



MINUTES

DECEMBER 27, 2016

BRAZOS COUNTY COMMISSIONERS COURT

REGULAR MEETING

1. Invocation and Pledge of Allegiance

- U.S. and Texas Flag - Chaplain G.H. Jones and Commissioner Mallard

2. Call for Citizen input and/or concerns

There was no citizen's input.

Consider and take action on agenda items 3-29:

3. Resolution 16-028 honoring Lloyd Wassermann for his service to Brazos County.

The Court voted unanimously to adopt Resolution 16-028 honoring Lloyd Wassermann. The Court takes this opportunity to honor Lloyd Wassermann for his many years of outstanding service to Brazos County as Commissioner of Precinct 1. The County Judge then presented the resolution to Commissioner Wassermann and wished him the very best in his retirement.

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner Sammy Catalena. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

4. Resolution 16-029 honoring Kenny Mallard for his service to Brazos County.

The Court voted unanimously to adopt Resolution 16-029 honoring Kenny Mallard. The Court takes this opportunity to honor Kenny Mallard for his many years of outstanding service to Brazos County as Commissioner of Precinct 3. The County Judge then presented the resolution to Commissioner Mallard and wished him the very best in his

retirement.

Motion: Approve, Moved by Commissioner Sammy Catalena, Seconded by Commissioner LLoyd Wassermann. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

5. Correction of the following appointments of Board of Directors to the Brazos Valley Groundwater Conservation District to match the 4 year terms from their bylaws.
 - a. Stephen Cast; term of appointment is 1/1/17 - 12/31/20
 - b. Billy Lynn Harris; term of appointment is 1/1/15 - 12/31/18
 - c. Mark Carrabba; term of appointment is 1/1/15 - 12/31/18

Motion: Approve, Moved by Commissioner Sammy Catalena, Seconded by Commissioner Irma Cauley. Other. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

6. Appointment of the following to the Homeland Security Advisory Committee (HSAC):
 - a. Curtis Darby; term of appointment is 12/27/2016 - 3/31/2017
 - b. Steve Aldrich; term of appointment is 1/1/2016 - 3/31/2017

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner Kenny Mallard. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

7. Approval of Official Bonds.

The following official bonds were approved:

Jarvis Parsons
Rodney Anderson
Nancy Berry
Steve Aldrich
Kristeen Roe
Christopher Kirk

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner Kenny Mallard. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

8. Payment Authorization to Hart Intercivic in the amount of \$54,537.00 for annual license and support for the Elections Administrator's Office; a purchase order was not obtained in advance.

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner LLoyd Wassermann. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

9. Approval for Payment Authorization to Galls LLC in the amount of \$420.00 for purchases

in 2015 by the Sheriff's Office; the invoices were not received before the purchase order was closed.

Motion: Approve, Moved by Commissioner LLOYD Wassermann, Seconded by Commissioner Irma Cauley. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

10. Payment authorization to Lawrence Thompson, Jr., Ph.D. in the amount \$3150.00 for expert witness services; a purchase order was not obtained in advance.

This payment authorization was requested by the District Attorney's office.

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner Kenny Mallard. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

11. Approval of the following job descriptions:
 - a. Class Code 0433, Position 01 - Temp. Clerk for District Attorneys Office
 - b. Class Code 1516, Position 02 - Intern, Detention Officer for S.O. Jail
 - c. Class Code 1516, Position 03 - Intern, Detention Officer for S.O. Jail
 - d. Class Code 0819, Position 03 - Building Event Worker for Brazos Center

Motion: Approve, Moved by Commissioner LLOYD Wassermann, Seconded by Commissioner Sammy Catalena. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

12. Consider and take action on Interlocal and Funding Agreement for the Maintenance of Roads for Brazos County Municipal Utility District Number 1.

A copy of the agreement is attached.

Motion: Approve, Moved by Commissioner LLOYD Wassermann, Seconded by Commissioner Sammy Catalena. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

13. Consider and take action on Chapter 381 Development Agreement between Brazos County and ViaSat, Inc.

A copy of the agreement is attached.

Motion: Approve, Moved by Commissioner Sammy Catalena, Seconded by Commissioner Irma Cauley. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

14. Consider and take action on a Chapter 381 Development Agreement between Brazos County and Cozumel Investor, Ltd.

A copy of the agreement is attached.

Motion: Approve, Moved by Commissioner Sammy Catalena, Seconded by Commissioner Irma Cauley. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters,

Wassermann.

15. Consider and take action on a Chapter 381 Development Agreement between Brazos County and Nutrabolt, Inc.

A copy of the agreement is attached.

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner LLoyd Wassermann. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

16. Discuss and take possible action on a contract with Houston County for the contracting of pre-adjudication detention beds.

A copy of the contract is attached.

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner Sammy Catalena. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

17. Discuss and take possible action on a contract with Harris County for sex offender residential services.

A copy of the contract is attached.

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner Kenny Mallard. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

18. Request approval of the Agreement for the Operation and Maintenance of the Brazos County Exposition Complex Concession with Baily Concessions

A copy of the agreement is attached.

Motion: Approve, Moved by Commissioner Sammy Catalena, Seconded by Commissioner LLoyd Wassermann. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

19. Approval of amendment to contract with SZH Architecture for Expo Expansion Phase III project.

A copy of the amended contract is attached.

