vii) Company is solely responsible for purchasing, obtaining, installing and operating any and all necessary equipment or software needed to access the service from the Bank or a Bank-approved alternative, and shall be responsible for maintaining such equipment or software in an operating condition, including any mandatory maintenance service programs prescribed by the Bank. The Bank will provide minimum specifications for all such equipment or software.

(viii) Company will be responsible for the payment of all telecommunications expenses associated with the service. The Bank assumes no liability or control over the internet access of its on-site systems and remote employee or affiliate access.

D. USE OF SERVICE.

Company will use the service only for its own internal business use in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Company agrees not to make the service available or allow use of the service in a computer bureau service business, timesharing, or otherwise disclose or allow use of the service by or for the benefit of any third party.

E. ADMINISTRATIVE RULES.

This Agreement shall be subject to such administrative rules as the Bank may establish and disseminate from time to time governing the services it will provide in connection with the service.

F. WARRANTIES; DISCLAIMER OF WARRANTIES.

(a) COMPANY ACKNOWLEDGES THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE BANK IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN OR TO ANY INFORMATION RESULTING FROM COMPANY'S USE OF THE SERVICE.

(b) THE BANK MAKES NO AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, REGARDING THE SERVICE INCLUDING THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE BANK DISCLAIMS ANY WARRANTIES REGARDING THE *REMOTE ITEM PROCESSING SERVICES* PERFORMANCE OR FUNCTIONALITY OF THE SERVICES (INCLUDING, WITHOUT LIMITATION, THAT THE SERVICES WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE). COMPANY FURTHER ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET AND OPERATION, TELECOMMUNICATION LINES OR CIRCUITS. COMPANY HEREBY ASSUMES ALL RISKS RELATING TO THE FOREGOING.

G. BANK'S LIABILITIES.

Bank shall only be liable to the Customer under this Section XI as described in Section I(N) above, and to extent modified by this Section XI(G) and Exhibit E.

The Bank shall not be liable in any manner for any and all financial risks unless (A) Company follows the procedures described in materials for use of the service; and (B) Company is assessed a penalty or late fee due to the Bank's gross negligence or willful misconduct. In no event shall the Bank's responsibilities for such penalties or late fees exceed \$100.00.

THE MAXIMUM AGGREGATE LIABILITY OF THE BANK RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED THE TOTAL FEES PAID BY COMPANY FOR THE REMOTE ITEM PROCESSING SERVICES RESULTING IN SUCH LIABILITY IN THE SIX-MONTH PERIOD PRECEDING THE DATE THE CLAIM ACCRUED. THE BANK'S LICENSORS OR SUPPLIERS WILL NOT BE SUBJECT TO ANY LIABILITY TO COMPANY IN CONNECTION WITH ANY MATTER.

H. FORCE MAJEURE.

The Bank shall not be responsible for liability, loss, or damage of any kind resulting from any delay in the performance of or failure to perform its responsibilities hereunder due to causes beyond the Bank's reasonable control.

I. TERMINATION.

Either party may terminate services provided under this Section pursuant to the provisions of Section I(M). Notwithstanding any such notice of termination, this Section shall remain effective in respect of any transaction occurring prior to such termination. Upon any termination of this Section, (i) Company will immediately cease using the service, (ii) Company shall promptly remit all unpaid monies due under this Agreement and (iii) all rights and obligations of the parties shall terminate except that the rights and obligations of the parties under Subsections E, F-G, and I-K of this Section XI and Sections 6, 8 and 10 of Exhibit E shall survive.

THE BANK MAY SUSPEND COMPANY'S ACCESS TO THE SERVICE IN THE EVENT THAT THE BANK REASONABLY DETERMINES SUCH SUSPENSION IS NECESSARY IN ORDER TO PROTECT THE SERVICE OR THE BANK FROM HARM OR COMPROMISE OF INTEGRITY, SECURITY, REPUTATION, OR OPERATION.

J. INDEMNIFICATION.

Company agrees to indemnify, defend and hold harmless the Bank and its shareholders, directors, officers, employees and agents ("Indemnified Parties") from and against any and all losses, costs, expenses, fees (including, but not limited to, reasonable attorney fees and disbursements), claims, damages, liabilities and causes of actions of third parties resulting or arising from: (a) Company's failure to abide by or perform any obligation imposed upon Company under this Agreement, (b) the willful misconduct, fraud, criminal activity, intentional tort or negligence of Company or any of its representatives involving use of the service; (c) the actions, omissions or commissions of Company, its employees, consultants and/or agents relating to the service; and (d) any transmission or instruction, whether or not authorized, acted upon by the Bank in good faith. Company shall be provided with prompt notice of any claims and given full authority and assistance (at Company's expense) for the defense of any such claims; provided that the Bank may participate in such defense and settlement with counsel of the Bank's own choosing at the Bank's own expense; provided, further, however, Company shall have no authority to settle any claim against any Indemnified Party without the prior written consent of such Indemnified Party (which consent shall not be unreasonably withheld).

K. THIRD-PARTY BENEFICIARY.

The parties acknowledge that the bank's processing agent or agents are intended third-party beneficiaries of this Agreement.

XII. LINE OF CREDIT SWEEP SERVICES.

Upon Company's execution and delivery of the Master Authorization Form for Line of Credit Sweep Service or upon its use of the service, whichever occurs first, Company agrees:

A. SWEEP SERVICE.

The Company authorizes Bank to determine, on a daily basis, based on clearing items for that day, the balance of, and the amount available under, the Company's revolving line of credit provided to Company by Bank. The Company further authorizes Bank, on a daily basis, to the extent available, apply funds in Company's Lead Account to (a) reduce the outstanding principal balance of the line of credit, or (b) automatically draw funds under the line of credit, if available, and deposit those funds into the Lead Account if necessary to fund disbursements from the Lead Account on that day.

B. STATEMENTS.

All transactions related to Line of Credit Sweep Service will appear on Company's line of credit statement.

C. CREDIT.

Line of Credit Sweep Service is based on the terms and conditions of the Company's lending agreement and is subject to credit approval.

Line of Credit Sweep Services require Customer to have a Line of Credit account. This section is subject to the provisions of this Agreement.

Business Services Master Authorization Form

Action: New Enrollment Modification

Company Name:		Tax Identification Number:		
Address:		City:	State:	Zip:
Company Administrator:		Phone:	Fax:	
Company Administrator Email:		Charge Account:		
Southside Bank recommends the use of Dual Authorization. If you choose to instead only require Single Authorization, you must indicate that choice here: <input type="checkbox"/>		<input type="checkbox"/> E-Statements		
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> RDC Setup Fee (One-Time)	<input type="checkbox"/> Tax Payment Only	<input type="checkbox"/> Line of Credit Sweep	
<input type="checkbox"/> ACH Setup (One-Time)	<input type="checkbox"/> Remote Deposit Capture	<input type="checkbox"/> Wire Transfer	<input type="checkbox"/> Commercial MM Sweep	
<input type="checkbox"/> ACH Module	<input type="checkbox"/> Lockbox	<input type="checkbox"/> Fed EDI Report	<input type="checkbox"/> Commercial Bill Pay	
<input type="checkbox"/> Positive Pay Set Up	<input type="checkbox"/> Positive Pay-Check	<input type="checkbox"/> Positive Pay-ACH		

Limits:

ACH per file Credit	ACH Debit Monthly	Tax Payment	Wire Transfer	RDC Total
\$	\$	\$	\$	\$

Account Name:				Account Number:			
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox				
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit		Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL	Other: _____	<input type="checkbox"/> Tax Payments			
<input type="checkbox"/> Pos Pay-Check	<input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay	<input type="checkbox"/> Return	Initial:	
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep		<input type="checkbox"/> Line of Credit Sweep			
<input type="checkbox"/> ZBA	<input type="checkbox"/> TBA	Lead Acct:	Sub Acct:	Target Balance:			
<input type="checkbox"/> Fed EDI Reporting		<input type="checkbox"/> Email Delivery	<input type="checkbox"/> Fax Delivery	Email Address/Fax Number:			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$	Per Check Limit \$	Check Volume:				

Account Name:				Account Number:			
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox				
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit		Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL	Other: _____	<input type="checkbox"/> Tax Payments			
<input type="checkbox"/> Pos Pay-Check	<input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay	<input type="checkbox"/> Return	Initial:	
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep		<input type="checkbox"/> Line of Credit Sweep			
<input type="checkbox"/> ZBA	<input type="checkbox"/> TBA	Lead Acct:	Sub Acct:	Target Balance:			
<input type="checkbox"/> Fed EDI Reporting		<input type="checkbox"/> Email Delivery	<input type="checkbox"/> Fax Delivery	Email Address/Fax Number:			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$	Per Check Limit \$	Check Volume:				

Account Name:				Account Number:			
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox				
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit		Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL	Other: _____	<input type="checkbox"/> Tax Payments			
<input type="checkbox"/> Pos Pay-Check	<input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay	<input type="checkbox"/> Return	Initial:	
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep		<input type="checkbox"/> Line of Credit Sweep			
<input type="checkbox"/> ZBA	<input type="checkbox"/> TBA	Lead Acct:	Sub Acct:	Target Balance: Zero			
<input type="checkbox"/> Fed EDI Reporting		<input type="checkbox"/> Email Delivery	<input type="checkbox"/> Fax Delivery	Email Address/Fax Number:			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$	Per Check Limit \$	Check Volume:				

Account Name:				Account Number:			
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox				
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit		Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL	Other: _____	<input type="checkbox"/> Tax Payments			
<input type="checkbox"/> Pos Pay-Check	<input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay	<input type="checkbox"/> Return	Initial:	
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep		<input type="checkbox"/> Line of Credit Sweep			
<input type="checkbox"/> ZBA	<input type="checkbox"/> TBA	Lead Acct:	Sub Acct:	Target Balance:			
<input type="checkbox"/> Fed EDI Reporting		<input type="checkbox"/> Email Delivery	<input type="checkbox"/> Fax Delivery	Email Address/Fax Number:			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$	Per Check Limit \$	Check Volume:				

Business Services Master Authorization Form

Company Name:	Tax ID Number:
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Account Name:		Account Number:	
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL Other: _____		<input type="checkbox"/> Tax Payments	
<input type="checkbox"/> Pos Pay-Check <input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay <input type="checkbox"/> Return Initial:
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep	<input type="checkbox"/> Line of Credit Sweep
<input type="checkbox"/> ZBA <input type="checkbox"/> TBA	Lead Acct: _____	Sub Acct: _____	Target Balance: _____
<input type="checkbox"/> Fed EDI Reporting <input type="checkbox"/> Email Delivery <input type="checkbox"/> Fax Delivery Email Address/Fax Number: _____			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$ _____	Per Check Limit \$ _____	Check Volume: _____

Account Name:		Account Number:	
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL Other: _____		<input type="checkbox"/> Tax Payments	
<input type="checkbox"/> Pos Pay-Check <input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay <input type="checkbox"/> Return Initial:
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep	<input type="checkbox"/> Line of Credit Sweep
<input type="checkbox"/> ZBA <input type="checkbox"/> TBA	Lead Acct: _____	Sub Acct: _____	Target Balance: _____
<input type="checkbox"/> Fed EDI Reporting <input type="checkbox"/> Email Delivery <input type="checkbox"/> Fax Delivery Email Address/Fax Number: _____			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$ _____	Per Check Limit \$ _____	Check Volume: _____

Account Name:		Account Number:	
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL Other: _____		<input type="checkbox"/> Tax Payments	
<input type="checkbox"/> Pos Pay-Check <input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay <input type="checkbox"/> Return Initial:
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep	<input type="checkbox"/> Line of Credit Sweep
<input type="checkbox"/> ZBA <input type="checkbox"/> TBA	Lead Acct: _____	Sub Acct: _____	Target Balance: _____
<input type="checkbox"/> Fed EDI Reporting <input type="checkbox"/> Email Delivery <input type="checkbox"/> Fax Delivery Email Address/Fax Number: _____			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$ _____	Per Check Limit \$ _____	Check Volume: _____

Account Name:		Account Number:	
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL Other: _____		<input type="checkbox"/> Tax Payments	
<input type="checkbox"/> Pos Pay-Check <input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay <input type="checkbox"/> Return Initial:
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep	<input type="checkbox"/> Line of Credit Sweep
<input type="checkbox"/> ZBA <input type="checkbox"/> TBA	Lead Acct: _____	Sub Acct: _____	Target Balance: _____
<input type="checkbox"/> Fed EDI Reporting <input type="checkbox"/> Email Delivery <input type="checkbox"/> Fax Delivery Email Address/Fax Number: _____			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$ _____	Per Check Limit \$ _____	Check Volume: _____

Account Name:		Account Number:	
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL Other: _____		<input type="checkbox"/> Tax Payments	
<input type="checkbox"/> Pos Pay-Check <input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay <input type="checkbox"/> Return Initial:
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep	<input type="checkbox"/> Line of Credit Sweep
<input type="checkbox"/> ZBA <input type="checkbox"/> TBA	Lead Acct: _____	Sub Acct: _____	Target Balance: _____
<input type="checkbox"/> Fed EDI Reporting <input type="checkbox"/> Email Delivery <input type="checkbox"/> Fax Delivery Email Address/Fax Number: _____			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$ _____	Per Check Limit \$ _____	Check Volume: _____

Account Name:		Account Number:	
<input type="checkbox"/> Balance Reporting	<input type="checkbox"/> Book Transfer	<input type="checkbox"/> Commercial Bill Pay	<input type="checkbox"/> Lockbox
<input type="checkbox"/> ACH Credit <input type="checkbox"/> ACH Debit Type: <input type="checkbox"/> PPD <input type="checkbox"/> CCD <input type="checkbox"/> WEB <input type="checkbox"/> TEL Other: _____		<input type="checkbox"/> Tax Payments	
<input type="checkbox"/> Pos Pay-Check <input type="checkbox"/> Reverse	<input type="checkbox"/> Positive Pay-ACH	<input type="checkbox"/> Positive Pay	<input type="checkbox"/> Pay <input type="checkbox"/> Return Initial:
<input type="checkbox"/> Wire Transfer		<input type="checkbox"/> Commercial Money Market Sweep	<input type="checkbox"/> Line of Credit Sweep
<input type="checkbox"/> ZBA <input type="checkbox"/> TBA	Lead Acct: _____	Sub Acct: _____	Target Balance: _____
<input type="checkbox"/> Fed EDI Reporting <input type="checkbox"/> Email Delivery <input type="checkbox"/> Fax Delivery Email Address/Fax Number: _____			
<input type="checkbox"/> Remote Deposit Capture	Daily Limit \$ _____	Per Check Limit \$ _____	Check Volume: _____

Business Services Master Authorization Form

Customer Authorization
<p>This Business Services Master Authorization Form, the Business Services Terms & Conditions, and all applicable exhibits, as well as all items expressly incorporated by reference herein, shall constitute a single agreement (collectively referred to herein as the "Agreement"), and, as such, shall contain the terms and conditions which govern Bank's Business Services, and shall constitute the entire agreement between the parties as related to such Services. This Agreement supersedes any prior agreements or representations relating to the Business Services and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Business Services Terms & Conditions.</p>
<p>Authorized Users are selected by a Company Administrator appointed by Customer. The Company Administrator for the Authorized Accounts is identified below. Bank will assign an initial system password to the designated Company Administrator, which will allow the Company Administrator to access the Bank's electronic platform, create a proprietary password for Customer and create security profiles for each of the Authorized Users. The Company Administrator may be changed only by the signatories to this Agreement. The Company Administrator will select a password, which will be recorded by Bank and used to identify the Company Administrator when Cash Management System support is requested of Bank.</p>
<p>Customer (i) acknowledges that these procedures are fully automated and not monitored by Bank; (ii) Customer assumes sole responsibility for the performance of the Company Administrator; and (iii) in addition to indemnification provisions stated elsewhere in this Agreement, indemnifies and holds Bank harmless from any claims, demands, losses or liability arising from or related to any failure by the Company Administrator and/or the Authorized Users to properly discharge their obligations in connection with Customer's use of the Cash Management System.</p>
<p>If Customer selects the Target Balance and Zero Balance Account services, such services allow the Customer to designate a target balance for each designated Sub Account. Any amount that is above or below the designated target balance in the Customer's account(s) is automatically transferred (swept) in or out of the Lead Account daily. To the extent of available funds, funds in the Lead Account will be used to accomplish the purpose of the Target Balance and Zero Balance Accounts.</p>
<p>If Customer selects the Line of Credit Sweep feature, such feature allows you to access or make advances or reductions on your business line of credit.</p>
<p>The Customer hereby represents and warrants that it has signatory authority with regard to the foregoing accounts, including without limitation the right to provide this authorization for any sweep services it selects, including, but not limited to, sweep transfers, and agrees to indemnify and hold Southside Bank harmless from any action taken in reliance upon this authorization.</p>
<p>The Customer understands that any request to change the information stated or the selections indicated on this Agreement and Master Authorization Form must be presented to Bank in a writing executed by the Company Administrator or another Authorized Signer.</p>
<p>The Customer acknowledges that these instructions do not in any way limit or waive any of the Bank's rights or remedies. These instructions and the applicable accounts remain subject to all applicable Account Agreements and policies of the Bank and may be subject to fees.</p>

Company Administrator Appointed by Customer		
Name:	Signature:	Date:
	Mobile: <input type="checkbox"/> Text <input type="checkbox"/> Call	Land Line:
Customer Authorization		
Name:	Signature:	Date:
Title:	Email:	Fax:
Bank Authorization		
Bank Officer:	Bank Officer Signature:	Date:
Business Services		
Processed by:	Signature:	Date:

The following individuals are hereby authorized to initiate payment orders on behalf of _____ (Customer).

Any changes must be made in writing according to Section III of the Business Services Agreement.

_____ Will Sign _____
(Typed Name) (Signature)

******* (Be sure to "x" out any lines not used). *******

<p>CUSTOMER ACKNOWLEDGMENT</p> <p>CUSTOMER(1) _____</p> <p>BY _____ (Please print or type name)</p> <p>SIGNATURE _____</p> <p>TITLE _____</p> <p>DATE _____</p> <p>TELEPHONE NUMBER _____</p> <p>-----</p>	<p>BANK ACKNOWLEDGMENT</p> <p>BY _____ (Please print or type name)</p> <p>SIGNATURE _____</p> <p>TITLE _____</p> <p>DATE _____</p> <p>TELEPHONE NUMBER _____</p>
<p>CUSTOMER(2) _____</p> <p>BY _____ (Please print or type name)</p> <p>SIGNATURE _____</p> <p>TITLE _____</p> <p>DATE _____</p> <p>TELEPHONE NUMBER _____</p>	

The following accounts held at Southside Bank are hereby authorized by Customer for the payment of wire transfer orders issued by Authorized Users shown in Exhibit A.

_____	_____
(Account Title)	(Account Number)
_____	_____
(Account Title)	(Account Number)
_____	_____
(Account Title)	(Account Number)
_____	_____
(Account Title)	(Account Number)
_____	_____
(Account Title)	(Account Number)

***** (Be sure to "x" out any lines not used). *****

<p>CUSTOMER ACKNOWLEDGMENT</p> <p>CUSTOMER(1) _____</p> <p>BY _____</p> <p style="text-align: center;">(Please print or type name)</p> <p>SIGNATURE _____</p> <p>TITLE _____</p> <p>DATE _____</p> <p>TELEPHONE NUMBER _____</p> <p>-----</p> <p>CUSTOMER(2) _____</p> <p>BY _____</p> <p style="text-align: center;">(Please print or type name)</p> <p>SIGNATURE _____</p> <p>TITLE _____</p> <p>DATE _____</p> <p>TELEPHONE NUMBER _____</p>	<p>BANK ACKNOWLEDGMENT</p> <p>BY _____</p> <p style="text-align: center;">(Please print or type name)</p> <p>SIGNATURE _____</p> <p>TITLE _____</p> <p>DATE _____</p> <p>TELEPHONE NUMBER _____</p>
---	---

As an added layer of security Southside Bank will provide a Secure Token to Company Administrator and Authorized Users. You will be required to enter your Token security number each time you approve an ACH or Wire Transfer transaction through our Southside Cash Management System. With the entry by the Company Administrator or Authorized User of the unique randomly-generated digital numerical display, such person proves they are in possession of the correct Secure Token and can then approve ACH or Wire Transfer transactions through the Southside Bank Cash Management System.

The Company Administrator will be responsible for obtaining a Secure Token for each Authorized User that the Company Administrator has authorized to approve wires or ACH transactions on any Authorized Account. Authorized Users will be required to utilize the Secure Token to approve wires and ACH transactions created and processed through the Southside Cash Management System. A Secure Token is associated with your Sign-On ID. No more than one Secure Token will be issued at any one time per Sign-On ID. You may choose a physical (hard token) or you may choose to download the mobile app version.