Motion: Approve, Moved by Commissioner Sammy Catalena, Seconded by Commissioner LLoyd Wassermann. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

20. Approval of evaluation committee for RFP 17-253, Expo Expansion - Phase III:

- a. Gary Arnold
- b. Irene Jett
- c. Duane Peters
- d. Tom Quarles
- e. Legal (non-voting)
- f. Purchasing (non-voting)

Motion: Approve, Moved by Commissioner Sammy Catalena, Seconded by Commissioner Irma Cauley. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

21. Approval to issue county diners club credit cards for Constable Pct. 3 with a credit limit of \$1,000.00 for travel purposes to the following:
- a. J.P. Ingram
 - b. Calder Lively

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner Kenny Mallard. Other. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

22. Approval of Amendment No. 2 and extension of contract #17-087R for Full Service Computerized Indexing, Optical Imaging Systems and Services for Vital and Real Property Records with Xerox Government Records Services, Inc.

A copy of the amended contract is attached.

Motion: Approve, Moved by Commissioner Sammy Catalena, Seconded by Commissioner LLoyd Wassermann. Other. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

23. Approval of contract and award of RFP # 17-243 for the Renovation of Building for Employee Medical Clinic and Voter Administration to JaCody Construction, LP.

The Court voted unanimously to accept the recommendation of the Purchasing Agent and awarded Bid Contract 2017-243 Renovation of Building for the Employee Medical Clinic and Voter Administration to JaCody Construction, LP. A copy of the contract and bid tabulation is attached.

Motion: Approve, Moved by , Seconded by . Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

24. Renewal of Contract #17-263R for Janitorial Paper Products with Ray Criswell Distributing Company.

A copy of the renewal of contract is attached.

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner Kenny Mallard. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

25. Request from Road and Bridge to enter private property owned by Antonio Pineda and Maria Medina located off Luza Lane for the purpose of removing a tree that has fallen onto property from county right of way. This work is being done for the health, safety and welfare of the general public. Site is located in Precinct 4.

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner

Sammy Catalena. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

26. Tax Refund Applications for the following:

- a. Wells Fargo Homemortgage-overpayment-\$791.31
- b. Shelby Savings Bank-payment in error-\$29,287.42

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner LLoyd Wassermann. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

27. Budget Amendments.

Budget Amendments FY 16/17 13.1 - 13.13

- 13.1 Reallocate funds for General Capital Improvement - Road & Bridge.
- 13.2 Transfer funds from Non-Departmental to Sheriff Office-Administration.
- 13.3 Reallocate funds for Emergency Management.
- 13.4 Reallocate funds for Emergency Management.
- 13.5 Transfer funds from Non-Departmental to Information Technology Services.
- 13.6 Reallocate funds for the District Attorney Crime Fund.
- 13.7 Correct beginning balance for Courthouse Improvements.
- 13.8 Reallocate funds for Elections Administrator.
- 13.9 Transfer funds from Non-Departmental to Jail.
- 13.10 Transfer funds from Non-Departmental to Sheriff Office-Administration
- 13.11 Transfer funds from Non-Departmental to Information Technology Services.
- 13.12 Reverse budget amendment FY 16/17 9.4.
- 13.13 Reallocate funds for General Capital Improvement - Elections Administrator.

Motion: Approve, Moved by Commissioner Sammy Catalena, Seconded by Commissioner LLoyd Wassermann. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

28. Personnel Change of Status.

Personnel Action Forms

A copy of the Personnel Change of Status requests is attached.

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner LLoyd Wassermann. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

29. Payment of Claims.

Claims 7151309-7151538

Motion: Approve, Moved by Commissioner Irma Cauley, Seconded by Commissioner Kenny Mallard. Passed. 5-0. Ayes: Catalena, Cauley, Mallard, Peters, Wassermann.

30. Sheriff's report on inmate population.

Sheriff Chris Kirk stated there were 589 inmates in jail, 531 inmates are male, 58 are female, 32 have electronic monitors and 20 are pending for monitors.

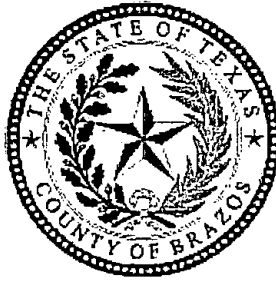
31. Announcement of interest items and possible future agenda topics.

There were no announcements.

32. Call for Citizen input and/or concerns

There was no citizen's input.

33. Adjourn.



**BRAZOS COUNTY
BRYAN, TEXAS**

NOTICE OF MEETING AND AGENDA

BRAZOS COUNTY COMMISSIONERS COURT

**THE COMMISSIONERS COURT OF BRAZOS COUNTY WILL MEET IN
REGULAR SESSION ON DECEMBER 27, 2016 AT 10:00 AM IN THE
COMMISSIONERS COURTROOM OF THE COUNTY ADMINISTRATION
BUILDING, 200 SOUTH TEXAS AVE., SUITE 106, BRYAN, TX 77803**

1. Invocation and Pledge of Allegiance
- U.S. and Texas Flag - Chaplain G.H. Jones and Commissioner Mallard
2. Call for Citizen input and/or concerns

Consider and take action on agenda items 3-29:

3. Resolution 16-028 honoring Lloyd Wassermann for his service to Brazos County.
4. Resolution 16-029 honoring Kenny Mallard for his service to Brazos County.
5. Correction of the following appointments of Board of Directors to the Brazos Valley Groundwater Conservation District to match the 4 year terms from their bylaws.
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7. Approval of Official Bonds.
8. Payment Authorization to Hart Intercivic in the amount of \$54,537.00 for annual license and support for the Elections Administrator's Office; a purchase order was not obtained in advance.
9. Approval for Payment Authorization to Galls LLC in the amount of \$420.00 for purchases in 2015 by the Sheriff's Office; the invoices were not received before the purchase order was closed.

FILED

2016 DEC 22 A 10:02

CLERK OF THE COUNTY CLERK
BRAZOS COUNTY, BRYAN, TEXAS
DECEMBER 22, 2016

John Romberg

10. Payment authorization to Lawrence Thompson, Jr., Ph.D. in the amount \$3150.00 for expert witness services; a purchase order was not obtained in advance.
11. Approval of the following job descriptions:
 - a. Class Code 0433, Position 01 - Temp. Clerk for District Attorneys Office
 - b. Class Code 1516, Position 02 - Intern, Detention Officer for S.O. Jail
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12. Consider and take action on Interlocal and Funding Agreement for the Maintenance of Roads for Brazos County Municipal Utility District Number 1.
13. Consider and take action on Chapter 381 Development Agreement between Brazos County and ViaSat, Inc.
14. Consider and take action on a Chapter 381 Development Agreement between Brazos County and Cozumel Investor, Ltd.
15. Consider and take action on a Chapter 381 Development Agreement between Brazos County and Nutrabolt, Inc.
16. Discuss and take possible action on a contract with Houston County for the contracting of pre-adjudication detention beds.
17. Discuss and take possible action on a contract with Harris County for sex offender residential services.
18. Request approval of the Agreement for the Operation and Maintenance of the Brazos County Exposition Complex Concession with Baily Concessions
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21. Approval to issue county diners club credit cards for Constable Pct. 3 with a credit limit of \$1,000.00 for travel purposes to the following:
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22. Approval of Amendment No. 2 and extension of contract #17-087R for Full Service Computerized Indexing, Optical Imaging Systems and Services for Vital and Real Property Records with Xerox Government Records Services, Inc.
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28. Personnel Change of Status.

Personnel Action Forms

29. Payment of Claims.

30. Sheriff's report on inmate population.

31. Announcement of interest items and possible future agenda topics.

32. Call for Citizen input and/or concerns

33. Adjourn.

PUBLIC COMMENTS

Public Comment during the Commission Meeting may be for all matters, both on and off the agenda, and be limited to four minutes per person. Persons are invited to submit comments in writing on the agenda items and/or attend and make comment at the Commission meeting. Members of the public are reminded that the Brazos County Commissioners Court is a Constitutional Court, with both judicial and legislative powers, created under Article V, Section 1 and Section 18 of the Texas Constitution. As a Constitutional Court, the Brazos County Commissioners Court also possesses the power to issue a Contempt of Court Citation under Section 81.024 of the Texas Local Government Code. Accordingly, members of the public in attendance at any Regular, Special and/or Emergency meeting of the Court shall conduct themselves with proper respect and decorum in speaking to, and/or addressing the Court; in participating in public discussions before the Court; and in all actions in the presence of the Court. Those members of the public who are inappropriately attired and/or who do not conduct themselves in an orderly and appropriate manner will be ordered to leave the meeting. Refusal to abide by the Court's Order and/or continued disruption of the meeting may result in a Contempt of Court Citation.

It is not the intention of the Brazos County Commissioners Court to provide a public forum for the demeaning of any individual or group. Neither is it the intention of the Court to allow a member (or members) of the public to insult the honesty and/or integrity of the Court, as a body, or any member or members of the Court, or County employees, individually or collectively. Accordingly, profane, insulting or threatening language directed toward the Court and/or any person in the Court's presence and/or racial, ethnic or gender slurs or epithets will not be tolerated. Violation of these rules may result in the following sanctions:

1. cancellation of a speaker's time;
2. removal from the Commissioners Court;
3. a Contempt Citation; and/or
4. such other and/or criminal sanctions as may be authorized under the Constitution, Statutes and Codes of the State of Texas.

The County Commissioners Court can deliberate or take action only if a matter has been listed on an agenda properly posted prior to the meeting. During the public comment period, speakers may address matters not listed on the published agenda. The Open Meeting Law does not expressly prohibit responses to public comments by the Commissioners Court. However, responses from the County Judge or Commissioners to unlisted public comment topics could become deliberation on a matter without notice to the public. To ensure the public has notice of all matters the Commissioners Court will consider, the County Judge and/or Commissioners may choose not to respond to public comments, except to correct factual inaccuracies, recite existing policy in response to an inquiry or to ask that a matter be listed on a future agenda. See Texas Open Meetings Act Section 551.042.

INVOCATION

Any invocation that may be offered before the official start of the Court meeting shall be to and for the benefit of the Court. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Court and do not necessarily represent the religious beliefs or views of the Court in part or as a whole. No member of the community is required to attend or participate in the invocation and such decision will have no impact on their right to actively participate in the business of the Court.

The Commissioners Courtroom of the County Administration Building, 200 South Texas Ave., Suite 106, Bryan, TX 77803 is wheelchair accessible. Handicap parking spaces are available. Any request for sign interpretive services must be made two working days before the meeting. To make arrangements, please call (979) 361-4102.