- **Report a Malfunctioning Token** – If a Secure Token malfunctions, the Company Administrator should immediately contact Cash Management Operations at (877) 639-3511. Upon notification, we will send you a replacement Token via overnight delivery whenever possible, unless you instruct us to send the replacement Token by U.S. Mail. When sending by overnight delivery we will attempt to deliver the Secure Token to you within 24 hours when your request is received by 12:00 p.m., Central Time. Malfunctioning Secure Tokens must be returned to the Bank within thirty (30) days or you may be assessed a fee, in accordance with the Bank’s Fee Schedule, as may change from time to time.
- **Report a Lost, Stolen or Damaged Token** - If a Secure Token is lost, stolen or damaged, the Company Administrator should immediately report this to Cash Management Operations at (817) 367-4880. When a Secure Token is lost, stolen or damaged, the existing Secure Token will be inactivated and a new Secure Token associated with the Sign-On ID and Password will be issued. Upon your request we will send the Company Administrator a replacement Secure Token via overnight delivery whenever possible, unless you instruct us to send the replacement Secure Token by U.S. Mail. When sending by overnight delivery we will attempt to deliver the Secure Token to you within 24 hours when your request is received by 12:00 p.m., Central Time. You will be charged a fee for a Secure Token replaced due to being lost, stolen or damaged in accordance with the Bank’s Fee Schedule, as it may change from time to time.
- **Cancel/Change a Token** - Once an Authorized User is enrolled for a Secure Token, the Token may be deleted by the Company Administrator by deleting that Authorized User and then reassigning the Secure Token to another Authorized User. If the Company Administrator’s Token needs to be deleted or changed the Company should contact Cash Management Operations by phone at (817) 367-4880 or in writing at Southside Bank, Attention: Cash Management Operations, P.O. Box 1079, Tyler, TX 75710-1079 with the request.
- **Request an Emergency Token Number** - In the event that a Secure Token is lost, stolen, damaged, malfunctions or is cancelled and the Authorized User requires access to your online account information, only the Company Administrator may request an “Emergency Token Number” by calling Cash Management Operations at (817) 367-4880. Upon verification and authentication, an Emergency Token Number (up to 2) will be issued to your Company Administrator only. The Emergency Token Number along with your Sign-On ID and Password can be utilized one time within 24 hours of issuance to access your Account through the Southside Cash Management System while your replacement Secure Token request is in process.
- **Returning a Token to Southside Bank** - Secure Tokens are the property of Southside Bank. It will be your responsibility to return the Token if: (i) you decide to discontinue using all Business Services that require a Token; (ii) your Account(s) at Southside Bank is/are closed; or (iii) a Token’s battery fails or there is a malfunction. Secure Tokens previously issued must be promptly returned to the Bank by U.S. Mail to: Southside Bank, Attention: Cash Management Operations, P.O. Box 1079, Tyler, TX 75710-1079 You may be charged a fee in accordance with the Bank’s Fee Schedule, as it may change from time to time, for any Secure Token not returned to us. Any fees assessed will be debited from your account.

Company Name: _____

Company Administrator: _____

Printed Name: _____

Date: _____

Schedule 1

Delivery of Files

A. Delivery method: Southside Bank will only accept files transmitted through the Bank’s website, southside.com. Files may be created and transmitted using the Bank’s electronic platform or created by other means and transmitted through the electronic platform attached to a secure message.

B. Format: All files will be formatted in a NACHA or other preapproved format. Appendix Three of the NACHA Operating Rules should be referred to for details and specifications for specific ACH formats.

C. Timing of Delivery: If the Company is generating consumer credit batches, these must be delivered to the Bank by **4:00 p.m one business day before the requested settlement day** to ensure funds availability at the opening of business on settlement day. For all other Files/batches, the final delivery deadline is **4:00 p.m. one business day before settlement day**. The Company may deliver Files up to five (5) business days before the requested settlement day. The Bank will hold those Files and process them to settle on the Effective Entry Date listed by the Company.

D. Limits: The total dollar amount of Entries transmitted by the Company to the Bank on any single day shall not exceed for credit files. Debit file limits are stated separately in the ACH Debit Origination Application.

E. Notice by Bank: If an Entry is rejected, returned or if a notification of change is received, the Bank shall notify the Company by fax, e-mail, or other method agreed to by the Company and the Bank.

All notices shall be provided to the following addresses for each party:

If to Bank:	If to Company:
Southside Bank P. O. Box 1079 Tyler TX 75710 Attn: ACH Coordinator Fax: 903-526-2079	Company: Address: Zip: Attn:

F. ACH Origination Services Offered: Check box next to the approved ACH service and include “Additional Originator Obligations for Specific Standard Entry Class (SEC) Codes” document(s) as **Schedule 5** when indicated below.

- PPD – Preranged Payment and Deposit Entry**
- CCD – Corporate Credit and Debit Entry**
- WEB – Internet-Initiated Entry (Schedule 5 Required)**

COMPANY: By: _____
Signature

Name: _____
Print or Type

Date: _____

Schedule 3

ACH Origination Fee Schedule

File Fee (Per File).....	\$10.00
Per Item.....	\$0.10
Chargeback Fee.....	\$4.00

Schedule 4

ACH Authorized User Signature Form

COMPANY:

ACCOUNT NO:

Below are the printed names and signatures of all employees authorized to originate, modify, and/or delete ACH transactions on Company's behalf. These may or may not be signers on Company's bank account. **This form is for ACH purposes only and gives no authorization for any other Business Service(s).**

Name (print or type)	Signature

Authorized Signature

*Authorized Signature

Print or Type name

Print or Type name

Title

Title

Date

Date

*Second signature required if the Company's account at the Bank requires two signatures for transactions.

ACH Originator
Customer Information

Company Name: _____

Account Number: _____

Primary ACH Contact: _____

Phone #: _____ Fax #: _____

Email Address: _____

Secondary ACH Contact: _____

Phone #: _____ Fax #: _____

Email Address: _____

Processing Schedule: (For Weekly & Bi-weekly specify day e.g. Wed, Thur, etc.)	Weekly (day of week)	_____
	Bi-weekly (day of week)	_____
	Semi Monthly (dates)	_____
	Monthly (date)	_____
	Other	_____

ACH DEBIT ORIGINATION APPLICATION

<u>DOCUMENT</u>	<u>NOTES (Y/N, amount)</u>	<u>INITIALS</u>
<u>ACH Agreement</u>		
Authorized Signer Schedule	_____	_____
3	_____	_____
Analysis/Hard Charge?	_____	_____
Schedule 4	_____	_____
Schedule 5 (WEB only)	_____	_____
Transmittal Register Waiver	_____	_____
Customer Info Sheet	_____	_____
Per File Credit Limit	_____	_____
Monthly Debit Limit	_____	_____

ACH Activity (check all that apply)

Credits

Payroll _____ ACH Payment _____ Single Pmt _____

Debits

Collections _____ Single Receipt _____

Verisign Token? Yes No _____

Will customer create a NACHA file? _____

If yes, will they use Import or Pass Thru? _____

For ACH Department use only:

ProfitStars Setup: _____

Final Approval: _____ Date: _____

ATTN: Jeff Quesenberry
Fax #903-526-2079
Toll Free Fax #877-884-6893
Email: JeffQ@southside.com

ACH TRANSMITTAL REGISTER

COMPANY NAME: _____

COMPANY'S ACCOUNT #: _____ **EFFECTIVE DATE:** _____

_____ SEND A FILE

_____ ACH PAYROLL/PAYMENTS/RECEIPTS/COLLECTIONS: **Tracking #** _____

_____ CREDIT FILE (Payroll, Distributions, Payments, Etc.)

_____ DEBIT FILE (Dues, Drafts, Collections, Etc.)

TOTALS: **Item Count** _____ **Amount \$** _____

Authorized Signature (Company)

Date

<u>Bank Use Only:</u>	
Credit File:	Debit File:
Verified Signature _____	Verified Signature _____
Confirm Funds _____	Verified Register to File Totals _____
Hold on Account _____	
Verified Register to File Totals _____	Initials _____

Southside Bank Lockbox Setup Sheet			
Bank Information			
Box / Dept. #:	Start Date:	Est Monthly Volume:	
Deposit Account #:		Service Charge Account # (if different):	
Bank Name:	Bank Contact:	Phone:	
Company Information			
Company Name:			
Mailing Address:			
Contact name:		Phone: ()	Fax: ()
		Email:	
General Setup			
Document Imaging:	<input type="checkbox"/>	<input type="checkbox"/> Documents	<input type="checkbox"/> Envelopes <input type="checkbox"/> Correspondence W/O check
Internet Access:	<input type="checkbox"/>	IView Authorization Form required to get UserIDs	
More than 10 Payees:	<input type="checkbox"/>	NOTE: All payees must be listed in Agreement	
Medical Customer	<input type="checkbox"/>	Yes <input type="checkbox"/> / No <input type="checkbox"/>	
Other Options			
Data Capture:	<input type="checkbox"/>	MICR Data Entry is default. Detail other requirements here.	
Special Sorting:	<input type="checkbox"/>	Detail special needs here	
Special Reports:	<input type="checkbox"/>	Detail special needs here	
Other Needs:	<input type="checkbox"/>	Detail other needs here	
Delivery Methods			
Doc Retention	<input type="checkbox"/>	Documents will be retained by Southside Bank for 60 days. Items are destroyed after 60 days.	
U. S. Mail:	<input type="checkbox"/>	For court documents, non- acceptable checks, magazines, etc.	
Reporting Methods			
Email:	<input type="checkbox"/>	Email Address(s):	
Transmission:	<input type="checkbox"/>	IS Contact: By email only	
Distribution - Original: Email to lockbox@southside.com or fax to (903)535-4408			

Southside Bank Lockbox Setup Sheet

Acceptable Payees

Please list all acceptable payees:

Southside Bank Lockbox Setup Sheet

Check Exception Processing

Process	Process	Do Not
1. Paid in full checks	<input type="checkbox"/>	<input type="checkbox"/>
2. Third party endorsed over to customer	<input type="checkbox"/>	<input type="checkbox"/>
3. Checks without signature	<input type="checkbox"/>	<input type="checkbox"/>

IView Authorization Form

Client Name: _____

IView is a browser based inquiry tool that will allow you to access your data and images through the internet. Your image data is stored in a secure environment utilizing the latest in encryption technology. Access to your images and data will be controlled through a confidential access ID, password and PIN # protocol established and issued by Southside Bank.

By signing this form you are assuming responsibility to provide the required internal safeguards to restrict use of the IView system ID, password and PIN # information to those who have a business need within your respective company and absolve Southside Bank from any liability that may arise from any such unauthorized access.

Customer Signature: _____

Bank Rep Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Authorized Users (please print):

CITATION™ i-View provides the lockbox customer with convenient and secure WEB delivery of **CITATION™** based transaction information, document images, data files and print reports. Transaction history is maintained and accessible with query capabilities to research, display, and download selected images.



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- **Function Overviews**
- **Log Off**
 - **Session Timeout**
- **Transaction History** – provides search functions for transaction information, images, data files and print reports.
 - **Using the Search Results Tree**
 - **Transaction Summary by Date**
 - **Transaction Details by Date**

Application Functions - continued

- **Transaction History – continued**
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 - **Downloading Data Files and Print Reports**
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- **User Setting**
 - **My Setting**
 - **Managing your Password**
 - **Managing your PIN number**
 - **Managing your Personal Information (security question and email)**

 - **User Groups** (User Groups provide User’s Permissions and Account Access)
 - **Basic User Groups**
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 - **Special Bank User Groups**

 - **Users**
 - **Adding New Users**
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 - **Remove (deleting) Users**
 - **Resetting Other Users Passwords**
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Application Functions – continued

User Settings –continued

Users - continued

- **Adding or Changing Other Users Personal Information** (email & security question/answer)

- **Contact Us**

Troubleshooting Page 32

Log In Page

The Log In process authenticates a User; only authenticated Users can access i-View application functions.

CITATION™ i-View has been designed as a secure portal for information delivery. To ensure that the user is authenticated, a valid User Name, Password and PIN number are all required.

To Log In, enter a User Name, Password and select the PIN numbers from the key pad then click Log In.

- *User Names are not case sensitive.*
- *Passwords are case sensitive.*
- *A User is required to use the randomized key pad (numbered buttons are not in fixed positions, they randomly shift at each log in attempt) to enter a PIN number.*

The initial User Names, Passwords and PIN numbers are provided to the customer by the bank. Passwords and PIN numbers are automatically generated and sent via email when a new User is added. See Adding Users for more additional information.

Instruct new Users to enter the My Settings functions to add personal information in the form of a security question and answer. The security question is presented as a challenge question in the event that the User forgets their Password or PIN number. Additionally, the User may wish to change their Password and PIN number; making it private and personal to them. See My Settings section for more information.

Log In Page - continued

Forgot Password or Pin?

A valid User Name, Password and PIN are required to access the website. However, a User can request a new password and PIN by choosing “Forgot Password or PIN” at the Log In page. The application will authenticate the User based upon a valid User Name and a correct answer to the Users Security Question; this authentication does not allow access to the *i-View* application functions but does send a new Password and PIN number via email.

To reset a Password and PIN number from the Log In page, click on “Forgot Password or PIN?”. Enter User Name and click “Retrieve Security Question”.

Enter Security Answer and Click OK.

NOTE: You must know your User Name and security answer to successfully reset your Password or PIN number using this function.

Home Page

The Home Page opens following a successful Log In. A tool bar is provided for navigating through the site. The bank can customize the Home Page html to present additional information to the Users making the page a potential marketing tool.

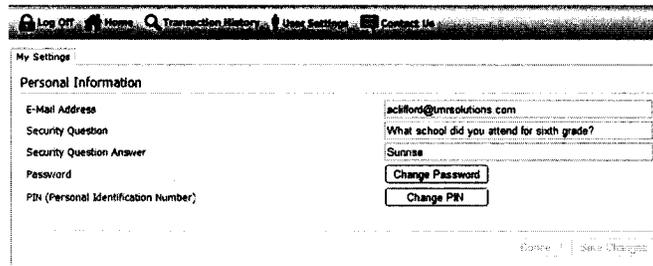
NOTE: A User’s access to the application functions will vary depending on the User’s permissions. Thus, the navigation options in the tool bar will vary based on User permissions.

Understanding the User Access

The navigation options in the tool bar are based on the Permissions granted to the User. This means the toolbar options or pages accessible may differ from user to user. See the User Groups section for additional information.

Basic User – can navigate to:

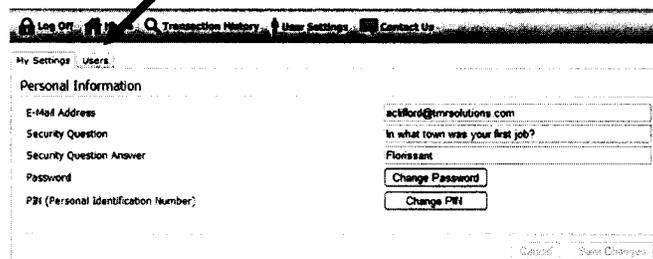
- Transaction History
- User Settings
 - My Settings
- Contact Us



Administrative User – can navigate to:

- Transaction History
- User Setting
 - My Setting
 - Users
- Contact Us

Note: The Users tab is only visible to a User with administrative permissions.



Application Functions

Function Overviews



Log Off – provides function to log off existing User and opens the Log In page.

Home – returns user to the Home page.

Transaction History – functions include retrieving transaction information, document images, data files and print reports by date, amount or field data.

User Settings – There are four sections viewable based on the User’s permissions.

- **My Settings** – Allows access and the ability to change to current User’s email address, Password, PIN number, Security Question and Security Answers.
- **User Groups** –User Groups provide the Users’ permissions and access to specific accounts. This User Setting allows access to functions for adding, modifying or removing User Groups.
- **Users** – includes functions to add or remove Users and to associate Users to specific User Groups.
- **Style Profiles** – Allows access to customization tools for modifying the colors, logos and html pages.

Contact Us – This page can be filled with any web appropriate content. This section can be customized to show information desired by building html pages, or by pointing this page to a contact us page on your organizations existing web site.

NOTE: A User’s access to the application functions will vary depending on the User’s permissions.

Log Off

Selecting the Log Off button closes the current User’s session. The Log In page will then be displayed. Log In will be required to access the **i-View** application functions.

Specific instructions for Log In are provided in the manual section [Log In Page](#).

Application Functions - continued

Log Off - continued

Time-out

For security purposes, a User’s session is defaulted to time-out after 20 minutes of inactivity. The length of time before a time-out will occur is configurable. Please contact a Technology Management Resources support technician to modify time-out settings. The User is sent back to the Log In page when a time-out occurs; at this point they must complete the log in process to access the **i-View** application functions.

Forgot Password or PIN number

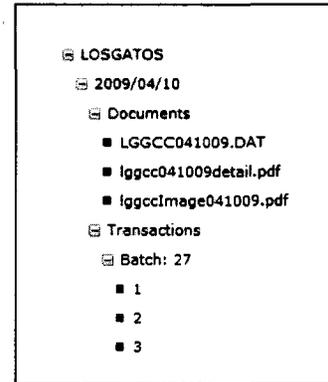
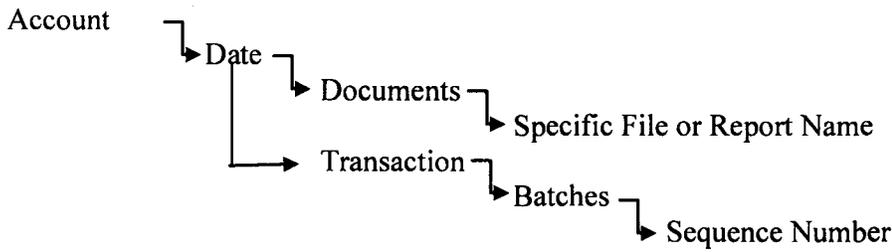
Procedures are provided for resetting a forgotten password or PIN number in the section [Log In Page](#).

Transaction History

Transaction history is maintained along with document images, data files and print reports all of which are accessible through the search queries. Search queries can be made by date, amount or field data. Users have the capabilities to download data files and printed reports. Images can be printed from the display.

Search results (Search Results Tree) are displayed following queries by date, amount or field values (check number, invoice number, etc.). Procedures are provided for queries in the sections [Search by Date](#), [Search by Amount](#) or [Search by Field Value](#).

Search results are provided in the following tree structure.

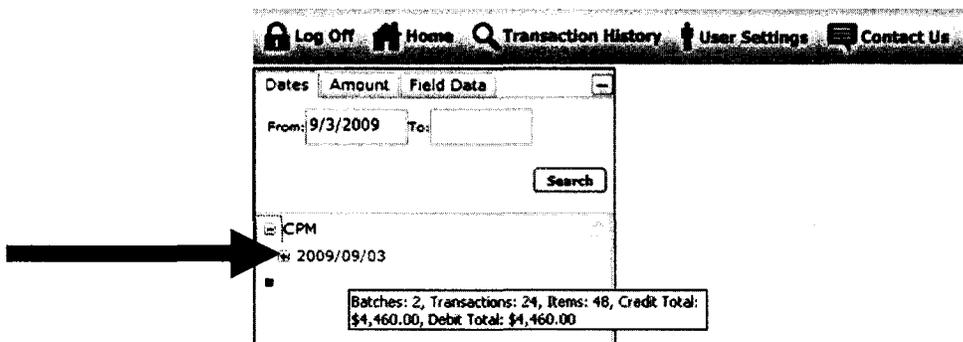


Application Functions - continued

Transaction History - continued

Using the Search Tree Results

To see a summary of transaction activity by date, expand the search results tree to see the dated folder and then hold the mouse over the “dated” folder. The transaction summary for the selected date is displayed as shown in the image below.



To see an entire day’s transaction details, click once on the search results “**Transaction**” folder. The entire day’s transaction information and images are available. The first 15 records are immediately loaded to the grid. Use the scroll bar to move up and down the grid. Use the Page selection to load additional images to the grid.

Enlarged view of page selection tool

Application Functions - continued

Transaction History - continued

Use the scroll bar to move up and down the grid.

Using the Search Tree

Results

To see a specific batch, expand the search results to see batches displayed. Click on the desired batch.

Search Results Pane Views

The Transaction History page is divided into three panes

- search results pane
- image pane
- transaction information pane

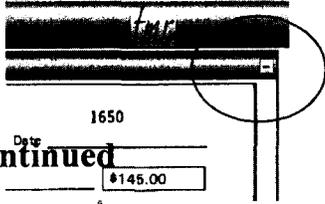
Search Pane

Transaction Information Pane

Image Pane

Batch	Transaction	Item	Debit	Credit	Check No.	Remittance No.	Name	Association
462	1	1	\$145.00		1733			
462	1	1		\$145.00	4111		BILL TURNER	LKV
462	2	1	\$145.00		1637			
462	2	1		\$145.00	4115		RICHARD TYSON	LKV

Each pane can be collapsed to allow more space for remaining panes by clicking on the minus symbol in the top right corner of the pane.



Application Functions - continued

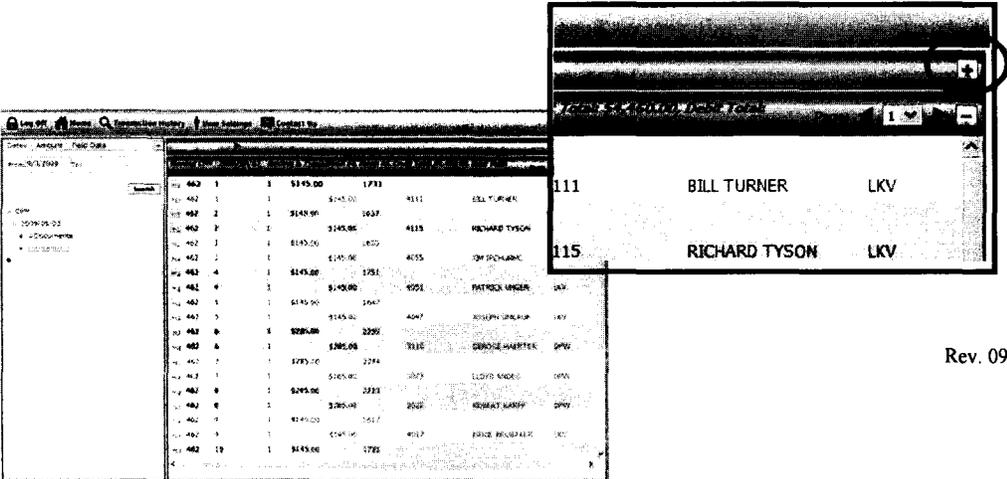
Transaction History - continued

Search Results Views - continued

The image below shows the image pane collapsed.

ID	Amount	Date	Name
462 1	\$145.00	1733	
462 1	\$145.00	1637	111 BILL TURNER LKV
462 2	\$145.00	1637	115 RICHARD TYSON LKV
462 3	\$145.00	1637	
462 4	\$145.00	1731	4055 JIM PUGHANIC LKV
462 5	\$145.00	1667	4051 PATRICK UNDER LKV
462 5	\$145.00	1667	4047 JOSEPH SALLER LKV
462 6	\$280.00	2299	3810 GEROISE HARTBER DPW
462 6	\$280.00	2299	3370 GEROISE HARTBER DPW
462 7	\$280.00	2294	3673 LLOYD HIGGS LKV
462 7	\$280.00	2294	3673 LLOYD HIGGS LKV
462 8	\$280.00	2233	3622 ADWERT KAPPY DPW
462 9	\$145.00	1637	
462 9	\$145.00	1637	4017 JIMMY HUNTER LKV
462 10	\$145.00	1731	

The panes can be restored to full size by clicking the plus symbol. By clicking on the plus symbol, all panes return back to full size as shown in the image below.

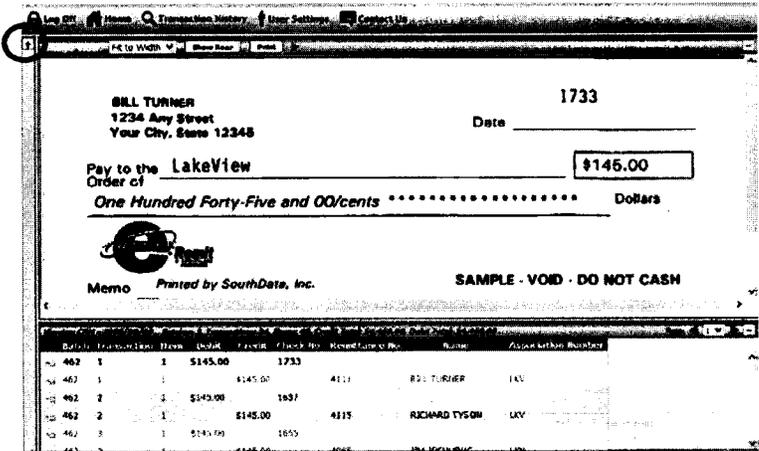


Application Functions - continued

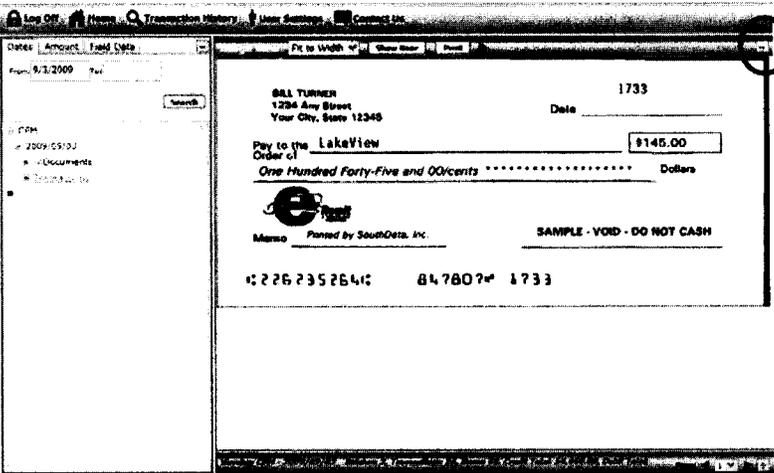
Transaction History - continued

Search Results Views - continued

The image below shows the search results tree pane collapsed. Click on the plus symbol to restore the search results pane to full size.



The image below shows the transaction information pane collapsed. Click on the plus symbol to restore the transaction information pane to full size.



Application Functions - continued

Transaction History - continued

Image Viewing Functions in the Image Pane

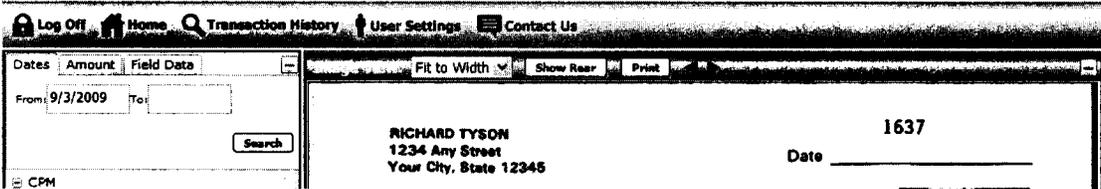
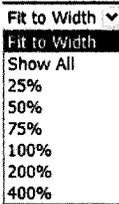
- The User can move from one image to the next by using the arrow(s) provided at the top of the image pane.



- The Show Rear Image button provides a toggle between the front and rear view of any image.



- The image view option is defaulted to a “Fit to Width” setting. Image view options can be changed by accessing a drop down menu in the window containing the “Fit to Width” setting.



Application

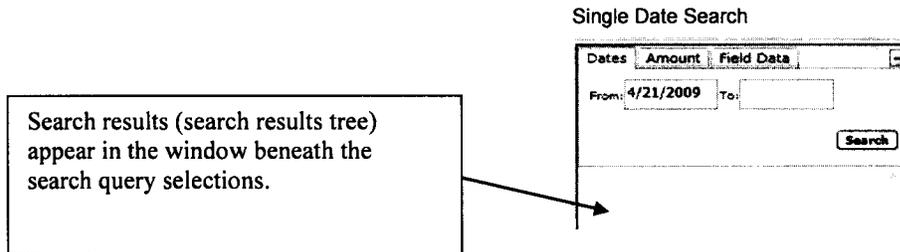
Functions - continued

Transaction History - continued

Search by Date

Single Date Search - For a single date search, type the date or use the calendar displayed by the application to enter the date in the “From” box. Click search.

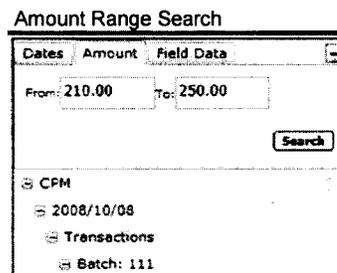
Date Range Search – For a multiple date search, type the date or use the calendar displayed by the application. Enter the starting date in the “From” box and the ending date in the “To” box. Click search.



Search by Check Amount

Single Amount Search – For a single amount search, type the amount in the “From” box. Click search.

Amount Range Search – For a multiple amount search, type an amount into the “From” and “To” box. Click search.



Application Functions - continued

Transaction History - continued

Search by field value (check number, name, etc.)

Users may search for information specific to a payment or payments. Type the payment information into the empty box and click search. Search results can be narrowed by selecting a specific field from the drop down menu in the “In” box and/or by selecting the “Match Whole Field” or “Match Case” filters.

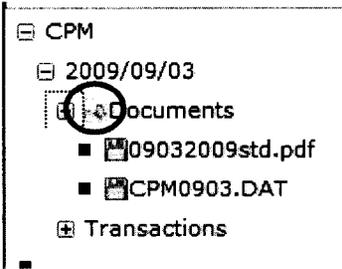


Downloading Data Files and Print Reports

Data files and print reports are stored by Account, organized by Date and stored in the Documents folders by file name.

You have the option to create a “zip” file of all data files and reports into one download or to select an individual data file or print report for download.

To create a “zip” file of all data files and print reports for download, click on the green arrow next to “Documents”.

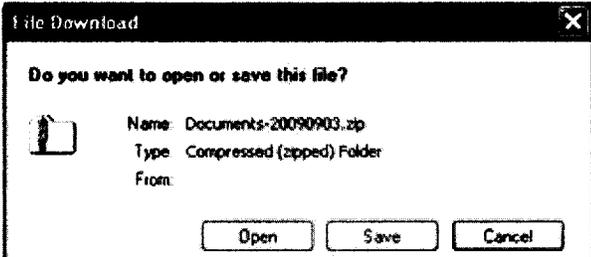


Application Functions - continued

Transaction History - continued

Downloading Data Files and Print Reports - continued

A file download window will appear, click the “save” button to save the file to your desired location.

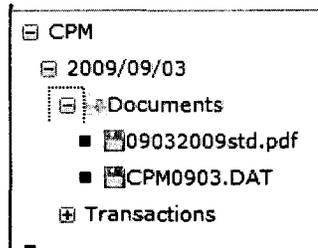


HINT: If you do not see the file download window, your system may have security features enabled to protect you from unauthorized file downloads. Below is a typical Internet Explorer security message.

 To help protect your security, Internet Explorer blocked this site from downloading files to your computer. Click here for options...

To download a data file or print report, click once on the

diskette icon next to the file name.

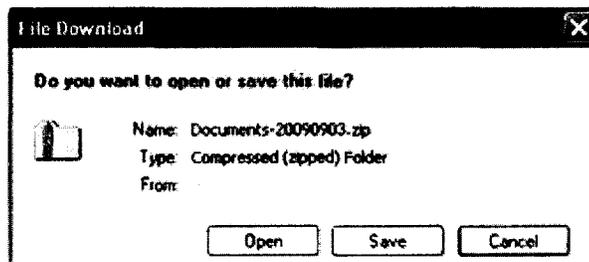


Application Functions - continued

Transaction History - continued

Downloading Data Files and Print Reports - continued

A file download window will appear, click the “save” button to save the file to your desired location.



HINT: If you do not see the file download window, your system may have security features enabled to protect you from unauthorized file downloads. Below is a typical Internet Explorer security message.

 To help protect your security, Internet Explorer blocked this site from downloading files to your computer. Click here for options...

Viewing Print Reports

Print reports are stored by Account, organized by Date and stored in the Documents folders by report name.

To view a print report, click once on the report name. The print report will open and display as shown below.

Account	Name	Check	Check Amount	Due Date	Due Date
4054	FRANCIS, LARRY	1764	\$141.00	09/01/2009	09/01/2009
4055	CRANE, VANCE EUGENE	1869	\$141.00	09/01/2009	09/01/2009
4018	ROBERT W. BAKER	1713	\$141.00	09/01/2009	09/01/2009
4021	DONALD BETHUNAG	1751	\$141.00	09/01/2009	09/01/2009
4021	FRANK W. BAKER	1751	\$141.00	09/01/2009	09/01/2009
3421	ROBERT E. BAKER	2227	\$141.00	09/01/2009	09/01/2009
4015	LEONARD, JIM	2214	\$141.00	09/01/2009	09/01/2009
4129	GEORGE BAKER	2229	\$141.00	09/01/2009	09/01/2009
4027	JOHN W. BAKER	1847	\$141.00	09/01/2009	09/01/2009
4025	PAUL E. BAKER	1751	\$141.00	09/01/2009	09/01/2009
4011	CH. BAKER	1825	\$141.00	09/01/2009	09/01/2009
4011	EDWARD T. BAKER	1847	\$141.00	09/01/2009	09/01/2009
4111	WILL T. BAKER	1731	\$141.00	09/01/2009	09/01/2009
*Checks: 13		*Transactions: 13	Total Amount:	\$2,001.00	

Application Functions - continued

Transaction History -

continued

Viewing Print Reports - continued

The User may have the ability to print the report from the web site. This functionality is dependent on the application needed to open the print report. Your customers PC determines the program to call by the file extension; file extensions can often be modified to meet the needs of your customers'.

HINT: The view of a printed report is dependent on the User's PC having a program(s) compatible with the printed report file type.

The program called to open the report will determine whether or not the User has an option to print the report from the web page.

User Settings

My Settings

The My Settings page provides the User access to manage the Log In aspects of their account. Basic and administrative Users must be given access to My Settings, as they must be able reset the password and PIN numbers for privacy/security purposes.

- **Managing your Personal Information (security question and email)**

E-Mail Address - The email address is used to deliver new or reset Password and PIN numbers. This includes those initially created by the bank when a new User is added and if the User utilizes the Forgot Password function.

User Settings - continued

My Settings – continued

- **Managing your Personal Information (security question and email)**

Security Question – The security question is used for part of the authentication process that occurs when resetting a Users Password and PIN number from the Forgot Password function. To change or add a Security Question, select any question from the drop down menu.

Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.

Security Question Answer - The security questions answer is used for part of the authentication process that occurs when resetting a Users Password and PIN number from the Forgot Password function. To change or add a Security Answer, enter the your answer into the Security Question Answer box.

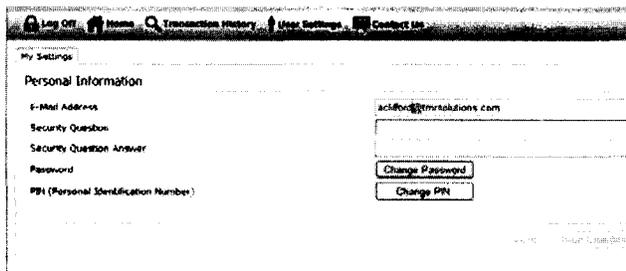
Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.

User Settings - continued

My Settings – continued

- **Managing your Password**

Password – This information is used as part of the Log In authentication. A User may change their Password by clicking the Change Password button in the My Setting window.

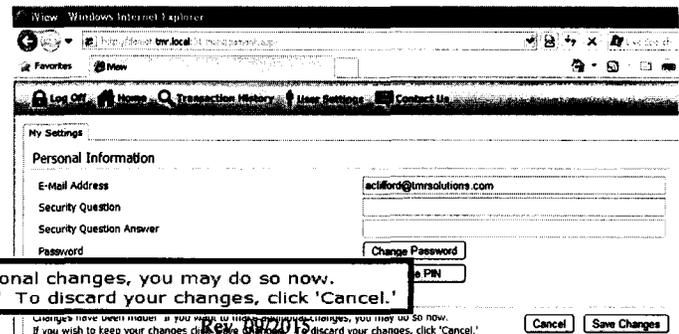


A Change Password window will appear. The current Password is required. Enter the new Password and enter it again as confirmation; Passwords must be a minimum of 8 characters and contain at least one number. Click OK.



NOTE: Passwords must be a minimum of 8 characters and contain at least one number.

Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.

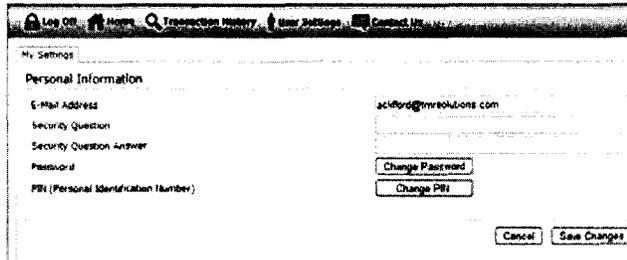


User Settings - continued

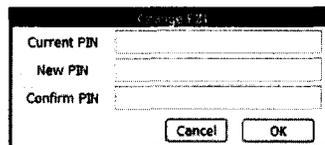
My Settings – continued

- **Managing your PIN number**

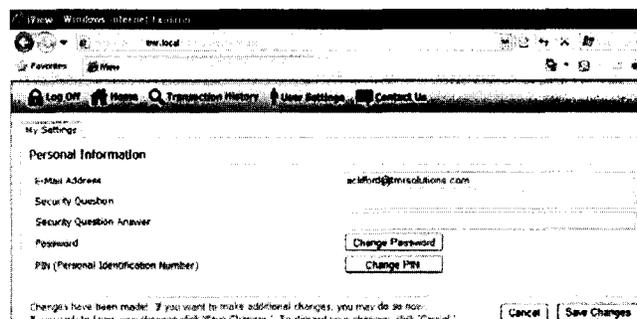
PIN Number – This information is used as part of the Log In authentication. A User may change their PIN Number by clicking the Change PIN button in the My Setting window.



A Change PIN window will appear. The current PIN is required. Enter the new PIN and enter it again as confirmation; PIN Numbers must be a minimum of 4 characters and numeric only. Click OK.



Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.



Changes have been made! If you want to make additional changes, you may do so now. If you wish to keep your changes click 'Save Changes.' To discard your changes, click 'Cancel.'

User Groups

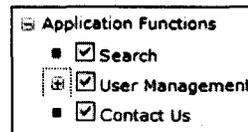
A User Group is created and assigned a specific set of permissions. Every *CITATION™ e-Remit* Account is assigned to one or more User Groups. User Group set up functions are accessed from User Setting; the User Group tab is not available to Basic or Administrative Users; special permission is required.



TMR creates **Basic User Groups** with these permissions:

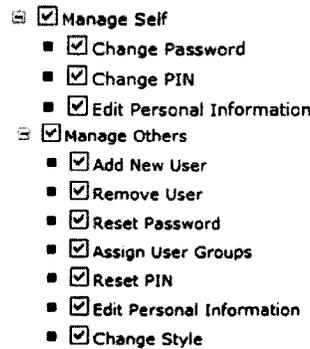
- Search
- User Management
 - Manage Self
- Contact Us

Permissions



TMR creates **Administrative User Groups** with these permissions:

- Search
- User Management
 - Manage Self
 - Manage Others
- Contact Us



Special User Groups - Permissions expand into other more complex areas and Bank representatives can be trained and given permission to use these complex set up functions.

- Creating Groups
- Managing/editing existing Groups
- Assigning accounts to Groups
- Creating new html styles
- Managing/editing existing styles
- Managing Other Users**

User

A User is created and assigned to one or more User Groups, this gives the User the permissions assigned to those User Groups as well as access to the *CITATIONTM e-Remit* Accounts assigned to those User Groups. The User set up and management functions are accessed from User Setting; the User tab is only available to Administrative Users.



Adding Users

Access the Users tab from the User Settings tool bar option. Add a new User by button with a green plus symbol.



clicking on the

The screenshot shows a web application interface with a navigation bar at the top containing 'Log Off', 'Home', 'Transaction History', 'User Settings', and 'Contact Us'. Below the navigation bar, there are tabs for 'My Settings' and 'Users'. The 'Users' tab is active, showing a list of users with 'testuser' visible. To the right, the 'User Group Assignment' section is visible, containing a checkbox for 'cpmAdmin', a 'Style Profile' dropdown menu set to 'testing_style', and a 'Personal Information' section with fields for 'E-Mail Address' (scifford@trmsolutions.com), 'Security Question' (In what town was your first job?), 'Security Question Answer' (Florissant), 'Password' (with a 'Reset' button), and 'PIN (Personal Identification Number)' (with a 'Reset' button).

The Add User window will appear. Enter the User Name and User E-Mail information. You are allowed a maximum of 20 characters for User Name. Click OK to add User.

Managing

User - continued

The 'Add User' dialog box has a title bar 'Add User'. It contains two input fields: 'User Name' and 'User E-Mail'. At the bottom, there are two buttons: 'Cancel' and 'OK'.

Other Users - continued

Adding Users - continued

The new User's Password and PIN number will appear in red on the User page, especially important if you are unable to utilize email functions to deliver new or and PIN numbers. New or reset password and PIN numbers are only temporarily displayed; you will be unable to access them once you exit the User window or select a different User. You must next assign the new user to the appropriate User Group(s) and style profile.



This is reset Password

The screenshot shows the user details page with the following fields and values: 'E-Mail Address' (empty), 'Security Question' (empty), 'Security Question Answer' (empty), 'Password' (DarkSeaGreen54892) with a 'Reset' button, and 'PIN (Personal Identification Number)' (5489) with a 'Reset' button.