BRAZOS COUNTY COMMISSIONER'S COURT

57th DAY OF December, 2016
10:00 (AM)PM, _____

Name

(PLEASE PRINT)

R. ALAN MUNGER

KAREN McQUEEN

Patricia Mantalban

Nina Means

Melissa Perez

Chaplain G. Jones

RICHARD VANCE

Bill Mathis

Annette Stephens

WM. CHARLES WENDT

Joanna Spencer

Cheryl Coffman

Teddy Hancock

Ann Mallard

Blanche Brick

Organization

(PLEASE PRINT)

R. B

Co. Clerk

" "

Budget

Rest

Chaplain

RETIRED

South Pointe

ABHR

PURCHASING

Brazos Center

Comm. Court

EA

citizen

College Station City Council

BRAZOS COUNTY COMMISSIONER'S COURT

27th DAY OF December, 2016
10:00 (AM/PM)

Name

(PLEASE PRINT)

Irene Jeff

Bethany Jones

Bill Oliver

Mark Wassermann

Suzanne Wassermann

Donna Hill

Kris Hill

Bobbie Peters

Chris Lueb

Michelle

Jason Ware

Jennifer Salazar

LAURA T DAVIS

Michael Parks

Karen

Organization

(PLEASE PRINT)

Budget

Co Judge

WTAW

JP Pct. 3

Shari A

BCEM

BCEM

HR

Treas

BUCOG

CA

BRAZOS COUNTY COMMISSIONER'S COURT

27th DAY OF December, 2016
10:00 (AM)PM, _____

Name

(PLEASE PRINT)

Organization

(PLEASE PRINT)

Ed Bull

CA

Bill Bullard

CA

Nancy Berry

Roger Sherdow

BUCOB

Tom Wilkinson

BUCOB

ERIC CALDWELL

BCIT

Brian Pratt

Asst. Dir.

Donald Lamp

BCC Pd 2

JAMES EDGE

COV 6, FLORES

Maggie Lee

Audit

W. O. D.

SG

Kristen Roe

Kristen Roe - Tax A.

Paul Switzer

Pol. Insp.

Ben Hardeman

City of Benham

Candy Gallego

Comm. Court



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Resolution 16-028 honoring Lloyd Wassermann for his service to Brazos County.
TO: Commissioners Court
DATE: 12/21/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

[resolution-Lloyd_Wassermann.doc](#)

Description

Resolution

Type

Cover Memo



Resolution Honoring Lloyd Wassermann

WHEREAS, Lloyd Wassermann has served the citizens of Brazos County as a Commissioner for 12 years; and

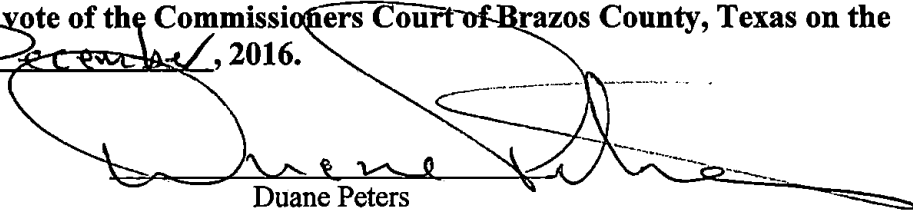
WHEREAS, Lloyd Wassermann has served the constituents of Precinct 1 since taking office in 2005; and

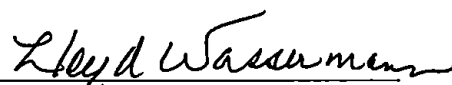
WHEREAS, Lloyd Wassermann has served on numerous boards and committees including 9-1-1 Board, Keep Brazos Beautiful, Health Facilities Development Corporation, and Intergovernmental Committee; and

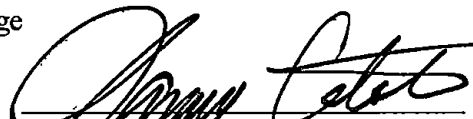
WHEREAS, Lloyd Wassermann was instrumental in the development of Brazos County's Subdivision Regulations and Brazos County's Animal Control Ordinance.


NOW THEREFORE, BE IT RESOLVED that the Commissioner's Court of Brazos County takes this opportunity to honor Commissioner Lloyd Wassermann and thank him for his years of service to Brazos County and its citizens, and to wish him the very best in his retirement.

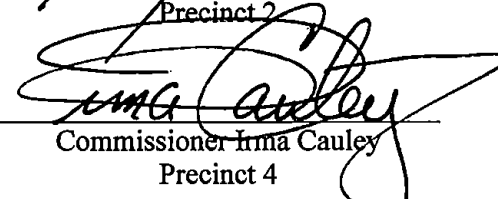
DULY adopted by vote of the Commissioners Court of Brazos County, Texas on the
27 day of ~~December~~, 2016.


Duane Peters
County Judge


Commissioner Lloyd Wassermann
Precinct 1


Commissioner Sammy Catalena
Precinct 2


Commissioner Kenny Mallard
Precinct 3


Commissioner Irma Cauley
Precinct 4



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Resolution 16-029 honoring Kenny Mallard for his service to Brazos County.
TO: Commissioners Court
DATE: 12/21/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

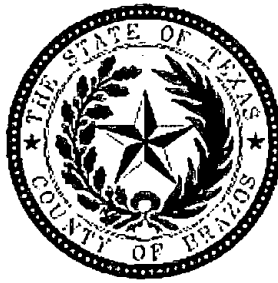
[resolution-Kenny Mallard \(2\) .doc](#)

Description

Resolution

Type

Cover Memo



Resolution Honoring Kenny Mallard

WHEREAS, Kenny Mallard has served the citizens of Brazos County as a Commissioner for 14 years; and

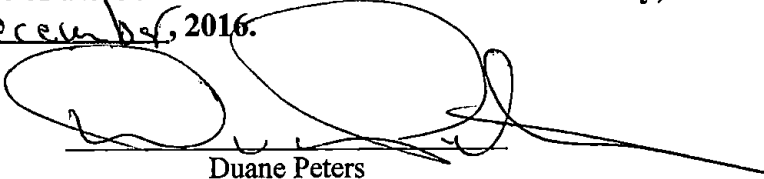
WHEREAS, Kenny Mallard has served the constituents of Precinct 3 since taking office in 2003; and

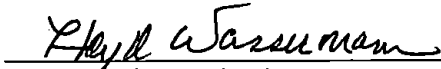
WHEREAS, Kenny Mallard has served on numerous boards and committees including The Research Valley Partnership, Bryan Brazos County Economic Development Foundation, Health Facilities Development Corporation, Brazos Valley Wide Area Communications, Intergovernmental Committee, Texas High Speed Rail and Transportation Committee, and the Brazos County Board of Health; and


WHEREAS, Kenny Mallard has been actively involved in the Texas Conference of Urban Counties, even serving on their Policy Committee for a time.