Assigning User Groups

New Users must be assigned to one or more User Groups; this gives the User the permissions assigned to those User Groups as well as access to the *CITATION™ e-Remit* Accounts assigned to those User Groups.

HINT: A User's permissions are an accumulation of all their associated User Groups permissions.

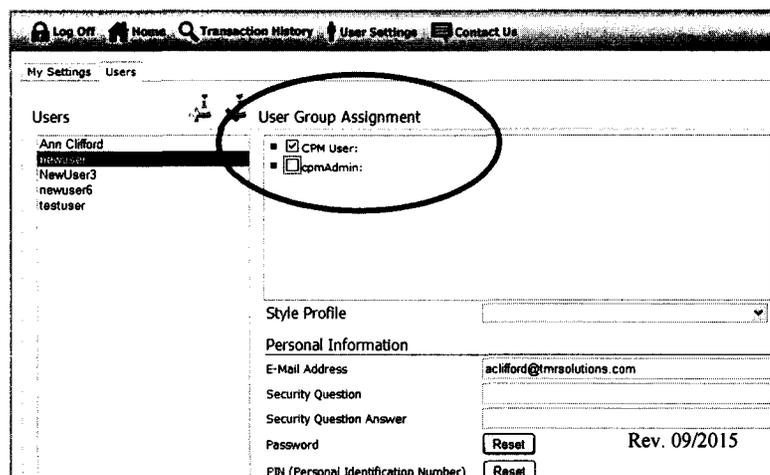
Managing Other Users - continued

User - continued

Assigning User Groups- continued

Access the Users tab from the User Settings tool bar option. Select the name of the User from the User portion of the User set up window, the name should remain highlighted. Locate the User Group in the User Group Assignment portion of the User set up window; assign the User Group by clicking on the box next to the User Group name. You may assign multiple groups.

Click Save Changes to save
As noted in red at the
screen, your change will not
exit this window without
Saving Changes button.



your changes.
bottom of the
be saved if you
selecting the

Changes have been made! If you want to make additional changes, you may do so now.
If you wish to keep your changes click 'Save Changes.' To discard your changes, click 'Cancel.'

Cancel Save Changes

Managing Other Users - continued

User - continued

Changing User Style Profile

Newly added Users default to “No Style-“for the Style Profile.

Style Profile

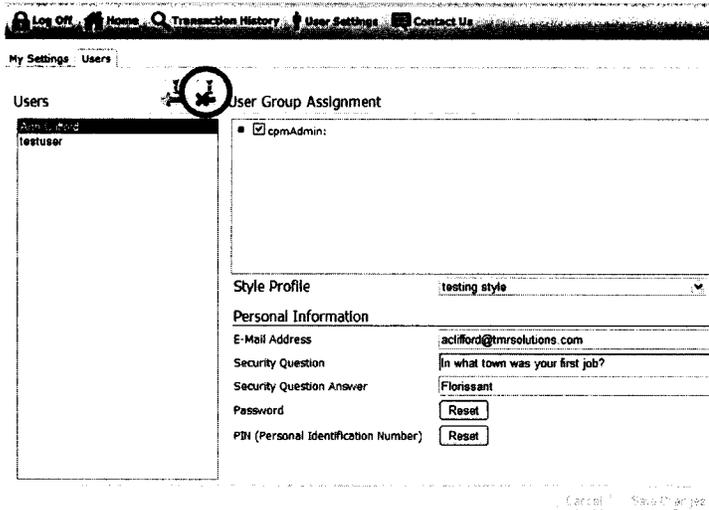
Select the name of the User from the User portion of the User set up window, the name should remain highlighted. Choose a style profile option from the drop down list.

Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.

Removing (Deleting) Users

Access the User tab from the User Settings tool bar option. Select the name of the User you want to remove (delete) from the User portion of the User set up window, the name should remain highlighted. Remove (delete) this User by clicking on the button with a red 'X' symbol.





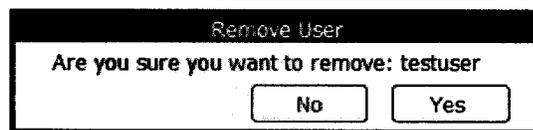
Managing Other Users - continued

User - continued

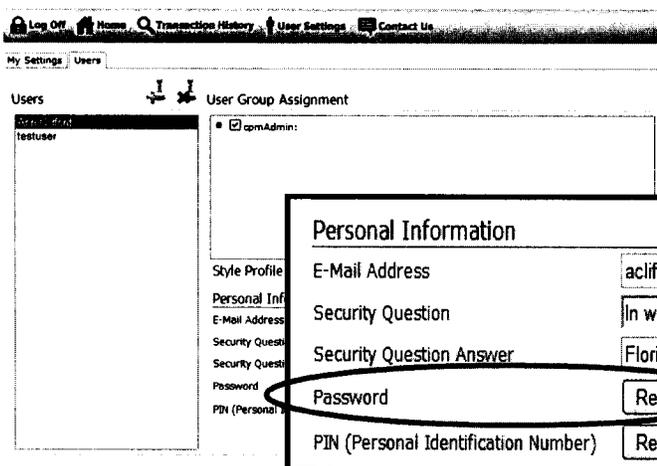
Removing (Deleting) Users - continued



The Remove User window will appear. Verify that the User Name listed in the Remove User window is correct. Click Yes to remove (delete) user. Please note: there is no “undo” for removing (deleting) Users.



Reset Other Users Passwords



Access the User tab from the User Settings tool bar option. In the Personal Information portion of the window, select the Reset button to the right of Password.

Managing Other Users - continued

User - continued

Reset Other Users Passwords

The new User's Password will appear in red on the User page. This is especially important if you are unable to utilize email functions to deliver new or reset Password and PIN numbers. New or rest password and PIN numbers are only temporarily displayed; you will be unable to access them once you exit the User window or select a different User.

Personal Information	
E-Mail Address	aclifford@tmsolutions.com
Security Question	
Security Question Answer	
Password	<input type="button" value="Reset"/> PaleVioletRed99203
PIN (Personal Identification Number)	<input type="button" value="Reset"/>

Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.

Log Off Home Transaction History User Settings Contact Us

My Settings Users

Users

- Ann Clifford
- NewUser3
- newuser6
- testuser

User Group Assignment

- cpAdmin:

Style Profile

Personal Information

E-Mail Address: aclifford@tmsolutions.com

Security Question

Security Question Answer

Password: PaleVioletRed99203

PIN (Personal Identification Number):

Changes have been made! If you want to make additional changes, you may do so now. If you wish to keep your changes click 'Save Changes.' To discard your changes, click 'Cancel.'

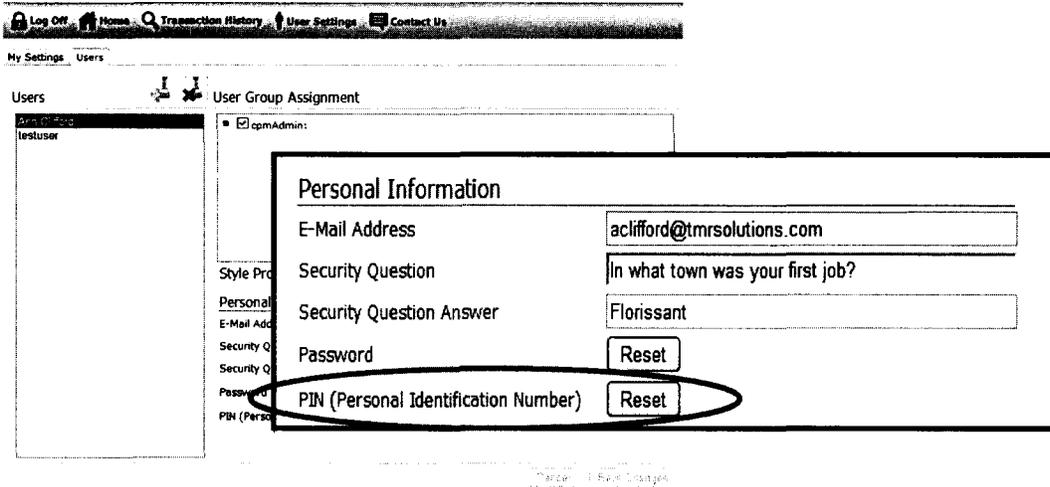
Managing Other Users -

continued

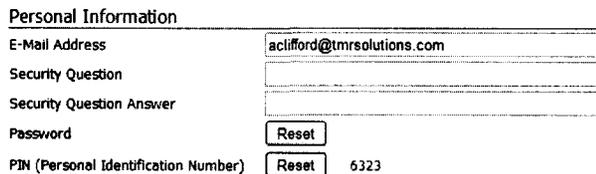
User - continued

Reset Other Users PIN

Access the User tab from the User Settings tool bar option. In the Personal Information portion of the window, select the Reset button to the right of PIN (Personal Identification Number).



The new User's PIN number will appear in red on the User page. This is especially important if you are unable to utilize email functions to deliver new or reset Password and PIN numbers. New or rest password and PIN numbers are only temporarily displayed; you will be unable to access them once you exit the User window or select a different User.

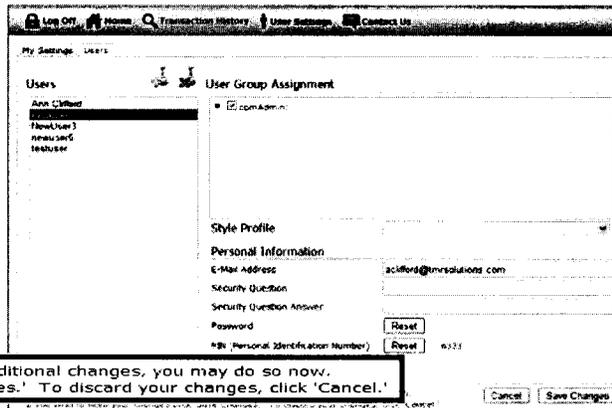


Managing Other Users - continued

User - continued

Reset Other Users PIN - continued

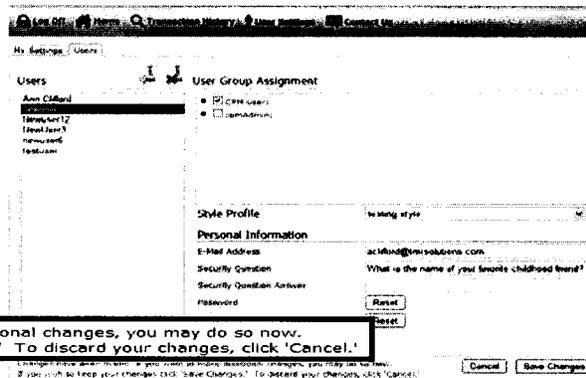
Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.



Adding or Changing Other Users Personal Information (security questions & email)

E-Mail Address - The email address is used to deliver new or reset Password and PIN numbers. This includes those initially created by the bank when a new User is added and if the User uses the Forgot Password function.

Type the User e-mail address in the field provided. Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.



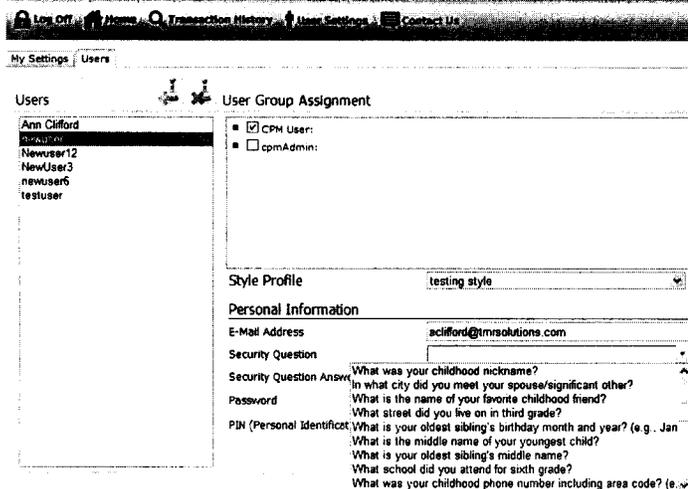
Managing Other Users -

continued

User - continued

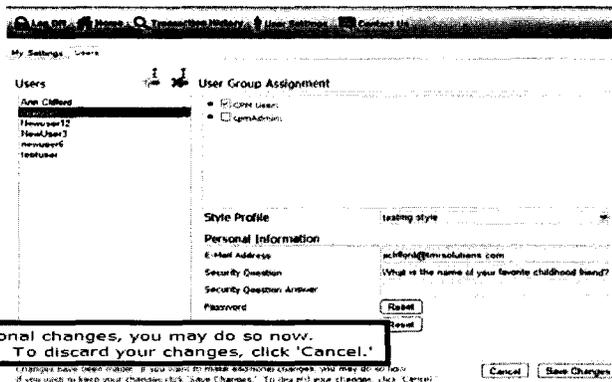
Adding or Changing Other Users Personal Information – continued

Security used for part occurs when number from change or add question from



Question – The security question is of the authentication process that resetting a Users Password and PIN the Forgot Password function. To a Security Question, select any the drop down list.

Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.



Managing Other

Users - continued

User - continued

Adding or Changing Other Users Personal Information – continued

Security Question Answer - The security question answer is used for part of the authentication process that occurs when resetting a Users Password and PIN number from the Forgot Password function. To change or add a Security Answer, enter the value into the Security Question Answer box.

Click Save Changes to save your changes. As noted in red at the bottom of the screen, your change will not be saved if you exit this window without selecting the Saving Changes button.

Contact Us

The Contact Us page is complete free form HTML. This entire page can be designed to the site's requirements.

Trouble shooting

User's tool bar only provides options for log off and home page.

- The User is not assigned to a User Group.
- The User's assigned User Group does not have the correct permissions.

The background page content is missing or incorrect.

- The User is not assigned to a Style Profile
- The User is assigned to an incorrect Style Profile

User can't download reports or data files, clicks on download but nothing happens.

- Many browsers have a security feature that require the User to authorize the download of data. The security message is provided by the browser and is usually presented at the top of the web page. It may look similar to the message shown below. Instructions are provided in the section Downloading Data files and Print Reports.

 To help protect your security, Internet Explorer blocked this site from downloading files to your computer. Click here for options...

May 28, 2010

1. Date range search capabilities are added to search by "Amount" and search by "Field Data" functions.
2. Improved search speed.
3. Field Data selections are now specific to the logged-in User's account.

1. **Date range search capabilities are added to search by "Amount" and search by "Field Data" functions.**

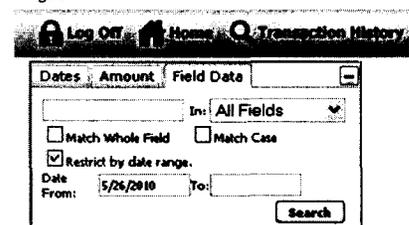
Applied Purpose:

- The User may choose to limit the search by "Amount" or search by "Field Data" to a specified date or date range. This feature is helpful in narrowing a search when the "Amount" or "Field Data" criteria are commonly occurring values.

Operator Instructions:

1. The "Restricted by date range" box must contain a check mark to limit the search by a specified date or dates. The box is defaulted with a check mark.
2. Enter the Amount or Field Data search criteria.
3. To limit the search to a specific date, type the date into the "Date From" box and click "Search". The "Date From" box defaults to the current date.
4. To limit the search to a date range, type the starting date into the "Date From" box and the ending date into the "To" box and click "Search".

Figure 1



2. **Improved search results speed.**

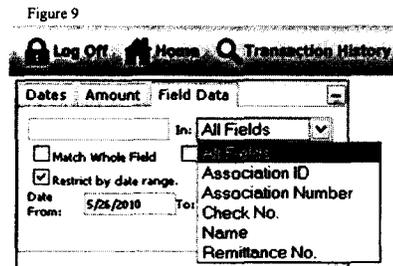
Applied Purpose:

- The search results tree populates faster for Date, Amount and Field queries.
- Images are accessed faster.
- The improved search result speeds make it possible for a bank administrator linked to all lockbox accounts to quickly perform search functions.

3. The Field Data list is now limited to fields specifically associated to the logged in User's accounts.

Applied Purpose:

- Restricting the Field Data list assists the customer in choosing a specific field for their search; the fields displayed are now specific to their account.



Remote Item Processing Services

This Exhibit is incorporated into the Agreement entered into by and between Bank and Company. Company has elected to use the "Smart Deposit" check capture services for the purpose of converting original checks (or "items") to Substitute Checks for deposit with Bank. The "Smart Deposit" check capture service is subject to the Agreement and to the instructions, rules, and terms contained in the Remote Deposit User Guide ("User Guide") provided to Company by Bank, which is incorporated by reference herein. In the event that any instruction, rule, or term of the User Guide conflicts with a provision in this Agreement, the instruction, rule, or term of the User Guide shall prevail.

1.0 Remote Deposit Capture Process –

Source Documents eligible for image replacement document services shall meet the following requirements:

- a. Must contain a pre-printed bank Routing/Transfer number, Account number, and serial number
- b. Must be payable to Customer only (and not any other person or entity)
- c. Must be completed and signed by a consumer or commercial drawer
- d. Must contain an amount to be paid
- e. Must not be checks or other items drawn on foreign financial institutions or payable other than in U.S. dollars
- f. Must not be checks or other items containing apparent alteration to any of the information on the front of the check or item, or which you know or suspect (or should know or suspect) are fraudulent or otherwise not authorized by the owner of the account on which the check or item is drawn
- g. Must not be original checks or other items previously converted to a Substitute Check
- h. Must not be checks or items that are Remotely Created Checks (as defined in Federal Reserve Board's Regulation CC)
- i. Must not be checks or items that are dated more than six (6) months prior to the date of deposit
- j. Must not be checks or items that are prohibited by Bank's current remote deposit capture procedures or which are otherwise not acceptable under the terms of Company's Account(s)

Company will scan items into an image capture device ("Scanner") provided by Bank in accordance with the User Guide. The image replacement document originating from a check or item ("RDC Electronic Image") shall accurately include the routing number, Account number, serial number, and the amount from the source document. Before submitting any RDC Electronic Image, Customer shall review such image as displayed on Customer's computer screen, and confirm that the image legibly and accurately depicts all information on the source document from which it is derived. Customer will indorse each source document, showing that it is for deposit only to Customer's Account. The Bank's processing agent shall perform an image quality assessment of scanned items and shall convert items meeting the standards set forth in this Exhibit into Substitute Checks to facilitate the deposit and collection of such items.

Company agrees that the manner (e.g. substitute check, image exchange, ACH) in which items are cleared or presented for payment shall be determined by Bank, in its sole discretion. Bank's business deposit account agreement, which is hereby incorporated within the Agreement, contains additional terms and conditions applying to the presentment, collection and return of items. Bank reserves the right to select the clearing agents through which Bank clears items.

Company agrees to be bound by any clearinghouse agreements, operating circulars, and image exchange agreements to which Bank is a party. Funds from deposited items will be available according to Bank's Regulation CC funds availability disclosure, as amended from time to time, which is incorporated herein by reference. For purposes of determining the availability of funds, Checks deposited via Smart Deposit are considered received by Bank when the remote deposit capture system expressly indicates that the Checks were received by or delivered to Bank. Company agrees that the scanning and transmitting of checks does not constitute receipt by Bank. Generally, Checks received before six (6) p.m. Central Time on a business day will be received by the Bank on that day, subject to the terms of Section 12(a) of this Exhibit. For the purpose of establishing funds availability, the Company's deposits via Smart Deposit are deemed to be received by the Bank at its office located at the address designated in this Agreement for the delivery of notices to be provided under this Agreement. Acknowledgment of receipt or delivery does not constitute an acknowledgment by Bank that the transmission of a check or checks does not contain errors. Company agrees that Bank may at any time, in its sole discretion, refuse to accept deposits of Checks from Company via Smart Deposit. In the event that remote deposit capture services are interrupted or are otherwise unavailable, Company may, at its option, deposit checks via the options described in Section 6(a) of this Exhibit.

RDC Electronic Image services contain an archival component for Customer to use for the electronic storage of the image of the front (front and back for RDC Electronic Image) of each Source Document. Bank shall not be liable for any damages whatsoever should this archiving component fail to perform, unless otherwise provided in the Agreement.

2.0 Dollar Limits and Minimum Balance Requirements –

(a) RDC File Limit. Customer agrees it will not exceed the daily dollar limit of _____ in RDC Electronic Images. Bank is not obligated to process any additional RDC Electronic Images if either limit is exceeded. To the extent it does process such RDC Electronic Images, all terms of this Agreement shall apply and same shall not act as a waiver of Customer's breach of this Agreement.

(b) Depository Account. Customer will maintain its Account with a minimum average collected balance of _____ to cover a projected percentage of returned RDC Electronic Images. Bank may at any time adjust this minimum average collected balance as it determines necessary in its sole discretion, but it will use reasonable efforts to notify Customer of any such change at the time of or before it is made. A hold will be placed on the Account for this amount or for such other amount as deemed necessary to manage the Bank's loss exposure.