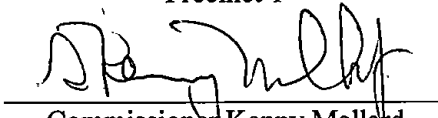
NOW THEREFORE, BE IT RESOLVED that the Commissioner's Court of Brazos County takes this opportunity to honor Commissioner Kenny Mallard and thank him for his years of service to Brazos County and its citizens, and to wish him the very best in his retirement.

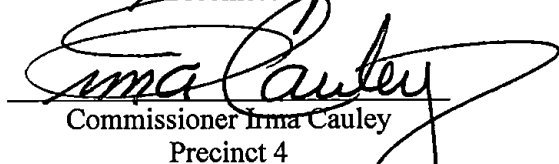
DULY adopted by vote of the Commissioners Court of Brazos County, Texas on the
27 day of **December**, 2016.


Duane Peters
County Judge


Commissioner Lloyd Wassermann
Precinct 1


Commissioner Sammy Catalena
Precinct 2


Commissioner Kenny Mallard
Precinct 3


Commissioner Irma Cauley
Precinct 4



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT:

NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Correction of the following appointments of Board of Directors to the Brazos Valley Groundwater Conservation District to match the 4 year terms from their bylaws.

- a. Stephen Cast; term of appointment is 1/1/17 - 12/31/20
- b. Billy Lynn Harris; term of appointment is 1/1/15 - 12/31/18
- c. Mark Carrabba; term of appointment is 1/1/15 - 12/31/18

TO: Commissioners Court

DATE: 12/19/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

Description

Type

No Attachments Available



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BRYAN, TEXAS**

DEPARTMENT:

NUMBER:

DATE OF COURT MEETING:

12/27/2016

ITEM:

Correction of the following appointments of Board of Directors to the Brazos Valley Groundwater Conservation District to match the 4 year terms from their bylaws.

- a. Stephen Cast; term of appointment is 1/1/17 - 12/31/20
- b. Billy Lynn Harris; term of appointment is 1/1/15 - 12/31/18
- c. Mark Carrabba; term of appointment is 1/1/15 - 12/31/18

TO:

Commissioners Court

DATE:

12/19/2016

FISCAL IMPACT:

False

BUDGETED:

False

DOLLAR AMOUNT:

\$0.00

ATTACHMENTS:

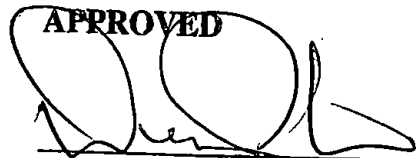
File Name

Description

Type

No Attachments Available

APPROVED

 12/27/16

Duane Peters
County Judge

Date



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Emergency Management

NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Appointment of the following to the Homeland Security Advisory Committee (HSAC):

- a. Curtis Darby; term of appointment is 12/27/2016 - 3/31/2017
- b. Steve Aldrich; term of appointment is 1/1/2016 - 3/31/2017

TO: Commissioners Court

FROM: Michele Meade

DATE: 12/15/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ACTION REQUESTED OR
ALTERNATIVES:

Appointment of Curtis Darby to the Homeland Security Advisory Committee (HSAC) for the period of 12/27/2016 – 3/31/2017.

ATTACHMENTS:

File Name

Description

Type

No Attachments Available



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Emergency Management NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Appointment of the following to the Homeland Security Advisory Committee (HSAC):

- a. Curtis Darby; term of appointment is 12/27/2016 - 3/31/2017
- b. Steve Aldrich; term of appointment is 1/1/2016 - 3/31/2017

TO: Commissioners Court

FROM: Michele Meade

DATE: 12/15/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ACTION REQUESTED OR
ALTERNATIVES: Appointment of Curtis Darby to the Homeland Security Advisory Committee (HSAC) for the period of 12/27/2016 – 3/31/2017.

ATTACHMENTS:


File Name

Description

Type

No Attachments Available

APPROVED

 12/27/16

Duane Peters Date
County Judge



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Approval of Official Bonds.
TO: Commissioners Court
DATE: 12/14/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

Description

Type

No Attachments Available



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT:

NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Payment Authorization to Hart Intercivic in the amount of \$54,537.00 for annual license and support for the Elections Administrator's Office; a purchase order was not obtained in advance.

TO: Commissioners Court

DATE: 12/20/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

[Payment Authorization.pdf](#)

Description

Payment Authorization

Type

Cover Memo



BRAZOS COUNTY
Payment Authorization

Vendor #: 11714
Pay to: Hart Intercivic
Address: Dept 0453
P O Box 120453
Dallas, Texas 7531-0453

Division: 11210020
Today's Date: December 20, 2016

Attach **ALL** supporting data such as invoices, meal and hotel receipts, airline tickets, seminar brochure(s) or syllabus, brochure(s) or syllabus, registration forms, etc.