3.0 Notice of RDC Electronic Images –

(a) Available through Internet Banking System. Bank will provide Customer with information about returned checks that were submitted as RDC Electronic Images via the Southside Bank Cash Management online banking service.

(b) Resubmission of RDC Electronic Images. If an RDC Electronic Image is returned, resubmission for payment will be in accordance with specific instructions provided to Bank by Customer.

4.0 Collection Fees and Hold Harmless –

(a) No Fees may be added to an RDC Electronic Image. No fees or charges of any kind may be added to the amount of the Source Document when it is transmitted as a RDC Electronic Image. Each RDC Electronic Image will be for the same amount as the drawer authorized on the Source Document. Such restriction does not prevent Customer from collecting a service fee via an alternate method.

(b) Other Fees and Hold Harmless Provision. Customer agrees to hold Bank harmless and defend it from any claims or losses, including attorneys' fees and court costs caused by Originator's inclusion of any fee or charge, or any other use of RDC contrary to the Agreement, the ACH Agreement, this Schedule, or the terms and conditions of the Account contract or the Account Documents, as applicable.

5.0 Company Liability for Warranties –

Because the Company is performing the function of converting original checks to Substitute Checks, the Company understands and agrees that it is responsible, to the extent permitted by law, for all warranties and indemnifications set forth in the Check Clearing for the 21st Century Act as implemented through the Federal Reserve Board's Regulation CC (together, "Check 21") applying to the Reconverting Bank and Truncating Bank, as such terms are defined by Check 21, including, without limitation, the obligation to only convert an original check that allows for the creation of a Substitute Check that clearly and accurately represents the information on the front and back of the original check. Bank and its agents may, but shall have no obligation, to screen items or Substitute Checks for legal compliance. The Company agrees to defend, indemnify, and hold Bank and its agents harmless from and against all liability, damage and loss arising out of any claims, suits, or demands brought by third parties with respect to any such Substitute Checks.

6.0 Company's Obligations –

(a) Company agrees that it will only use the Southside Bank Remote Deposit check capture services to deposit checks drawn on financial institutions within the United States, excluding its territories. Company will deposit checks not falling within this requirement in person, using a night drop facility, or by U.S. Mail accompanied by a deposit slip issued by Bank.

(b) Company agrees that each check it submits for deposit through the Remote Deposit Capture service will meet the image quality standards established in American National Standards Institute's standard X9.37.

(c) The Company shall retain any original check that has been deposited via Smart Deposit for a reasonable period of time in order to verify settlement and credit or to balance periodic statements, but in no case beyond thirty (30) days

from the date processed, and shall properly destroy and dispose of such original checks after such time. During the period that the Company maintains the original checks, the Company understands and agrees that it must use a high degree of care to protect these original checks against security risks. These risks include, without limitation, (i) theft or reproduction of the original checks (including by employees) for purposes of presentment for deposit of these original checks (i.e., after the original checks have already been presented for deposit via Smart Deposit) and (ii) unauthorized use of information derived from the original checks. When Company destroys, and disposes of, the original checks pursuant to the requirements of this Agreement, the Company understands and agrees that it must use a high degree of care when selecting and implementing destruction and disposal procedures. Among other things, these procedures must be designed to ensure that the original checks are not accessed by unauthorized persons during the destruction and disposal process and, once destroyed, the original checks are no longer readable or capable of being reconstructed (e.g., through the use of competent shredding equipment.)

(d) The Company shall not present, or attempt to present, or allow others, either directly or indirectly, to present, or attempt to present, for deposit (i) any Substitute Check that has already been presented for deposit via Smart Deposit or (ii) any original check, the Substitute Check of which has already been presented for deposit via Smart Deposit. In the event that the Company, or any third party, presents, or attempts to present, a deposit in violation of this subsection the Company agrees to defend, indemnify, and hold Bank and its agents harmless from and against all liability, damage and loss arising out of any claims, suits, or demands brought by third parties with respect to any such Substitute Check or original check.

(e) Customer agrees to have controls in place to ensure its compliance with its obligations to Bank. Customer will maintain security and confidentiality of passwords and user identifications used in connection with the Remote Item Processing Services. Customer will be liable for all consequential damages resulting from negligence due to lack of proper controls.

(e) Company represents and warrants:

- i. that it will comply with all federal and state laws, and rules and regulations applicable to banking transactions, including those of the National Automated Clearing House Association for ACH transactions;
- ii. that all Checks scanned through image transport are made payable to Company;
- iii. that all signatures on each check are authentic and authorized; and
- iv. that each check has not been altered.

In the event Company breaches any of the representations or warranties contained in this subsection, Company agrees to defend, indemnify and hold Bank and its agents harmless from and against all liability, damages and loss arising out of any claims, suits or demands brought by third parties with respect to any such breach. Company further authorizes the Bank to charge its Account(s) for the amount of any such demand, claim or suit that constitutes a breach of warranty claim under the provisions of the Uniform Commercial Code.

(f) Company shall purchase or lease from Bank the Scanner and the related equipment and software necessary to use the Smart Deposit service (the "Equipment"). Company agrees to purchase or lease the Equipment at Bank's then current rates for the Equipment. **BANK MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, ON OR REGARDING THE EQUIPMENT.** Manufacturers' warranties (based on standards applied by the manufacturers) may accompany the Equipment and if the Equipment fails while still under the manufacturer's warranty, Company will contact the Equipment manufacturers' representative directly. In the event manufacturer warranties accompany the Equipment and such warranties may be transferred, Bank shall transfer such warranties to Company. Bank shall not be responsible for any errors or failures relating to any malfunction of the Equipment nor for any computer virus or related problems that may be associated with the use of the Equipment. Bank shall have the right, in its discretion, to make future changes to the Southside Bank Remote Deposit check capture service that may result in the incompatibility of certain Equipment and Bank shall have no duty to update or replace any Equipment purchased by the Company in the event of such a change. In no event shall Bank be liable to Company for any damages, including lost profits, lost savings or other direct, indirect, incidental, special or consequential damages arising out of the Company's use, or inability to use, or installation of, the Equipment, or for any claim by another party relating thereto.

7.0 Bank's Obligations –

(a) **Equipment.** Bank agrees, as described above, to provide Company with Equipment options that allow for the capture and transmission of check images and MICR information. Company may order the Scanner and related

Equipment directly from the manufacturer or manufacturer's representative. Bank shall not be responsible for the servicing or repair of said Equipment purchased from Bank by the Company.

(b) **Reports.** Bank shall provide Company with daily reports via the Internet, detailing items processed, return items, and deposit adjustments.

(c) **Retention of Check Images.** Bank will retain Substitute Checks for seven (7) years.

8.0 Services Fees –

Company agrees to pay all applicable fees and charges described in Schedule 3 (Smart Deposit Fee Schedule), including monthly service fees, licensing fees and equipment lease or purchase fees. All Service Fees are subject to change by Bank upon thirty (30) days written notice to Company. Company acknowledges and agrees that it is solely responsible for the payment of all Service Fees.

9.0 Modification of Services –

Bank reserves the right to modify the Smart Deposit check capture services from time to time without making prior notice to Company, provided, however, that Bank will give Company at least thirty (30) days' notice prior to making any modifications to the Smart Deposit check capture services that would materially alter their functionality.

10.0 Limitation of Liability –

(a) **Company's Duty to Report Errors.** Company shall notify Bank of any errors, omissions, or interruptions in, or delay or unavailability of, the Services as promptly as practicable, and in any event within one business day after the earliest of discovery thereof, or the date discovery should have occurred through the exercise of reasonable care, and, in the case of any error, within fourteen (14) days of the date of the earliest notice to Company which reflects the error. Failure of Company to notify Bank of any error, omission, or other discrepancy within seven (7) days from the date of a loss shall relieve Bank of any liability for such error, omission, or discrepancy.

(b) **Bank's Performance.** Company acknowledges and agrees that Bank shall not be liable for any damages or loss of any kind resulting from any unintentional error or omission by Bank in performing the Services, in accordance with or unintentional deviation from the terms and conditions of this agreement, including exhibits or addenda. Company acknowledges that Bank's systems and procedures established for providing the Services are commercially reasonable. Company shall defend, indemnify, and hold Bank harmless from and against all liability, damage, and loss arising out of any claims, suits, or demands brought by third parties with respect to the Services.

(c) **Limitation.** Bank shall have no liability to Company, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the Services regardless of the form in which asserted, whether in contract, tort (including negligence), warranty, or any other legal or equitable grounds, and regardless of whether the remedies available fail of their essential purpose, except as provided by applicable law for any error or delay in performing the Services provided for in this Agreement, and shall have no liability for not effecting an Entry, if:

- i. Bank receives actual notice or has reason to believe that Company has filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;
- ii. The ownership of funds involving an Entry or the Authorized Representative's authority to transmit an Entry is in question;
- iii. Bank suspects a breach of the Security procedures;
- iv. Bank suspects that the Company account has been used for illegal or fraudulent purposes; or
- v. Bank reasonably believes that an Entry is prohibited by federal law or regulation, or otherwise so provided in the Agreement.

Bank will not be liable if Company fails to report timely any error or discrepancy reflected in a Statement prepared by Bank, or if Company fails to report a breach of a security procedure. If Bank fails to perform under this Agreement in accordance with the standards set herein, Bank's liability for damages, losses, and other compensation owing to Company shall be limited to the total fees paid by Company to Bank for the Bank failure to perform resulting in such liability in the two (2) month period proceeding the date the claim accrued. Bank shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder which is

caused by earthquakes, fires, natural disasters, civil or foreign disturbances, power outages, acts of government, labor disputes, failures in either communication or computer networks, legal constraints, or any other event beyond its control. In no event will Bank be liable for any indirect, consequential, punitive, or special damages. Bank will also be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in it exceeding any limitation imposed on it by any governmental or regulatory body.

(d) *Liability for Fines.* Company shall be liable for all fines levied against Bank by the National Automated Clearing House Association for any violation of the ACH Rules arising from Company's intentional misconduct or negligence.

11.0 On-Site Audit of Company Processes/Controls

The Bank will have the right to perform periodic on-site audits of the Company's procedural processes and security controls that are established as required in this agreement.

12.0 Timing

(a) *Cut-Off Time* – The Remote Deposit Cut-off Time is 6:00 PM Central Time each business day, (Monday through Friday, excluding holidays), at Southside Bank. Deposits made after the Cut-Off Time on any business day or on non-business days, (Saturday, Sunday and legal holidays) will be considered made on the next business day.

(b) *Posting Delays or Funds Availability Limitations* – Lack of funds in the Account, hardware, software and systems problems, as well as other interruptions and delays in service may affect funds availability. The availability of funds shall be subject to all limitations set forth in the Agreement, and all terms and conditions applicable to Customer's Account.

(c) *Deposit Insurance* – Federal Deposit Insurance Corporation insurance shall not be effective prior to the time of deposit (as recognized by the FDIC) to Customer's Account. Such deposit insurance is subject to all rules and regulations of the FDIC.

SCHEDULE 1

Southside Bank Remote Deposit Fee Schedule

Option 1

Lower Volume Scanner

Monthly Service Fee including Equipment Lease - \$25.00

Equipment

Digital Check TellerScan CX30

- Single feed scanner
- Scanner repairs covered under agreement

2-Year Service Agreement

- Service and equipment include a 60-day initial opt out period if you choose to not use the product
- if service is cancelled after the 60-day opt out and before the 2-year service period has elapsed, there will be a \$150 cancellation fee.

Choose Option One

Option 2

Higher Volume Scanner

Monthly Service Fee including Equipment Lease - \$50.00

Equipment

Digital Check TellerScan TS240

- (100 document feeder, 65 documents scanned per minute)
- Scanner repairs covered under agreement

2-Year Service Agreement

- Service and equipment include a 60-day initial opt out period if you choose to not use the product
- if service is cancelled after the 60-day opt out and before the 2-year service period has elapsed, there will be a \$250 cancellation fee.

Choose Option Two

**Monthly service fee and lease fees may be put on account analysis and may not result in an additional charge*

*** Service may be canceled by the bank if no items are processed for 90 consecutive days.*

SCHEDULE 2

Smart Deposit Authorized Signature Form

****Below are the printed names and signatures of all Authorized Users authorized to originate, modify, and/or delete Remote Deposit Capture transactions on Company's behalf. These may or may not be signers on Company's bank account.**

COMPANY:

ACCOUNT(S):

NAME (PRINT OR TYPE)	SIGNATURE

AUTHORIZED SIGNATURE

*AUTHORIZED SIGNATURE

PRINT OR TYPE NAME

PRINT OR TYPE NAME

TITLE

TITLE

DATE

DATE

*Second signature required if the Company's account at the Bank requires two signatures for transactions.

** Once Login is created, Southside Bank is responsible for User training.

Smart Deposit Customer Checklist



smart deposit

Date: _____

Customer: _____

Before Set-Up

_____ **Remote Deposit Merchant Acceptance Evaluation**

_____ **Complete Remote Deposit Agreement (Signed by Customer & Senior Lender)**

During Set-Up

_____ **Scanner Inventory Tracking (Type and Serial Number)**

Type: _____ SN: _____

_____ **Account Listing (List of Customers accounts available on Smart Deposit)**

Account(s) _____

_____ **Analysis/Fee Structure**

Analysis/Fee Schedule: _____

Account Charged & Start Date: _____

_____ **Customer Contact Information**

Email: _____

Phone Number(s): _____

_____ **Customers Officer and Officer Limits**

Officer: _____ Deposit Limit: _____

_____ **Operating System:** **Browser:** _____

Completed By: _____

Please return checklist to Ramon Cocolan for it to be added to the customers master file



(Circle One) Risk Rating:

High Medium Low

smartdeposit

Remote Deposit Merchant Acceptance Evaluation

Business:	Date:	Reviewed By:
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Business Relationship

Questions	Response
Type of Business/Products sold?	
How long has the business has been in operation?	
How long have they been a Southside customer?	
Is the business in good standing with Southside Bank?	
Is there a credit relationship with SSB? If so, how long?	
Do they have a present Business Services Relationship?	

Business Particulars

Questions	Response
What is the main physical location of the business?	
Will deposits be made from multiple locations?	
Is the business for sale or been sold within the last year?	
How many employees will have access to Smart Deposit?	
How did the customer learn about Smart Deposit?	
Is it on the list of high risk businesses? (See on Risk Rating document)	

As an added layer of security Southside Bank will provide a Secure Token to Company Administrator and Authorized Users. You will be required to enter your Token security number each time you approve an ACH or Wire Transfer transaction through our Southside Cash Management System. With the entry by the Company Administrator or Authorized User of the unique randomly-generated digital numerical display, such person proves they are in possession of the correct Secure Token and can then approve ACH or Wire Transfer transactions through the Southside Bank Cash Management System.

The Company Administrator will be responsible for obtaining a Secure Token for each Authorized User that the Company Administrator has authorized to approve wires or ACH transactions on any Authorized Account. Authorized Users will be required to utilize the Secure Token to approve wires and ACH transactions created and processed through the Southside Cash Management System. A Secure Token is associated with your Sign-On ID. No more than one Secure Token will be issued at any one time per Sign-On ID. You may choose a physical (hard token) or you may choose to download the mobile app version.

- **Report a Malfunctioning Token** – If a Secure Token malfunctions, the Company Administrator should immediately contact Cash Management Operations at (877) 639-3511. Upon notification, we will send you a replacement Token via overnight delivery whenever possible, unless you instruct us to send the replacement Token by U.S. Mail. When sending by overnight delivery we will attempt to deliver the Secure Token to you within 24 hours when your request is received by 12:00 p.m., Central Time. Malfunctioning Secure Tokens must be returned to the Bank within thirty (30) days or you may be assessed a fee, in accordance with the Bank’s Fee Schedule, as may change from time to time.
- **Report a Lost, Stolen or Damaged Token** - If a Secure Token is lost, stolen or damaged, the Company Administrator should immediately report this to Cash Management Operations at (817) 367-4880. When a Secure Token is lost, stolen or damaged, the existing Secure Token will be inactivated and a new Secure Token associated with the Sign-On ID and Password will be issued. Upon your request we will send the Company Administrator a replacement Secure Token via overnight delivery whenever possible, unless you instruct us to send the replacement Secure Token by U.S. Mail. When sending by overnight delivery we will attempt to deliver the Secure Token to you within 24 hours when your request is received by 12:00 p.m., Central Time. You will be charged a fee for a Secure Token replaced due to being lost, stolen or damaged in accordance with the Bank’s Fee Schedule, as it may change from time to time.
- **Cancel/Change a Token** - Once an Authorized User is enrolled for a Secure Token, the Token may be deleted by the Company Administrator by deleting that Authorized User and then reassigning the Secure Token to another Authorized User. If the Company Administrator’s Token needs to be deleted or changed the Company should contact Cash Management Operations by phone at (817) 367-4880 or in writing at Southside Bank, Attention: Cash Management Operations, P.O. Box 1079, Tyler, TX 75710-1079 with the request.
- **Request an Emergency Token Number** - In the event that a Secure Token is lost, stolen, damaged, malfunctions or is cancelled and the Authorized User requires access to your online account information, only the Company Administrator may request an “Emergency Token Number” by calling Cash Management Operations at (817) 367-4880. Upon verification and authentication, an Emergency Token Number (up to 2) will be issued to your Company Administrator only. The Emergency Token Number along with your Sign-On ID and Password can be utilized one time within 24 hours of issuance to access your Account through the Southside Cash Management System while your replacement Secure Token request is in process.
- **Returning a Token to Southside Bank** - Secure Tokens are the property of Southside Bank. It will be your responsibility to return the Token if: (i) you decide to discontinue using all Business Services that require a Token; (ii) your Account(s) at Southside Bank is/are closed; or (iii) a Token’s battery fails or there is a malfunction. Secure Tokens previously issued must be promptly returned to the Bank by U.S. Mail to: Southside Bank, Attention: Cash Management Operations, P.O. Box 1079, Tyler, TX 75710-1079. You may be charged a fee in accordance with the Bank’s Fee Schedule, as it may change from time to time, for any Secure Token not returned to us. Any fees assessed will be debited from your account.

Company Name: _____

Company Administrator: _____

Printed Name: _____

Date: _____



AGENDA MEMORANDUM

DATE: July 1, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Greg Vick, City Manager *GV*
 Paul Hackleman, Director of Public Works *P. Hackleman*
 Sandra Gibson, Director of Finance *Sandra Gibson*
 Deby Woodard, Assistant Finance Director/Purchasing Manager *Deby Woodard*

SUBJECT: Discussion and Action to approve an amendment to the Contract with Haydon Building Corporation, Construction Manager at Risk for the Senior Center Project to increase the Guaranteed Maximum Price by \$146,491 from \$1,644,325 to \$1,790,816 and replenish project contingency in the amount of \$40,000.

BACKGROUND/INFORMATION:

In February, 2016, Council approved Haydon Building Corporation as the Construction Manager at Risk for the Senior Center expansion project in the amount not to exceed \$1,644,325.

Over the past several months, the Senior Citizen design and construction team consisting of members of City staff, Haydon Building Corporation, and Barker Rinker Seacat, has been working diligently towards controlling construction costs and obtaining value for our money that will result in a quality building that will meet the needs of our senior citizens.

Despite our best efforts, it has not been possible to preserve the integrity of the building design within the established construction budget of \$1,644,325. The project has experienced escalation rates of costs in the Dallas Ft. Worth Market including such things as materials, labor, general contractor and subcontractor fees. In addition, there were some design changes to incorporate a fully functioning kitchen versus a catering kitchen.

We are anticipating a need for an additional appropriation of \$146,491 for the building construction costs and are requesting an additional \$40,000 to replenish the contingency funds for the project. Haydon Building Corporation has eliminated their preconstruction phase service fee of \$4,200 and reduced their Construction Manager's fee by \$5,000 in an effort to achieve a viable project.

FINANCIAL IMPLICATIONS:

An additional appropriation in the amount of \$186,491 for the Senior Center Project is requested in order to retain the quality and functionality of the original Senior Center building design.

The source funding would be as follows:

- 2011 Certificate of Obligation funding
- 2014 Certificate of Obligation funding (savings from Bursey Road Project)
- Fund Balance (General Construction Fund)

RECOMMENDATION/ACTION DESIRED:

Staff requests approval of the amendment to the contract between Haydon Building Corporation and the City of Watauga to increase the guaranteed maximum price by \$146,491 for the Senior Center Project and replenish project contingency in the amount of \$40,000.

ATTACHMENTS/SUPPORTING DOCUMENTATION:

- 1) Letter from Mark Daniel, City Attorney
- 2) Haydon Concession Letter dated June 22, 2016 in the amount of \$9,200
- 3) Amendment to AIA Contract for Construction Services with Haydon Building Corporation
- 4) Original AIA Contract for Construction Services (February 2016)

Attachment 1

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

July 1, 2016

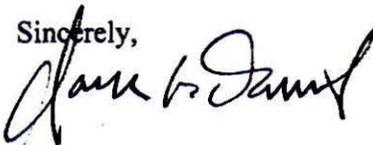
Ms. Zolaina Reyes
City Secretary
City of Watauga
7105 Whitley Road
Watauga, TX 76148

Re: Senior Center Expansion

Dear Mayor Garcia:

Pursuant to your request, I have reviewed and approved the Guaranteed Maximum Price Amendment for the City of Watauga Texas Senior Center Expansion. This is a standard AIA contract amendment form document.

Thank you for your attention to the above and the opportunity to be of assistance.

Sincerely,

MARK G. DANIEL

MGD:cer

Attachment 2



HAYDON

June 22, 2016

Mr. Paul D. Hackleman, P.E.

Director of Public Works

City of Watauga Texas

7800 Virgil R Anthony Sr. Blvd

Watauga, TX 76148

RE: Watauga Senior Center Expansion

7901 Indian Springs Road

Dear Mr. Hackleman;

During our discussions regarding value engineering and ways to bring this project back within or close to budget Haydon Building Corp offered the following concessions with regards to our fee and work to be performed by Haydon Building Corp. These concessions and reductions in cost include:

1. Reduction of Haydon Building Corp's overall fee by \$5,000.00
2. Haydon Building Corp will also forgo the Pre-construction Services fee of \$4,200.00 and these services will be performed at no cost to the City of Watauga.

We look forward to working with the City staff and the design team on this project. Should you have any questions please feel free to contact us.

Sincerely

Haydon Building Corp

Scott Liston

Regional Manager North Texas

CC: Greg Vick – City of Watauga

Dennis Naylor – Haydon Building Corp

HAYDON BUILDING CORP
8200 Springwood Dr., Ste. 230
Irving, Texas 75063

Tel 972.739.6405
Fax 972.264.1922

Attachment 3



Document A133™ – 2009 Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:
(Name and address or location)

City of Watauga Texas Senior Center Expansion
7857 Indian Springs Road
Watauga, TX 76148

THE OWNER:
(Name, legal status and address)

City of Watauga Texas
7105 Whitley Road
Watauga, TX 76148
ATTN: Mr. Hector Garcia, Mayor of the City of Watauga Texas

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

Haydon Building Corp
4640 E Cotton Gin Loop
Phoenix, AZ 85040
ATTN: Mr. Fritz Behrhorst

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed One Million Seven Hundred Ninety Thousand Eight Hundred Sixteen Dollars (\$ 1,790,816.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide below or reference an attachment.)

See Attached Exhibit A1

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

| See Attached Exhibit B

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
See Attached Exhibit A1	

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

| See Attached Exhibit A1

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

| See Attached Exhibit B

Section	Title	Date	Pages
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§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

| See Attached Exhibit B

Number	Title	Date
--------	-------	------

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

| See Attached Exhibit C

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

Mr. Hector Garcia, Mayor
(Printed name and title)

Fritz Behrhorst, Vice President
(Printed name and title)

**Watauga Senior Center Expansion
Watauga, TX
Assumptions and Clarifications**



6/29/2016

General:

- GMP pricing is based on plans titled Watauga Senior Center Expansion - Construction Documents dated 5/20/2016 as prepared by Barker Rinker Seacat Architecture

Proposed GMP:

\$1,790,816

Allowances: (Included in above)

- Owner Contingency \$0
-
-
-

Clarifications:

GENERAL

Project schedule is based upon a Notice to Proceed date of July 18, 2016 with Substantial Completion being achieved 34 weeks after the Notice to Proceed.

SITE

- Clear & Grub Site
- Removal of the existing paving as required
- Removal of the existing canopy as required for the new expansion
- Excavate & condition the soils below the slab as noted in the soils report
- Relocate the existing FDC/Fire Hydrant/PIV as required by the new expansion
- Construct the storm sewer and drains as noted.
- Install a new 300 Gallon Grease Trap
- New sanitary sewer
- New 6" concrete paving at parking areas
- New 7" Concrete paving at the drive aisles and fire lane
- New 8" concrete paving at the dumpster enclosure
- New 4" concrete sidewalks and ramps as required
- Dumpster enclosure will be constructed of standard 8 x 8 x 16 CMU that will be painted

BUILDING

- Building slab will be a 6" concrete reinforced slab over moisture conditioned soil
- Piers are figured as shown on the plans with a 6'0" Penetration.
- Exterior of the building will have burnished block to a height of 2'8" above finish floor
- Above the burnished block will be integral colored cement plaster over sheathing.
- Building structure will be a Pre-engineered Metal Building with Standing Seam Roof.
- The area over the new entry lobby will be conventionally framed
- Doors Frames & Hardware as noted
- Exterior glass as noted
- Flooring as noted
- The roof over the new entry lobby will be a 60 mil TPO with insulation.

EXCLUSIONS:

Government or utility company fees or assessments of any type.
Government or utility company permits or fees of any type.
Construction or Design contingencies
State of Texas sales tax. Owner to provide tax exemption certificate.
Material testing or inspections including special inspections
Mock ups
Window treatments
Kitchen equipment
Items shown or noted on the landscape drawings, but not on the
Civil/Architectural/Structural or MEP
Metal ceilings
Furniture, Fixtures and Equipment
Fire proofing
Voice and Data Cabling
Security equipment or cabling
CCTV or other audiovisual equipment

EXHIBIT A1 - BUDGET RECAP

HAYDON BUILDING CORP Watauga Senior Center Expansion RECAP OF BUDGET & BID ITEMS 6/29/2016					 HAYDON
CODE	DESCRIPTION	90% CD's Dated 04/27/16	GMP Bid Recap	Current GMP Budget	Delta From 90% CD Estimate
	General Conditions Budget	\$120,140	\$ 106,230	\$106,230	(\$13,910)
	Allowances				
	Owner Contingency	\$117,000	\$0	\$0	(\$117,000)
	FFE	\$0	\$0	\$0	\$0
	TV's	\$0	\$0	\$0	\$0
	Signage	\$0	\$0	\$0	\$0
	Utility Company Fees	\$0	\$0	\$0	\$0
	Preconstruction Services Budget	\$4,200		\$0	(\$4,200)
	Final Cleaning	\$1,232		\$1,232	\$0
	Beez		\$1,232		
	Goldmark		\$1,562		
	F & P		\$2,735		
	Construction Staking Haydon	\$7,500	\$7,500	\$7,500	\$0
	Selective Demolition	\$6,325		\$9,768	\$3,443
	Blue Ribbon		\$9,768		
	Precision Demolition		\$9,918		
	Jericho		\$10,168		
	Cast In Place Concrete	\$248,243		\$155,295	(\$92,948)
	Brinkman		\$155,295		
	Cowtown		\$202,332		
	Allens Contracting		\$204,402		
	1 Construction		\$210,002		
	Masonry	\$81,150		\$118,623	\$37,473
	Gay & Sons		\$118,623		
	J & E		\$152,000		
	Structural & Misc Steel BECO	\$0	\$25,000	\$25,000	\$25,000
					\$0
					\$0
					\$0
					\$0

Haydon Building Corp

EXHIBIT A1 - BUDGET RECAP

6/30/2016

HAYDON BUILDING CORP Watauga Senior Center Expansion RECAP OF BUDGET & BID ITEMS 6/29/2016					 HAYDON
CODE	DESCRIPTION	90% CD's Dated 04/27/16	GMP Bid Recap	Current GMP Budget	Delta From 90% CD Estimate
	Rough Carpentry Haydon	\$5,100	\$5,100	\$5,100	\$0
	Millwork SAW IMS ASI	\$33,585	\$25,740 \$30,450 \$31,737	\$25,740	(\$7,845)
	Door Installation Haydon	\$0	\$2,585	\$2,585	\$2,585
	Solid Surface Counter Tops	\$0		\$0	\$0
	TPO Roofing	\$6,402	\$9,402	\$9,402	\$3,000
	Joint Sealants SCS	\$27,150	\$30,000	\$30,000	\$2,850
	Expansion Joint Cover Assemblies	\$675	\$675	\$675	\$0
	Doors / Frames / Hardware Chas F Willims Architectural Openings	\$16,180	\$14,550 \$17,680	\$14,550	(\$1,630)

EXHIBIT A1 - BUDGET RECAP

HAYDON BUILDING CORP Watauga Senior Center Expansion RECAP OF BUDGET & BID ITEMS 6/29/2016					 HAYDON
CODE	DESCRIPTION	90% CD's Dated 04/27/16	GMP Bid Recap	Current GMP Budget	Delta From 90% CD Estimate
	Colling Counter Doors TBS Texas Oh Door OH Door Co FW OH Garage Door	\$4,500	\$2,471 \$3,777 \$5,133 \$5,250	\$2,471	(\$2,029)
	Glass & Glazing B & B Glass	\$56,377	\$76,883	\$78,883	\$22,506
	Drywall & Acoustical North Texas Drywall F & P Walker Tommy Williams	\$60,967	\$143,903 \$146,256 \$153,900 \$248,860	\$143,903	\$82,936
	Portland Cement Plaster Kelly Moore	\$6,360	\$30,460	\$30,460	\$24,100
	Ceramic Tile Sterling Tile Simply Floor It One Source Dobson Floors	\$18,608	\$13,210 \$13,283 \$18,444 \$20,920	\$13,210	(\$5,398)
	Resilient Flooring One Source Dobson Floors Simply Floor It	\$14,806	\$23,660 \$29,014 \$30,150	\$23,660	\$8,854
	Acoustical Accessories	\$3,000	\$3,000	\$3,000	\$0
	Painting Artistic Painting BBP Industries F & P	\$36,693	\$28,635 \$33,200 \$63,673	\$28,635	(\$8,058)

EXHIBIT A1 - BUDGET RECAP

HAYDON BUILDING CORP Watauga Senior Center Expansion RECAP OF BUDGET & BID ITEMS 6/29/2016					 HAYDON
CODE	DESCRIPTION	90% CD's Dated 04/27/16	GMP Bid Recap	Current GMP Budget	Delta From 90% CD Estimate
	Signage Your Sign CO Casteel & Assoc CCSW	\$250	\$1,524 \$1,550 \$1,600	\$1,524	\$1,274
	Folding Partitions Superior Support Modern Fold	\$55,625	\$26,175 \$34,365	\$26,175	(\$29,450)
	Wall & Corner Guards Chas F Williams Rocky Duron TBS	\$250	\$695 \$700 \$704	\$695	\$445
	Toilet Partitions & Accessories TBS APSCO Chas F Williams PDV Rocky Duron	\$6,990	\$7,493 \$8,051 \$9,500 \$10,220 \$11,835	\$7,493	\$503
	Fire Extinguishers Rocky Duron PDV	\$1,275	\$1,480 \$1,720	\$1,480	\$205
	Food Service Equipment Zetley Dist	\$55,000	\$0	\$0	(\$55,000)
	Projection Screens TBS	\$800	\$1,223	\$1,223	\$423
	Pre-Engineered Metal Building Red Dot Roskilde	\$187,000	\$190,000 \$245,640	\$190,000	\$3,000
	Fire Sprinklers Century Fire Complete Fire Prot SFS	\$10,668	\$10,500 \$12,950 \$22,750	\$10,500	(\$168)

EXHIBIT A1 - BUDGET RECAP

HAYDON BUILDING CORP Watauga Senior Center Expansion RECAP OF BUDGET & BID ITEMS 6/29/2016					 HAYDON
CODE	DESCRIPTION	90% CD's Dated 04/27/16	GMP Bid Recap	Current GMP Budget	Delta From 90% CD Estimate
	Plumbing Echols & Sons	\$117,348	\$78,000	\$78,000	(\$39,348)
	H V A C Elite Services Richard Meek CBS Mech	\$138,884	\$120,799 \$136,719 \$275,662	\$120,799	(\$17,885)
	Testing Adjusting & Baslancing Advanced Air	\$2,000	\$2,500	\$2,500	\$500
	Electrical JC Electric	\$158,633	\$160,720	\$160,720	\$4,087
	Fire Alarm Century Fire Total Fire	\$0	\$5,125 \$20,500	\$5,125	\$5,125
	Earthwork Cowtown Brooks Paving F & L Tri Dal	\$200,729	\$80,350 \$87,690 \$107,986 \$110,349	\$80,350	(\$120,379)
	Termite Treatment Grahams Pest Force Finley	\$1,100	\$486 \$500 \$795	\$486	(\$614)
	Pavement Markings	\$9,089		\$0	(\$9,089)
	Concrete Paving Brinkman 1 Construction Alens Cowtown	\$150,000	\$124,481 \$163,925 \$205,943 \$232,433	\$124,481	(\$25,519)

Haydon Building Corp

EXHIBIT A1 - BUDGET RECAP

6/30/2016

HAYDON BUILDING CORP Watauga Senior Center Expansion RECAP OF BUDGET & BID ITEMS 6/29/2016					 HAYDON
CODE	DESCRIPTION	90% CD's Dated 04/27/16	GMP Bid Recap	Current GMP Budget	Delta From 90% CD Estimate
	Landscaping	\$0		\$0	\$0
	Site Utilities Chimner Bear Creek Fire Line Svcs	\$39,192	\$61,275 \$61,900 \$100,448	\$61,275	\$22,083
	SUBTOTAL - Base Construction	\$1,810,545		\$1,708,748	(\$101,797)
	Contractors Contingency	\$0		\$0	\$0
	Liability Insurance	\$16,069		\$13,670	(\$2,399)
	Builders Risk	\$4,009		\$3,416	(\$593)
	Bond	\$25,386		\$14,037	(\$11,349)
	Fee	\$65,763		\$50,944	(\$14,819)
	Tax	\$0		\$0	\$0
	TOTAL PROJECT COST	\$1,921,772		\$1,790,816	(\$130,956)

EXHIBIT A1 - BEST VALUE ANALYSIS

Watuga Senior Center Expansion		Budget Date		6/29/2016		
Best Value Analysis - GMP - R1		BVA Date		6/29/2016		
	Description	Possible Cost Impact	Items Incorporated	Rejected Items	Elthar/Or	Notes
1	Delete Storage Room A110	(\$23,600)				
2	Lower High Roof over Multi Purpose Room or Raise Low Roof to one Elevation	(\$13,300)				
3	Delete Overhang on south side of Multi Purpose Room	(\$15,200)				
4	Provide Carpet ILO Vinyl Plank Floors in Multi Purpose Room	(\$500)			4 or 8	
5	Delete Gyp Board Bulkheads	(\$1,800)				
6	Shell out Gang Restrooms for Future Finish Out	(\$28,300)				
7	Delete All Ceilings where Possible and provide Exposed Metal Deck	(\$10,400)				
8	Provide Drywall Column wraps ILO Masonry	(\$2,600)				
9	Provide VCT Floorin ILO Vinyl Plank In Multi Purpose Rooms	(\$4,700)			9 or 4	
10	Install 100" Storefront Glass ILO Folding Partition between Corridor & Multi Purpo	\$12,400			10 or 11	
11	Provide Vertical Lift Glass Doors ILO Folding Partition	\$5,900			11 or 10	
12	Add Folding Partition Between Multi Purpose Room & Corridor	\$26,300				
13		\$0				
14		\$0				
15		\$0				
16		\$0				
17		\$0				
18		\$0				
19		\$0				
20		\$0				
21		\$0				
22		\$0				
23		\$0				
24		\$0				
TOTAL TO DATE			\$0			
Project Construction Budget Target			\$0			
Current Project Estimate (GMP)			\$1,790,816			
Value Engineering to be incorporated			\$0			
Current Estimate inc VE			\$1,790,816			
Variance from Target Budget - (\$)= under budget			\$1,790,816			

EXHIBIT B

Haydon Building Corp
List of Plans

Specifications Amendments

Construction Documents dated 5-20-16

WATAUGA SENIOR CENTER EXPANSION

7901 Indian Springs Rd, Watauga, TX 76148



HAYDON

Number	Description	Date	Revision	Stamp
GENERAL				
G000	COVER SHEET	05/20/16		05/20/16
G010	CODE ANALYSIS	05/20/16		05/20/16
G011	CODE PLAN	05/20/16		05/20/16
CIVIL				
C0.1	OVERALL SITE PLAN	05/20/16		
C1.1	DEMOLITION PLAN	05/20/16		
C1.2	DEMOLITION PLAN	05/20/16		
C2.1	DIMENSIONAL CONTROL PLAN	05/20/16		
C2.2	DIMENSIONAL CONTROL PLAN	05/20/16		
C3.1	GRADING PLAN	05/20/16		
C3.2	GRADING PLAN	05/20/16		
C4.1	EX DRAINAGE AREA MAP	05/20/16		
C4.2	PROP DRAINAGE AREA MAP	05/20/16		
C4.3	STORM SEWER PLAN	05/20/16		
C5.1	SITE UTILITY PLAN	05/20/16		
C6.1	PAVING PLAN	05/20/16		
C6.2	PAVING PLAN	05/20/16		
C6.3	PAVEMENT DETAILS	05/20/16		
C7.1	EROSION CONTROL PLAN	05/20/16		
C7.2	EROSION CONTROL PLAN	05/20/16		
C7.3	EROSION CONTROL DETAILS	05/20/16		
LANDSCAPING				
L1.1	PLANTING PLAN	05/20/16		05/20/16
L1.2	PLANTING PLAN	05/20/16		05/20/16
L2.1	IRRIGATION PLAN	05/20/16		05/20/16
L2.2	IRRIGATION PLAN	05/20/16		05/20/16
L3.1	LANDSCAPE DETAILS	05/20/16		05/20/16
L3.2	LANDSCAPE DETAILS	05/20/16		05/20/16
L3.3	IRRIGATION DETAILS	05/20/16		05/20/16
ARCHITECTURAL				
A000	ABBREVIATIONS, SYMBOLS, AND GENERAL NOTES	05/20/16		05/20/16
A001	WALL TYPES, ROOF TYPES, FLOOR TYPES	05/20/16		05/20/16
AD100	DEMOLITION PLAN	05/20/16		05/20/16
A101	FLOOR PLAN	05/20/16		05/20/16
A103	OVERALL ROOF PLAN	05/20/16		05/20/16
A210	REFLECTED CEILING PLAN	05/20/16		05/20/16
A300	OVERALL BUILDING ELEVATIONS	05/20/16		05/20/16
A310	OVERALL BUILDING SECTIONS	05/20/16		05/20/16
A311	OVERALL BUILDING SECTIONS	05/20/16		05/20/16
A312	OVERALL BUILDING SECTIONS	05/20/16		05/20/16
A400	WALL SECTIONS	05/20/16		05/20/16
A401	WALL SECTIONS	05/20/16		05/20/16
A402	WALL SECTIONS	05/20/16		05/20/16
A600	ACCESSORY SCHEDULES AND ELEVATIONS	05/20/16		05/20/16
A601	RESTROOM ENLARGED PLANS AND ELEVATIONS	05/20/16		05/20/16
A610	INTERIOR ELEVATIONS - LOBBY, CORRIDOR	05/20/16		05/20/16
A611	INTERIOR ELEVATIONS - MULTI RM	05/20/16		05/20/16
A630	GENERAL MILLWORK DETAILS	05/20/16		05/20/16