INVOICE DATE	INVOICE NUMBER	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
12/01/2016	066636	Annual Software License & Support	1	54537.00	54537.00

"I, the requisitioner, hereby certify that the item(s) and/or service(s) on this requisition have been or will be used exclusively for the benefit of Brazos County. They have been purchased in compliance with Section 262.021 - Section 262.034 of the Local Government Code. I further certify that I am aware of the criminal penalties resulting from the violation of these State laws."

FREIGHT
TOTAL \$ 54,537.00

FUND	DIVISION	ACCOUNT	PROJECT#	AMOUNT
	11210020	71020000		\$ 54537.00

Rudolf H. Haddock
Requisitioned By

[Signature]
Approved/County Judge

Approved/County Auditor

TOTAL \$ 54,537.00



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: SO - Jail NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Approval for Payment Authorization to Galls LLC in the amount of \$420.00 for purchases in 2015 by the Sheriff's Office; the invoices were not received before the purchase order was closed.
TO: Commissioners Court
FROM: Wayne Dicky
DATE: 12/21/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00

NOTES/EXCEPTIONS: Approval for Payment Authorization to Lone Star Uniforms which is now Galls LLC #93357 for purchases in 2015 for invoices 004207376, 4235391, 4235392, 4235393 - these invoices were never received. and PO #15004187 was closed with the funds available.
ACTION REQUESTED OR ALTERNATIVES: approval

ATTACHMENTS:

<u>File Name</u>	<u>Description</u>	<u>Type</u>
Lone Star PO# 15004187.pdf	PO and invoices	Cover Memo
Past due inv s PO15004187.pdf	Invoice back ups	Cover Memo
DOC017.pdf	Invoice	Cover Memo



BRAZOS COUNTY
Payment Authorization

Vendor #: 93357
Pay to: GALLS LLC
Address: 1340 RUSSELL CAVE RD.
LEXINGTON KY 40505

Division: BCDC - JAIL
Today's Date: 12/21/2016

Attach **ALL** supporting data such as invoices, meal and hotel receipts, airline tickets, seminar brochure(s) or syllabus, brochure(s) or syllabus, registration forms, etc.

INVOICE DATE	INVOICE NUMBER	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
10/12/2015	004207376	UNIFORMS FOR J WILLIAMS	1	105.00	105.00
10/16/2015	004235391	UNIFORMS FOR J BENNATT	1	105.00	105.00
10/16/2015	004235392	UNIFORMS FOR M RIORDAN	1	105.00	105.00
10/16/2015	004235393	UNIFORMS FOR A OBRIEN	1	105.00	105.00
		Invoices were never received-PO was closed			
		with funds still available on PO			

"I, the requisitioner, hereby certify that the item(s) and/or service(s) on this requisition have been or will be used exclusively for the benefit of Brazos County. They have been purchased in compliance with Section 262.021 - Section 262.034 of the Local Government Code. I further certify that I am aware of the criminal penalties resulting from the violation of these State laws."

FREIGHT TOTAL \$ **420.00**

FUND	DIVISION	ACCOUNT	PROJECT#	AMOUNT
	28002000	60080000		\$ 420.00

Requisitioned By

Approved/County Judge

Approved/County Auditor

TOTAL \$ 420.00



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: District Attorney NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Payment authorization to Lawrence Thompson, Jr., Ph.D. in the amount \$3150.00 for expert witness services; a purchase order was not obtained in advance.

TO: Commissioners Court

FROM: Jarvis Parsons

DATE: 12/21/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

[image0241.pdf](#)

Description

backup

Type

Cover Memo



BRAZOS COUNTY
Payment Authorization

Vendor #: 96955 **Division:** 19000100
Pay to: Lawrence Thompson, Jr., Ph.D. **Today's Date:** 12.15.16
Address: PO BOX 3807
Humble, TX 77347

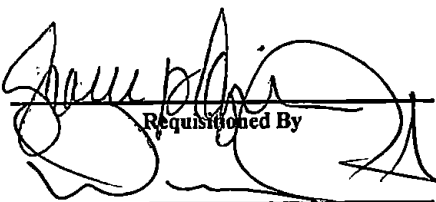
Attach ALL supporting data such as invoices, meal and hotel receipts, airline tickets, seminar brochure(s) or syllabus, brochure(s) or syllabus, registration forms, etc.

INVOICE DATE	INVOICE NUMBER	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
10.30.16		Consultation and Court Testimony			3,150.00

"I, the requisitioner, hereby certify that the item(s) and/or service(s) on this requisition have been or will be used exclusively for the benefit of Brazos County. They have been purchased in compliance with Section 262.021 - Section 262.034 of the Local Government Code. I further certify that I am aware of the criminal penalties resulting from the violation of these State laws."

FREIGHT
TOTAL \$ **3,150.00**

FUND	DIVISION	ACCOUNT	PROJECT#	AMOUNT
	19000100	61210000		\$ 3,150.00


Requisitioned By

Approved/County Judge

Approved/County Auditor

TOTAL \$ 3,150.00



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Human Resources NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Approval of the following job descriptions:

- a. Class Code 0433, Position 01 - Temp. Clerk for District Attorneys Office
- b. Class Code 1516, Position 02 - Intern, Detention Officer for S.O. Jail
- c. Class Code 1516, Position 03 - Intern, Detention Officer for S.O. Jail
- d. Class Code 0819, Position 03 - Building Event Worker for Brazos Center

TO: Commissioners Court

DATE: 12/21/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

[Class Code 0433 Position 1.pdf](#)

[Class Code 1516 Position 2.pdf](#)

[Class Code 1516 Position 3.pdf](#)

[Class Code 0819 Position 3.pdf](#)

Description

Class Code 0433, Position 1

Class Code 1516, Position 2

Class Code 1516, Position 3

Class Code 0819, Position 3

Type

Cover Memo

Cover Memo

Cover Memo

Cover Memo



Brazos County Job Description

Last Updated: September 2016

Template Revision 1.2 08/15/2012

pos.01

11

Class Number:	433	Title:	Clerk, Temp.
Pay Group:	N/A	Department:	District Attorney, Crime Fund
FLSA Status:	Non Exempt	Reports To:	Chief Investigator
Approved Date:	10/01/2016	EEOC Category:	Office and Clerical
Position End Date:	09/30/2017	Temporary Employee Signature:	

Christine Vazquez Lugo

General Summary:

This position is primarily filled by students who are in law school or will be attending law school and are looking to gain some legal experience as they continue their education. Assist all DA personnel with any work they need help with.

Essential Duties:

Assist Investigators with any work they may have which include serving subpoenas, picking up evidence from police agencies, pick up records from businesses;

Assist attorneys with any work they may have which may include legal research or helping with a trial case;

Filing paperwork or files, shredding paperwork, scanning documents into laserfiche.

Other Duties as assigned. (1%)

Supervision

Received: Form Chief Investigator & District Attorney

Given: This is a non-supervisory position.

Education

Required: High school graduation or its equivalent; or any equivalent combination of education and experience which provides the required knowledge, skills, and abilities.

Preferred:

Experience

Required: To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Preferred:

Certificates, Licenses, Registrations

Required: None.

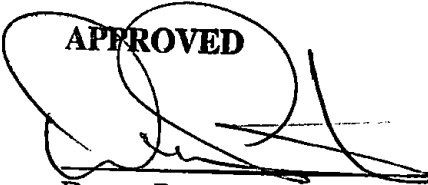
Preferred:	
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Physical Demands	
Typical:	The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is regularly required to sit; use hands to finger, handle, or feel; reach with hands and arms; bend and kneel; and talk and hear. The employee frequently is required to stand and walk. The employee must frequently lift and/or move objects weighing up to 20 pounds, such as boxes of files, stacks of records, or other similar objects. Specific vision abilities required by this job include close vision, and ability to adjust focus.

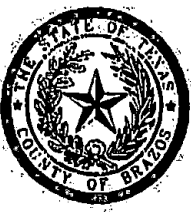
Knowledge, Skills, & Abilities	
Typical:	Computers, shredders; and standard office practices and procedures. Operate computers, including performing word processing functions; read and understand manuals; operate office equipment, such as shredder, copy machine, and facsimile machine; communicate effectively, both in person and over the phone; and maintain effective working relationships with co-workers.

Work Environment	
Typical:	The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is may be required to perform multiple tasks simultaneously, and to work closely with others as a part of a team. The noise level in the work environment is usually moderate.

APPROVED


 Duane Peters
 County Judge

12/21/14
 Date



Brazos County Job Description

Last Updated: September 2016

pos. 2
Template Revision 1.2 08/15/2012

Class Number:	1516	Title:	Intern, Detention Officer (Intake Release)
Pay Group:	10	Department:	Sheriff-Jail Admin.
FLSA Status:	Non Exempt	Reports To:	Intake Sergeant
Approved Date:	10/01/2016	EEOC Category:	Office and Clerical
Position End Date:	09/30/2017	Temporary Employee Signature:	

General Summary:

Performs duties assisting Intake/Release Officers related to the intake and booking of inmates, answering the telephone and routing calls and taking messages; and serves as public/inmate liaison, including appropriately responding to letters and telephone calls regarding incarcerated inmates, assisting the public in the Release Lobby. Assisting any other subdivision of the Intake/Release department.

Essential Duties:

Other duties may be assigned. Assisting the Intake/Release staff; Assisting the Court Clerks; Answers the telephone, including routing calls and taking messages; Performs duties of Public/Inmate liaison, including appropriately responding telephone calls regarding incarcerated inmates; Performs miscellaneous duties, including writing memos; May assist with transporting inmates within and outside of facility; May fingerprint and photograph prisoners; May assist Serve Time Coordinator as necessary.

Other Duties as assigned. (1%)

Supervision

Received: From Intake Sergeant

Given: This is a non-supervisory position.

Education

Required: High school graduation or its equivalent, and be enrolled in the internship class at a university.

Preferred:

Experience

Required: To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Preferred:

Certificates, Licenses, Registrations

Required: Valid Texas Motor Vehicle operator's license.

Preferred:

Physical Demands

Typical:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is regularly required to sit; use hands to finger, handle, or feel; reach with hands and arms; bend and kneel; and talk and hear. The employee frequently is required to stand and walk. The employee must frequently lift and/or move objects weighing up to 20 pounds, such as books and stacks of records, and occasionally must lift and/or move objects weighing 100 pounds or more. Specific vision abilities required by this job include close vision, distance vision, peripheral vision, color vision, and ability to adjust focus.

Knowledge, Skills, & Abilities

Typical:

Procedures and laws relating to intake of inmates, standard office practices and procedures, and use of computer software. Operate computers, including word processing software; read and understand legal documents, letters, and memos; operate office equipment, communicate effectively, both orally and in writing; and maintain effective working relationships with co-workers, county employees, and the general public.