INITIAL _____

EXHIBIT B
 Haydon Building Corp
 List of Plans
 Specifications Amendments



HAYDON
Stamp

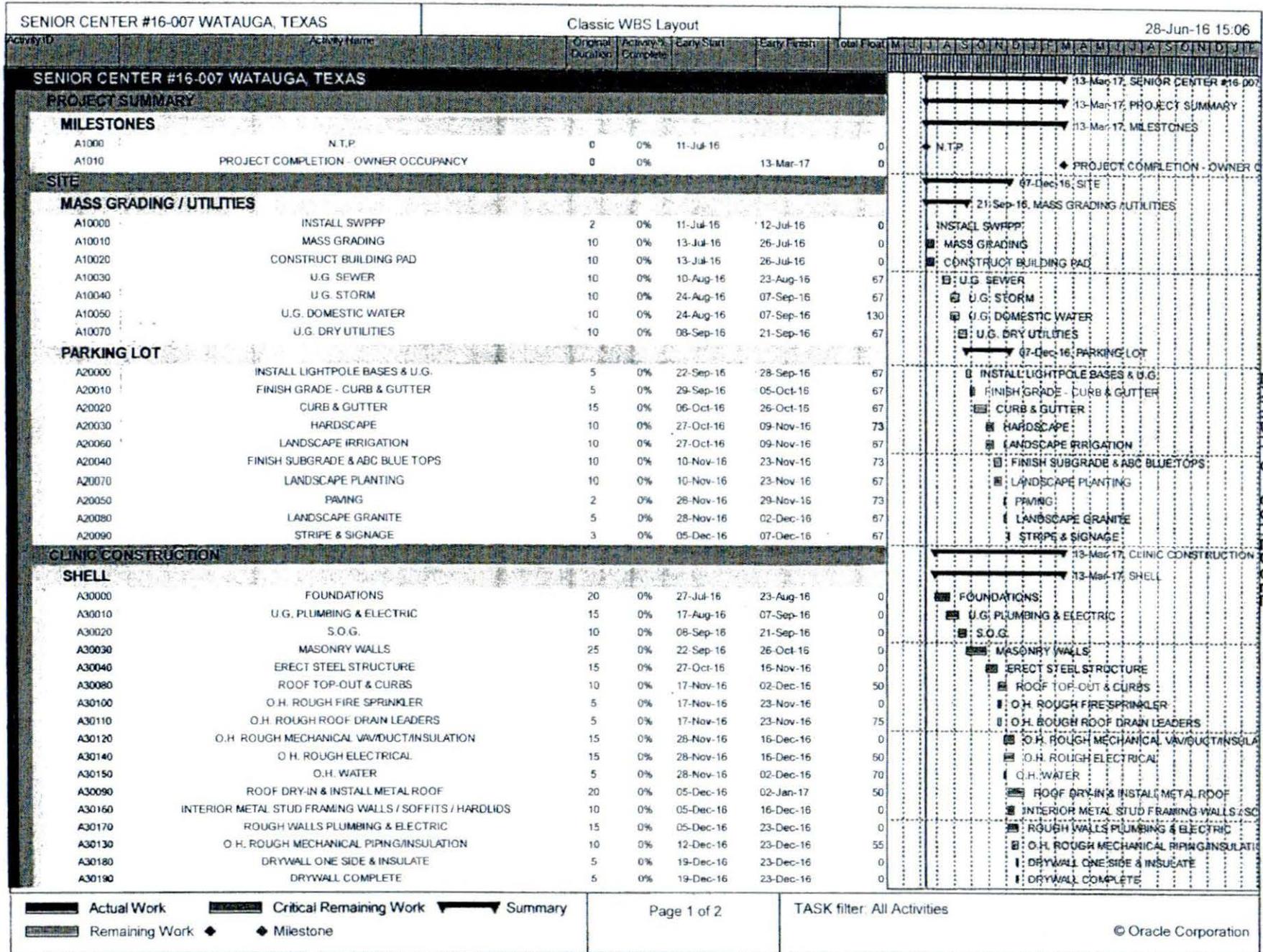
Number	Description	Date	Revision	Stamp
A631	DESK DETAILS	05/20/16		05/20/16
A700	DOOR SCHEDULE, TYPES AND DETAILS	05/20/16		05/20/16
A702	WINDOW TYPES, DETAILS AND WINDOW COVERINGS	05/20/16		05/20/16
A710	PLAN DETAILS	05/20/16		05/20/16
A720	SECTION AND PLAN DETAILS	05/20/16		05/20/16
A721	ROOF DETAILS	05/20/16		05/20/16
A900	ROOM FINISH SCHEDULES	05/20/16		05/20/16
A910	FIRST FLOOR FINISH PLAN	05/20/16		05/20/16
A920	FURNITURE PLAN	05/20/16		05/20/16
	STRUCTURAL			
S000	GENERAL NOTES	05/20/16		05/20/16
S001	GENERAL NOTES	05/20/16		05/20/16
S002	GENERAL NOTES	05/20/16		05/20/16
S003	GENERAL NOTES	05/20/16		05/20/16
S004	GENERAL NOTES	05/20/16		05/20/16
S005	GENERAL NOTES	05/20/16		05/20/16
S006	GENERAL NOTES	05/20/16		05/20/16
S007	GENERAL NOTES	05/20/16		05/20/16
S008	GENERAL NOTES	05/20/16		05/20/16
S009	OVERALL 3D VIEW	05/20/16		05/20/16
S100	DEMOLITION PLANS	05/20/16		05/20/16
S101	PIER PLACEMENT PLAN	05/20/16		05/20/16
S102	FOUNDATION PLAN	05/20/16		05/20/16
S103	LOW ROOF FRAMING PLAN	05/20/16		05/20/16
S104	MID ROOF FRAMING PLAN	05/20/16		05/20/16
S105	HIGH ROOF FRAMING PLAN	05/20/16		05/20/16
S200	FRAME DETAILS	05/20/16		05/20/16
S300	TYPICAL FOUNDATION DETAILS	05/20/16		05/20/16
S301	TYPICAL FOUNDATION DETAILS	05/20/16		05/20/16
S302	TYPICAL FOUNDATION DETAILS	05/20/16		05/20/16
S310	FOUNDATION SECTIONS	05/20/16		05/20/16
S311	FOUNDATION SECTIONS	05/20/16		05/20/16
S312	FOUNDATION SECTIONS	05/20/16		05/20/16
S400	TYPICAL CMU DETAILS AND SCHEDULES	05/20/16		05/20/16
S500	TYPICAL FRAMING DETAILS	05/20/16		05/20/16
S501	TYPICAL FRAMING DETAILS	05/20/16		05/20/16
S502	TYPICAL FRAMING DETAILS	05/20/16		05/20/16
S510	FRAMING SECTIONS	05/20/16		05/20/16
S511	FRAMING SECTIONS	05/20/16		05/20/16
	MECHANICAL			
M000	SYMBOLS, LEGEND, & NOTES	05/20/16		05/20/16
M100	HVAC PLAN	05/20/16		05/20/16
M200	PIPING PLAN	05/20/16		05/20/16
M300	ROOF PLAN	05/20/16		05/20/16
M400	MECHANICAL DETAILS	05/20/16		05/20/16
M500	MECHANICAL SCHEDULES	05/20/16		05/20/16
	FIRE PROTECTION	05/20/16		05/20/16
FP000	SYMBOLS, LEGEND, & NOTES	05/20/16		05/20/16
FP100	FIRE PROTECTION PLAN	05/20/16		05/20/16
	PLUMBING			
P000	SCHEDULES, LEGEND, & NOTES	05/20/16		05/20/16
P100	PLUMBING PLANS	05/20/16		05/20/16

EXHIBIT B
 Haydon Building Corp
 List of Plans
 Specifications Amendments



HAYDON
Stamp

Number	Description	Date	Revision	Stamp
P200	ENLARGED PLUMBING PLANS	05/20/16		05/20/16
P300	PLUMBING RISERS	05/20/16		05/20/16
P401	PLUMBING DETAILS	05/20/16		05/20/16
P402	PLUMBING DETAILS	05/20/16		05/20/16
ELECTRICAL				
E000	SYMBOLS, LEGEND, & NOTES	05/20/16		05/20/16
E100	ELECTRICAL SITE PLAN	05/20/16		05/20/16
E200	LIGHTING RCP PLAN	05/20/16		05/20/16
E400	EQUIPMENT POWER PLAN - LEVEL 1	05/20/16		05/20/16
E401	EQUIPMENT POWER PLAN - ROOF	05/20/16		05/20/16
E500	ENLARGED PLANS	05/20/16		05/20/16
E600	LIGHTING SCHEDULES	05/20/16		05/20/16
E700	ELECTRICAL ON LINE DIAGRAM	05/20/16		05/20/16
E800	ELECTRICAL PANEL SCHEDULES	05/20/16		05/20/16
FOOD SERVICE EQUIPMENT				
QF101	FOODSERVICE EQUIPMENT LAYOUT PLAN	05/20/16		
QF201	FOODSERVICE ELECTRICAL REQUIREMENTS PLAN	05/20/16		
QF301	FOODSERVICE PLUMBING REQUIREMENTS PLAN	05/20/16		
QF401	FOODSERVICE VENTILATION REQUIREMENTS PLAN	05/20/16		
	SPECIFICATIONS CONSTRUCTION DOCUMENTS	05/20/16		



Attachment 4



Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the **22nd** day of **February** in the year **2016**
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Watauga Texas
7105 Whitley Road
Watauga, TX 76148
ATTN: Mr. Hector Garcia, Mayor of the City of Watauga Texas

and the Construction Manager:
(Name, legal status and address)

Haydon Building Corp
4640 E Cotton Gin Loop
Phoenix, AZ 85040
ATTN: Mr. Fritz Behrhorst

for the following Project:
(Name and address or location)

City of Watauga Texas Senior Center Expansion
7857 Indian Springs Road
Watauga, TX 76148

The Architect:
(Name, legal status and address)

Barker Rinker Seacat Architecture
3457 Ringsby Court, Suite 200
Denver, CO 80216 **ATTN: Kip Jameson**

The Owner's Designated Representative:
(Name, address and other information)

The Construction Manager's Designated Representative:
(Name, address and other information)

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

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

Scott Liston
8200 Springwood Drive, Suite 230
Irving, TX 75063
972.739.6405

sliston@haydonbc.com

The Architect's Designated Representative:
(Name, address and other information)

Kip Jameson
3457 Ringsby Court, Suite 200
Denver, CO 80216
303.453.1366

kipjameson@brsarch.com

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES
- 3 OWNER’S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’s skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

Init.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager

shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

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

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

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

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Four Thousand Two Hundred Dollars and no Cents..... \$4,200.00 See Attachment A

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within **TWO (2)** months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the

mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid **Forty Five (45)** days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

2 % Monthly

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Fifty Thousand Dollars and No Cents \$50,000.00 See Attachment A

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

3% on the first \$117,000 of changes and then 5 & 10% for self-performed work and 10% on work performed by subcontractors

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed **Ten percent (10 %)** of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A	N/A	N/A

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

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

Construction Costs/CMR	\$1,527,325.00
Owner's Contingency	\$ 117,000.00
Guaranteed Maximum	\$1,644,325.00

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

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§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

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

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

See Attachment A for Total General Conditions Costs

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

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

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

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§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

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

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 20th day of

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the **following** month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than **thirty (30)** days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of FIVE percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of FIVE percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

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

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Builders Risk Insurance	0.25%/month - \$2892.00
General Liability Insurance	0.08% of contract value - \$11,592.00
Payment & Performance Bonds	1.14% of contract value - \$17,359.00
Maintenance Bonds	1.00% of contract value - \$15,275.00

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

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

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

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3 :
- .4
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

Attachment A – Haydon Building Corp 16-007 Construction Manager @ Risk Pricing Structure 02.09.15

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

Hector Garcia
OWNER (Signature)



Fritz Behrhorst
CONSTRUCTION MANAGER (Signature)

Hector Garcia Mayor
(Printed name and title)

Fritz Behrhorst Vice President
(Printed name and title)

Init.

FEE REQUEST – CONSTRUCTION MANAGER @ RISK Agenda Page 158 of 211
SENIOR CENTER # 16-007
DUE NO LATER THAN: Tuesday, February 9, 2016 at 11:00 AM



Please provide the following information in the sequence and format prescribed no later than Tuesday, February 9, 2016 at 11:00AM to the Purchasing Office located at City of Watauga, 7105 Whitley Road, Watauga, Texas 76148. Supplemental materials providing additional information may be attached, if limited to three pages, but the information requested below is to be provided in this format. You may email the information to Deby Woodard, dwoodard@cowtx.org.

The preliminary drawing is attached for your reference.

The CMR contract form to be used for this project: AIA A201CMc

As indicated in the Construction Manager @ Risk Proposal documents and the pre-bid meeting, the Senior Center Project budget is \$2,026,000 and the breakdown is as follows:

Design/Architect:	\$202,175
Testing/Surveys:	\$14,500
FFE	\$165,000
Owner's Contingency	\$117,000
Construction/CMR	\$1,527,325

Total Project Budget: \$2,026,000

1. FIRM INFORMATION:

Name of firm: Haydon Building Corp

Address of principal office: 4640 E. Cotton Gin Loop, Phoenix, AZ 85040 / Texas Address: 8200 Springwood Ste 230, Irving, Texas 75063

Phone: 972-739-6405

Fax: 972-999-4609

Primary individual to contact: Fritz Behrhorst: fbehrhorst@haydonbc.com (602-296-1496)

2. FEES:

It is anticipated that the City of Watauga will enter into a fixed sum contract with the Construction Manager.

Pre-construction service fee

To include personnel expenses, project estimates, preliminary project schedule, value engineering, constructability reviews, pre-planning, overhead and profit, and other services, through the design and construction document phases to conclude with the establishment of a guaranteed maximum price.

Pre-construction service fee: \$ 4,200.00

Construction phase service fee

To include profit and indirect costs. Indirect costs are defined as:

- Home office personnel assigned to the project
- Operations manager
- Project manager
- Superintendent and Assistant Superintendents
- Field engineers
- Pick-up
- Two way radios
- Employee benefits for above
- Worker's compensation for above
- Project office supplies
- Postage & shipping costs
- Personnel relocation
- Job office rental
- Printing – shop and record drawings
- Storage trailer rental
- Pick-up truck rental
- Haul and set-up trailers
- Fuel & maintenance for secretarial support

ATTACHMENT A

- Project office telephones
- First aid supplies
- Fire extinguishers for construction
- Drug screens
- Progress schedules
- Project office utilities
- Project office machines
- Transportation for staff including travel and lodging
- Accounting and audit fees
- Data processing
- Personnel

List any other cost included in indirect cost not shown above.

Identify the profit part of the construction phase fee based on project scope and budget. Include method of calculating this cost.

\$50,000.00 method used to calculate: 3.274% of \$1,527,325.00

Identify the overhead part of the construction phase fee based on project scope and budget. Include method of calculating this cost.

\$ 120,140.00

3. **Savings:**

Define the savings participation for this project.

Owner 75 % CM 25 %

4. **Schedule:**

Furnish a schedule of estimated consecutive calendar days for the project. See attached

5. **Change orders:**

Describe change order pricing procedures and fee. See attached

6. **Performance and Payment Bond:**

Identify the premium for 100% Performance and Payment Bond

1.14 % equals \$ 17,359.00

7. **Maintenance Bond:**

Identify the premium on 100% one (1) year Maintenance Bond

1.00 % equals \$ 15,275.00

8. **Liability Insurance:**

Identify the premium for General Liability, Automobile Liability and Umbrella Liability Insurance.

0.08 % equals \$ 11,592.00

9. **Builders Risk Insurance:**

Identify the premium for Builders Risk Insurance.

0.25 % equals \$ 2,892.00

10. **Total Construction Manager Fee: \$ 221,458.00** This is cumulative cost of items 1-9

11. **Estimated Calendar Days: 245**

12. **Personnel:**

Given the scope and schedule of the project, identify the specific Project Manager, Estimator, and Field Operations personnel who would work on the project. Provide a resume, references and list of past projects completed similar to this one for each individual.

See attached



**FEE REQUEST - CONSTRUCTION MANAGER @
RISK SENIOR CENTER # 16-007**

DUE NO LATER THAN: Tuesday, February 9, 2016 at 11:00 AM

5. Change orders:

Describe change order pricing procedures and fee.

Answer: No work will proceed without written authorization from the owner. All Request for Changes or Architectural Supplementary Instructions will be issued to the subcontractors and suppliers for pricing to be returned to Haydon Building Corp within seven (7) days of receipt from the architect. Pricing will be detailed showing all changes in quantities both adds and deletions, as well as pricing for both.

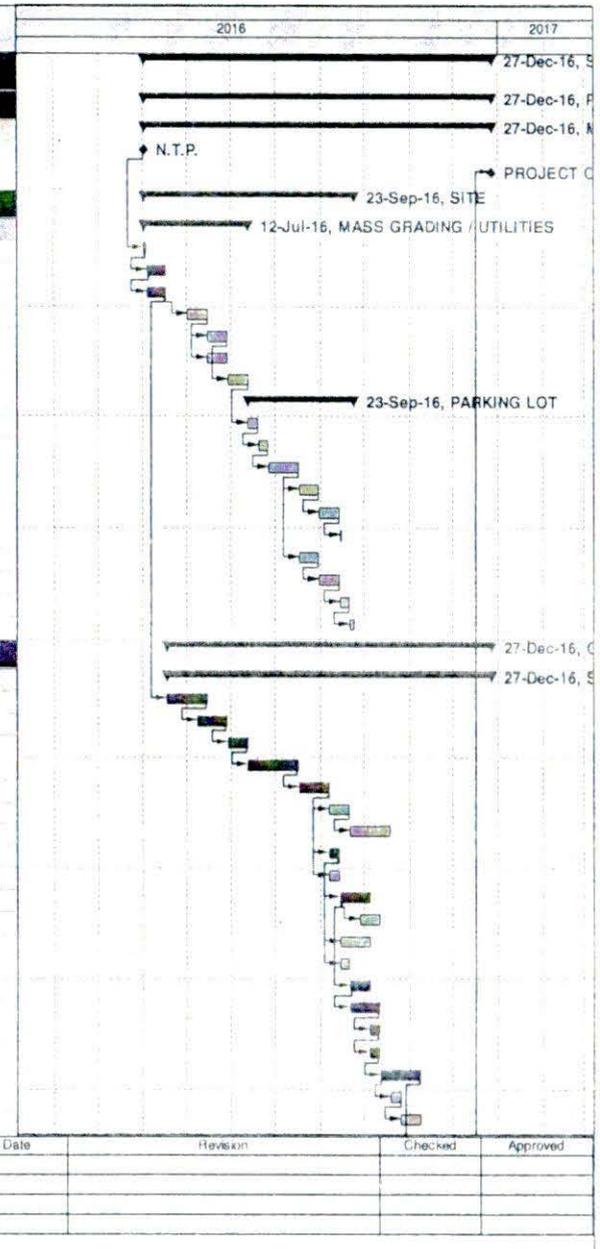
Subcontractors will be limited to a 5 and 10 percent mark up for work performed by their own forces and 10 percent for subcontracted work. Pricing will then be forwarded to the architect and owner for approval with the detailed breakdowns and subcontractor back up.

Any items that might be identified in the field that do not correspond to the plans and specifications will be brought to the attention of the architect and owner for direction as to how to proceed, prior to any work being performed unless authorized in writing by the owner to proceed on a time and material basis. The mark ups will be limited to the subcontractor at a 5 and 10 percent mark up for work performed by their own forces and 10 percent for subcontracted work.

Haydon's mark up for changes will be the same as the subcontractors. Additional general conditions costs will only be added to any changes that will impact time. Detailed back up for all of the costs will be provided.

ATTACHMENT A

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish
SENIOR CENTER #16-007 WATAUGA, TEXAS					
		172	172	02-May-16	27-Dec-16
MILESTONES					
A1000	N.T.P.	0	0	02-May-16	
A1010	PROJECT COMPLETION - OWNER OCCUPANCY	0	0		27-Dec-16
MASS GRADING / UTILITIES					
A10000	INSTALL SWPPP	2	2	02-May-16	03-May-16
A10010	MASS GRADING	10	10	04-May-16	17-May-16
A10020	CONSTRUCT BUILDING PAD	10	10	04-May-16	17-May-16
A10030	U.G. SEWER	10	10	01-Jun-16	14-Jun-16
A10040	U.G. STORM	10	10	15-Jun-16	28-Jun-16
A10050	U.G. DOMESTIC WATER	10	10	15-Jun-16	28-Jun-16
A10070	U.G. DRY UTILITIES	10	10	29-Jun-16	12-Jul-16
PARKING LOT					
A20000	INSTALL LIGHTPOLE BASES & U.G.	5	5	13-Jul-16	19-Jul-16
A20010	FINISH GRADE - CURB & GUTTER	5	5	20-Jul-16	26-Jul-16
A20020	CURB & GUTTER	15	15	27-Jul-16	16-Aug-16
A20030	HARDSCAPE	10	10	17-Aug-16	30-Aug-16
A20040	FINISH SUBGRADE & ABC BLUE TOPS	10	10	31-Aug-16	13-Sep-16
A20050	PAVING	2	2	14-Sep-16	15-Sep-16
A20060	LANDSCAPE IRRIGATION	10	10	17-Aug-16	30-Aug-16
A20070	LANDSCAPE PLANTING	10	10	31-Aug-16	13-Sep-16
A20080	LANDSCAPE GRANITE	5	5	14-Sep-16	20-Sep-16
A20090	STRIPE & SIGNAGE	3	3	21-Sep-16	23-Sep-16
SHELL					
A30000	FOUNDATIONS	20	20	16-May-16	14-Jun-16
A30010	U.G. PLUMBING & ELECTRIC	15	15	08-Jun-16	28-Jun-16
A30020	S.O.G.	10	10	29-Jun-16	12-Jul-16
A30030	MASONRY WALLS	25	25	13-Jul-16	16-Aug-16
A30040	ERECT STEEL STRUCTURE	15	15	17-Aug-16	06-Sep-16
A30080	ROOF TOP-OUT & CURBS	10	10	07-Sep-16	20-Sep-16
A30090	ROOF DRY-IN & INSTALL METAL ROOF	20	20	21-Sep-16	18-Oct-16
A30100	O.H. ROUGH FIRE SPRINKLER	5	5	07-Sep-16	13-Sep-16
A30110	O.H. ROUGH ROOF DRAIN LEADERS	5	5	07-Sep-16	13-Sep-16
A30120	O.H. ROUGH MECHANICAL VAV/DUCT/INSULATION	15	15	14-Sep-16	04-Oct-16
A30130	O.H. ROUGH MECHANICAL PIPING/INSULATION	10	10	28-Sep-16	11-Oct-16
A30140	O.H. ROUGH ELECTRICAL	15	15	14-Sep-16	04-Oct-16
A30150	O.H. WATER	5	5	14-Sep-16	20-Sep-16
A30180	INTERIOR METAL STUD FRAMING WALLS / SOFFITS / HARDLIDS	10	10	21-Sep-16	04-Oct-16
A30170	ROUGH WALLS PLUMBING & ELECTRIC	15	15	21-Sep-16	11-Oct-16
A30180	DRYWALL ONE SIDE & INSULATE	5	5	05-Oct-16	11-Oct-16
A30190	DRYWALL COMPLETE	5	5	05-Oct-16	11-Oct-16
A30200	TAPE, TEXTURE, & PAINT	20	20	12-Oct-16	08-Nov-16
A30210	CEILING GRID	5	5	19-Oct-16	25-Oct-16
A30220	O.H. FINISH MECHANICAL & ELECTRICAL	10	10	26-Oct-16	08-Nov-16



SENIOR CENTER #16-007
WATAUGA, TEXAS

Date	Revision	Checked	Approved

- Remaining Level of Effort
- Secondary Baseline
- Tertiary Baseline
- Actual Work
- Remaining Work
- Critical Remaining Work
- Milestone
- Summary

ATTACHMENT A

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	2016												2017											
A30230	FINISH WALLS - ELECTRICAL	15	15	09-Nov-16	29-Nov-16																								
A30240	CERAMIC TILE @ RESTROOMS	10	10	09-Nov-16	22-Nov-16																								
A30250	INSTALL COUNTER TOPS @ RESTROOMS	2	2	23-Nov-16	24-Nov-16																								
A30260	FINISH PLUMBING @ RESTROOMS	5	5	25-Nov-16	01-Dec-16																								
A30270	PARTITIONS & ACCESSORIES @ RESTROOMS	3	3	02-Dec-16	06-Dec-16																								
A30280	INSTALL MILLWORK	5	5	09-Nov-16	15-Nov-16																								
A30290	FINISH PLUMBING & ELECTRICAL @ MILLWORK	5	5	16-Nov-16	22-Nov-16																								
A30300	INSTALL FLOORING - GENERAL	15	15	16-Nov-16	06-Dec-16																								
A30301	INSTALL MOVABLE PARTITION	10	10	07-Dec-16	20-Dec-16																								
A30305	INSTALL FLOORING & WALL TREATMENT @ KITCHEN	15	15	09-Nov-16	29-Nov-16																								
A30307	INSTALL KITCHEN EQUIPMENT	5	5	30-Nov-16	06-Dec-16																								
A30310	INSTALL DOORS & HARDWARE	5	5	16-Nov-16	22-Nov-16																								
A30330	PRE-PUNCH & CLEAN	15	15	07-Dec-16	27-Dec-16																								



- Remaining Level of Effort
- Secondary Baseline
- Tertiary Baseline
- Actual Work
- Remaining Work
- Critical Remaining Work
- Milestone
- Summary

SENIOR CENTER #16-007
WATAUGA, TEXAS

Date	Revision	Checked	Approved



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

City of Watauga Texas Senior Center Expansion
 7857 Indian Springs Road
 Watauga, TX 76148

THE OWNER:
(Name, legal status and address)

City of Watauga Texas
 7105 Whitley Road
 Watauga, TX 76148
 ATTN: Mr. Hector Garcia, Mayor of the City of Watauga Texas

THE ARCHITECT:
(Name, legal status and address)

Barker Rinker Seacat Architecture
 3457 Ringsby Court, Suite 200
 Denver, CO 80216
 ATTN: Kip Jameson

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- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

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

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

Init.

14 **TERMINATION OR SUSPENSION OF THE CONTRACT**

15 **CLAIMS AND DISPUTES**

Init.

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ARTICLE 1 GENERAL PROVISIONS**§ 1.1 BASIC DEFINITIONS****§ 1.1.1 THE CONTRACT DOCUMENTS**

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

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the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 SUPERINTENDENT

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

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

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

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

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT**§ 4.1 GENERAL**

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

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.4 As provided in Section 7.3.7.

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

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

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

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

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME**§ 8.1 DEFINITIONS**

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION**§ 9.1 CONTRACT SUM**

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding

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dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

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

extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

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

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the

Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

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

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

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

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

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

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

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

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

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

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

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES**§ 15.1 CLAIMS****§ 15.1.1 DEFINITION**

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

§ 15.1.2 NOTICE OF CLAIMS

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

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

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

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

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

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

§ 15.3 MEDIATION

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

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

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

§ 15.4 ARBITRATION

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

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration

permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

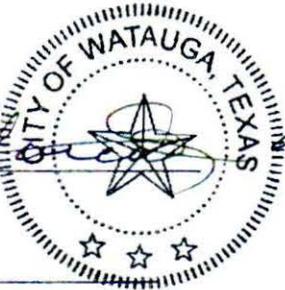
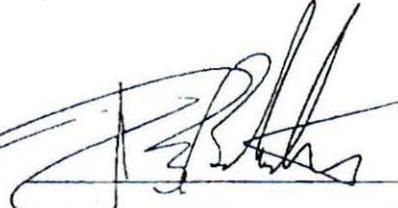
§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.



ATTACHMENT B
FEE REQUEST – CONSTRUCTION MANAGER @ RISK
SENIOR CENTER # 16-007

Haydon Building agrees that work will be substantially complete within 34 weeks from the Issuance of a Notice to Proceed or City of Watauga Building Permit whichever is later. Owner and Haydon Building agree that as liquidated damages for delay, Haydon Building shall pay Owner the sum of \$100 for each consecutive calendar day that expires after the time specified for completion of Senior Center project.

The construction period shall be extended by a period of time equal to the period of interruption caused by an Event of Force Majeure.

		
OWNER (SIGNATURE)		CONSTRUCTION MANAGER (SIGNATURE)
<u>Hector Garcia – Mayor</u>		<u>Fritz Behrhorst – Vice President</u>



AGENDA MEMORANDUM

DATE: June 30, 2016

TO: Honorable Mayor and Members of the City Council

THROUGH: Greg Vick, City Manager *GV*

FROM: Marcia Reyna, Human Resources & Civil Service Director *Marcia Reyna*
Deby Woodard, Assistant Finance Director/Purchasing Manager *Deby Woodard*

SUBJECT: Healthcare Insurance Renewal for FY 2016-17

BACKGROUND/INFORMATION:

City Administration along with the City's benefits broker, Benefits SeminarsPLUS, have been in negotiations with Aetna, the current healthcare insurance provider for the last two (2) months. The bid opening on May 12, 2016, revealed a renewal increase from Aetna of 44.8%. Aetna is steadfast on this renewal rate despite the City's attempt to negotiate.

In addition to Aetna, three (3) other health insurance companies provided bids:

1. United Healthcare's bid provided for an increase of 21% with less favorable plan design options.
2. BlueCross BlueShield's bid provided for an increase of 21.6% with less favorable plan design options and narrower networks.
3. Cigna's bid provided for an increase of 17.6% with plans identical to the City's current plan options with slightly narrower networks.

Several reasons continue to contribute to the rise in health insurance premiums this year such as:

- Claims expenses paid out by the insurance company in the last 12 months exceeded the premiums paid by the City to the insurance company by over 115%.
- The Affordable Care Act continues to require health plans to cover many expenses with no limit, expands coverage for many additional and sometimes costly preventive procedures particularly for women and children. In addition, there are taxes and fees included in the cost of insurance.
- Pharmaceutical companies continue to develop new drugs for conditions such as hepatitis, heart disease, diabetes, hypertension and cancer. Insurance is required to pay for these therapies that often approach over \$100K per round of treatment. In the meantime there are new costly drugs being developed every day.
- Cost of medical inflation (trend) which is a result of aging demographics, new technology, state and federal mandates.

Employee Healthcare Committee

A Healthcare Committee was formulated this year to assist with evaluating healthcare options. The Committee consisted of employees from various departments throughout the City who are enrolled in different plan options. The diverse group allows for various perspectives. Committee members learned about the health insurance bidding process and its challenges.

Past Plan Adjustments

In the recent years, the City has explored different ways to reduce healthcare costs while balancing both the City's and employees' needs.

In FY2013-14, the City changed the design of our healthcare plans to include high deductible health plans (HDHP) and began to offer Health Savings Accounts.

In FY2014-15, the City changed carriers to Aetna which offered a savings in premiums compared to the current provider at the time, Blue Cross Blue Shield of Texas.

In FY2015-16, the City modified its existing plan design with Aetna to an EPO. EPO stands for Exclusive Provider Organization which requires employees to use physicians, hospitals and treatment facilities within Aetna's network. In addition, the City also contributed \$40.00 per month to eligible Health Savings Accounts for employees. This helped offset the increase in premium on the high deductible plan.

In this memo, City Administration's recommendations on healthcare (medical), dental, vision and life insurance will be discussed. The City's decline in sales tax revenues, increasing cost of living for our employees and the compilation of the FY16-17 budget needs continue to be of concern.

Current Medical Insurance Plan (FY 2015-16)

The City currently offers three (3) healthcare plans through Aetna.

Plan 1 is a traditional PPO plan which has a high deductible. This is the City's base plan which is free to the employees.

Plan 2 is a high deductible health plan (HDHP). Employees have the option of enrolling in a health savings account when they select the high deductible health plan.

Plan 3 is the premium PPO plan which has a lower deductible, but has a higher premium.

On the following page, you will find an illustration of the City's current plans with Aetna and their monthly cost. Keep in mind that the City pays for a portion of the employees' premium on Plan 2 and Plan 3. Dependent healthcare costs are completely absorbed by the employees.

FY 2015-2016 MEDICAL PLAN			
AETNA			
Description	3500 EPO PLAN	HDHP 2500 PLAN	1000 EPO PLAN
Description	In Network Only	In Network Only	In Network Only
Integrated Deductible	No	Yes	No
Deductible	\$3500	\$2500	\$1000
Family Deductible	2X	2X	2X
Deductible Carry Forward		No	No
Out of Pocket (Including Ded)	\$6600	\$2500	\$4500
Family Out of Pocket	2X	2X	2X
Your Coinsurance Amount	20%	0%	20%
PCP Office Visit Co-pay	\$30	NA	\$30
Specialist Copay	\$50	NA	\$30
Preventive Care	\$0	\$0	\$0
Lab & X Ray (Diagnostic)	Ded+20%	Ded	\$0
Inpatient Hospital	Ded+20%	Ded	Ded+20%
Hospital Deductible/admission	NA	NA	\$250
Outpatient Surgery	Ded+20%	Ded	Ded+20%
Urgent Care	Paid at 100%	Ded	\$50 + 20%
Emergency Room	Ded+20%	Ded	\$100 + 20%
Prescription Drugs:			
Generic	\$10	Ded	\$10
Name brand	\$20	Ded	\$25
Non-formulary	\$50	Ded	\$50
Mail order	3X	Ded	3X
Coverage Type	Monthly		
Individual (Cost to Employee)	\$ -	\$ 34.25	\$ 186.33
Individual (Cost to City)	\$ 544.65	\$ 567.00	\$ 567.00
Individual & Spouse	\$ 1,113.25	\$1,228.96	\$ 1,539.82
Individual & Child(ren)	\$ 877.42	\$ 968.61	\$ 1,213.62
Individual & Family	\$ 1,228.17	\$1,355.84	\$ 1,698.77

Proposed Medical Insurance Plan (FY 2016-17)

Due to Aetna's astronomical increase of 44%, the City is forced to change carriers. Cigna's bid provided the lowest overall increase of 17.6%. This provides for an increase of about \$68,000 to the City for employee coverage. It is the recommendation of City Administration and the Healthcare Committee to change carriers to Cigna. The plans offered by Cigna are similar to our current plans with Aetna with slightly narrower networks. Cigna is also offering to reimburse up to \$3,000 for City sponsored wellness programs. Furthermore, Cigna has a first year rate

guarantee which limits renewal increases at a tiered level if the City suffered a large amount of high claims during our first year.

Below you will find an illustration of the City's proposed plans with Cigna and their monthly cost. You will also find an additional illustration which details the amount of increase on the following page.

FY 2016-2017 MEDICAL PLAN CIGNA (PROPOSED)			
Description	3500 EPO PLAN	HDHP 2500 PLAN	1000 EPO PLAN
Description	Local Plus	OAP	OAP
Integrated Deductible	No	Yes	No
Deductible	\$3500	\$2500	\$1000
Family Deductible	2X	2X	2X
Deductible Carry Forward	No	No	No
Out of Pocket (Including Ded)	\$6600	\$2500	\$4500
Family Out of Pocket	2X	2X	2X
Your Coinsurance Amount	20%	0%	20%
PCP Office Visit Co-pay	\$30	NA	\$30
Specialist Copay	\$50	NA	\$30
Preventive Care	\$0	\$0	\$0
Lab & X Ray (Diagnostic)	Ded+20%	Ded	\$0
Inpatient Hospital	Ded+20%	Ded	Ded+20%
Hospital Deductible/admission	NA	NA	\$250
Outpatient Surgery	Ded+20%	Ded	Ded+20%
Urgent Care	Paid at 100%	Ded	\$50 + 20%
Emergency Room	Ded+20%	Ded	\$100 + 20%
Prescription Drugs:			
Generic	\$10	Ded	\$10
Name brand	\$20	Ded	\$25
Non-formulary	\$50	Ded	\$50
Mail order	3X	Ded	3X
Coverage Type	Monthly		
Individual (Cost to Employee)	\$ -	\$ 40.04	\$ 113.50
Individual (Cost to City)	\$ 590.73	\$ 600.00	\$ 600.00
Individual & Spouse	\$ 1,216.92	\$1,323.87	\$ 1,469.81
Individual & Child(ren)	\$ 1,169.66	\$1,272.27	\$ 1,412.73
Individual & Family	\$ 1,778.11	\$1,936.75	\$ 2,147.63

Although an overall increase of 17.6% is high, what is even of more concern is the increase in cost for dependent healthcare. As you may recall, dependent healthcare costs are completely absorbed by the employees. About 30% of our employees cover a dependent on their health insurance. The premium EPO 1000 plan will have a decrease for the employee only and employee and spouse options. However, the rest of the plans have increases that range from 10.1% to 74%. Any contribution to dependent healthcare would help ease this large increase for employees and their families. Below is an illustration of the increase premiums by plan and coverage level.

MONTHLY PAYROLL DEDUCTION (MEDICAL)				
3500 EPO PLAN			Increase	
Coverage Type	FY 15-16	FY 16-17	Amount	%
Individual (Cost to Employee)	\$ -	\$ -	\$ -	
Individual (Cost to City)	\$ 544.65	\$ 590.73	\$ 46.08	8.5%
Individual & Spouse	\$ 568.60	\$ 626.19	\$ 57.59	10.1%
Individual & Child(ren)	\$ 332.77	\$ 578.93	\$ 246.16	74.0%
Individual & Family	\$ 683.52	\$ 1,187.38	\$ 503.86	73.7%

HDHP 2500 PLAN			Increase	
Coverage Type	FY 15-16	FY 16-17	Amount	%
Individual (Cost to Employee)	\$ 34.25	\$ 40.04	\$ 5.79	16.9%
Individual (Cost to City)	\$ 567.00	\$ 600.00	\$ 33.00	5.8%
Individual & Spouse	\$ 661.96	\$ 723.87	\$ 61.91	9.4%
Individual & Child(ren)	\$ 401.61	\$ 672.27	\$ 270.66	67.4%
Individual & Family	\$ 788.84	\$ 1,336.75	\$ 547.91	69.5%

1000 EPO PLAN			Increase	
Coverage Type	FY 15-16	FY 16-17	Amount	%
Individual (Cost to Employee)	\$ 186.33	\$ 113.50	\$ (72.83)	-39.1%
Individual (Cost to City)	\$ 567.00	\$ 600.00	\$ 33.00	5.8%
Individual & Spouse	\$ 972.82	\$ 869.81	\$ (103.01)	-10.6%
Individual & Child(ren)	\$ 646.62	\$ 812.73	\$ 166.11	25.7%
Individual & Family	\$ 1,131.77	\$ 1,547.63	\$ 415.86	36.7%

Other Benefits

Dental

Proposals for dental insurance were solicited this year. Carriers such as Humana, MetLife and United Healthcare provided bids. United Health Care offered a decrease in premiums, but only with a 12 month guarantee. Humana's bid provided for an increase. MetLife offered a decrease of 11.8% to the City, but offered a less rich plan which passed along most of the increase to the dependent rates. Aetna offered a 24 month renewal with a smaller increase to both the City and the employee on the PPO plan and a decrease on the DMO plan. The total increase to the City is about \$2,750. This renewal also provided for the same plan design. It is the recommendation of City Administration and the Healthcare Committee to keep the City's dental insurance with Aetna. On the following page you will find the monthly rates and an additional illustration which details the amount of increase/decrease for dental insurance

FY 2015-2016 DENTAL PLAN AETNA (PROPOSED FOR FY 16-17)				
Description	PPO		DMO	
Maximum Annual Benefit	\$1,500		Unlimited	
Deductible	\$50 / 0		\$0	
Family	\$150 / 0		\$150 / 0	
Preventive	100%		\$5	
Definition of Cleanings	2 per year		2 per year	
Cleanings	100%		100%	
Oral Evaluation	100%		100%	
Basic	80%		Copays	
Fillings	80%		\$0	
Includes endo + perio	Yes		NA	
Major	50%		Copays	
Crown	50%		\$315	
Wait for timely new hires	None		None	
Orthodontics	\$1,500		Copays	
Deductible	Combined		\$0	
Adults covered	No		Yes	
Child treatment	50%		\$1945 copay	
Adult treatment	NA		\$1945 copay	
Waiting period	None		None	
Out of Network % of U&C	90%		NA	
Monthly Premium	FY 15-16	FY 16-17	FY 15-16	FY 16-17
Individual (Cost to Employee)	\$ -	\$ -	\$ -	\$ -
Individual (Cost to City)	\$ 29.63	\$ 31.76	\$ 12.41	\$ 12.00
Individual & Spouse	\$ 55.40	\$ 59.39	\$ 24.43	\$ 23.62
Individual & Child(ren)	\$ 65.50	\$ 70.22	\$ 32.55	\$ 31.48
Individual & Family	\$ 86.61	\$ 92.85	\$ 44.58	\$ 43.11

MONTHLY PAYROLL DEDUCTION (DENTAL)				
AETNA PPO PLAN			Increase	
Coverage Type	FY 15-16	FY 16-17	Amount	%
Individual (Cost to Employee)	\$ -	\$ -	\$ -	
Individual (Cost to City)	\$ 29.63	\$ 31.76	\$ 2.13	7.2%
Individual & Spouse	\$ 25.77	\$ 27.63	\$ 1.86	7.2%
Individual & Child(ren)	\$ 35.87	\$ 38.46	\$ 2.59	7.2%
Individual & Family	\$ 56.98	\$ 61.09	\$ 4.11	7.2%

AETNA DMO PLAN			Increase	
Coverage Type	FY 15-16	FY 16-17	Amount	%
Individual (Cost to Employee)	\$ -	\$ -	\$ -	
Individual (Cost to City)	\$ 12.41	\$ 12.00	\$ (0.41)	-3.3%
Individual & Spouse	\$ 12.02	\$ 11.62	\$ (0.40)	-3.3%
Individual & Child(ren)	\$ 20.14	\$ 19.48	\$ (0.66)	-3.3%
Individual & Family	\$ 32.17	\$ 31.11	\$ (1.06)	-3.3%

Vision

Proposals for vision insurance were not solicited because our contract with Vision Service Plan (VSP) does not expire until October 1, 2019.

Life and Disability

Our current carrier, Lincoln Financial Group, has renewed our contract at the current rates. These rates are guaranteed for 24 months with the next renewal being October 1, 2018.

RECOMMENDATION/ACTION DESIRED:

City Administration, along with the Healthcare Committee, has carefully reviewed and considered all healthcare insurance options with two (2) objectives in mind: 1) the financial stability of the City and 2) the financial well-being of our employees.

Balancing those two (2) objectives, the following are our recommendations:

1. Change healthcare (medical) insurance carrier from Aetna to Cigna.
2. Contribute to 100% of the employee premium of the 3500 plan. This would be the City's base plan.
3. Continue to match up to \$40.00/month for H.S.A. plan holders for FY16-17.
4. Attempt to contribute to part of the dependent premiums on all plans if budget allows.
5. Keep dental insurance with Aetna.

FINANCIAL IMPLICATIONS:

Funding Source: Line item XX-XXX-41020 for each corresponding budget.

ATTACHMENTS/SUPPORTING DOCUMENTATION:

1. None.