Work Environment

Typical:

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. The noise level in the work environment is usually high. While performing the essential duties of this job, the employee is constantly required to perform tedious and exacting tasks. The employee is frequently required to perform multiple tasks simultaneously and to work closely with others a part of a team. The employee may experience the threat of danger or physical abuse and may be required to respond to emergency situations.

APPROVED

Duane Peters
County Judge

12/27/14
Date



Brazos County Job Description

Last Updated: September 2016

Template Revision 1.2 08/15/2012

POS-3

Class Number:	1516	Title:	Intern, Detention Officer (Intake Release)
Pay Group:	10	Department:	Sheriff-Jail Admin.
FLSA Status:	Non Exempt	Reports To:	Intake Sergeant
Approved Date:	10/01/2016	EEOC Category:	Office and Clerical
Position End Date:	09/30/2017	Temporary Employee Signature:	<i>Lucas S. Saldaña</i>

General Summary:

Performs duties assisting Intake/Release Officers related to the intake and booking of inmates, answering the telephone and routing calls and taking messages; and serves as public/inmate liaison, including appropriately responding to letters and telephone calls regarding incarcerated inmates, assisting the public in the Release Lobby. Assisting any other subdivision of the Intake/Release department.

Essential Duties:

Other duties may be assigned. Assisting the Intake/Release staff; Assisting the Court Clerks; Answers the telephone, including routing calls and taking messages; Performs duties of Public/Inmate liaison, including appropriately responding telephone calls regarding incarcerated inmates; Performs miscellaneous duties, including writing memos; May assist with transporting inmates within and outside of facility; May fingerprint and photograph prisoners; May assist Serve Time Coordinator as necessary.

Other Duties as assigned. (1%)

Supervision

Received: From Intake Sergeant

Given: This is a non-supervisory position.

Education

Required: High school graduation or its equivalent, and be enrolled in the internship class at a university.

Preferred:

Experience

Required: To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Preferred:

Certificates, Licenses, Registrations

Required: Valid Texas Motor Vehicle operator's license.

Preferred:

Physical Demands

Typical:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is regularly required to sit; use hands to finger, handle, or feel; reach with hands and arms; bend and kneel; and talk and hear. The employee frequently is required to stand and walk. The employee must frequently lift and/or move objects weighing up to 20 pounds, such as books and stacks of records, and occasionally must lift and/or move objects weighing 100 pounds or more. Specific vision abilities required by this job include close vision, distance vision, peripheral vision, color vision, and ability to adjust focus.

Knowledge, Skills, & Abilities

Typical:

Procedures and laws relating to intake of inmates, standard office practices and procedures, and use of computer software. Operate computers, including word processing software; read and understand legal documents, letters, and memos; operate office equipment, communicate effectively, both orally and in writing; and maintain effective working relationships with co-workers, county employees, and the general public.

Work Environment

Typical:

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. The noise level in the work environment is usually high. While performing the essential duties of this job, the employee is constantly required to perform tedious and exacting tasks. The employee is frequently required to perform multiple tasks simultaneously and to work closely with others a part of a team. The employee may experience the threat of danger or physical abuse and may be required to respond to emergency situations.

APPROVED

Duane Peters
County Judge

12/27/14
Date




Brazos County Job Description

Last Updated: September 2016

Template Revision 1.2 08/15/2012

pos. 3

Class Number:	819	Title:	Building Event Worker
Pay Group:	07	Department:	Brazos Center
FLSA Status:	Non Exempt	Reports To:	Director and Event Coordinator
Approved Date:	10/01/2016	EEOC Category:	Service/Maintenance
Position End Date:	09/30/2017	Temporary Employee Signature:	

General Summary:

This is a temporary part time position that involves being responsible for the safety of the customers, setting up the rooms as specified in the layout book, overseeing the cleanliness of the building and grounds, and must meet the customer's expectations as far as courtesy and prompt response to their requests.

Essential Duties:

Cleaning the restroom floors with wet mops and disinfectant and vacuuming mats at the beginning of each shift.

Restock the paper towels, hand soap and toilet paper.

Cleaning the floors with wet mops for spills and food.

Dust mop the concourse, assembly rooms and hallways regularly to remove excess dirt.

Autoscrub assembly room floors before setting up the tables and chairs.

Empty all trash containers at the end of the event/evening.

Before the event seek out the person in charge and introduce yourself and tell them where you can be found throughout the event.

Make sure sound levels are appropriate for each group.

During events you should be visible and available.

Check restrooms every 30 minutes.

Lock rooms that are not being used. Lock office when you are not in it and leave it locked at the end of the night.

Check the areas the caterer or bartender use for cleanliness before they leave.

When an event is coming to an end you are to be present in the room.

Before leaving for the night, check all rest rooms, clean and restock as needed.

Vacuum mats in front of doors and in restrooms.

Turn off all interior lights in the building.

Store equipment and supplies appropriately.

Make sure all exterior doors are locked.

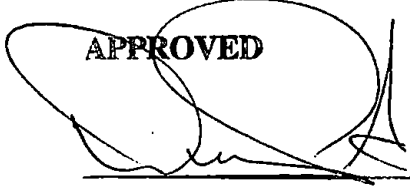
Close overhead door completely. V
vacuum office every evening.

Priorities are, Safety, Customer Service, Rules enforcement and Cleanliness

Other Duties as assigned. (1%)

Supervision	
Received:	From Director and Event Coordinator
Given:	This is a non-supervisory position.
Education	
Required:	High School graduation or its equivalent.
Preferred:	
Experience	
Required:	To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill and/or ability required.
Preferred:	
Certificates, Licenses, Registrations	
Required:	None.
Preferred:	
Physical Demands	
Typical:	The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is regularly required to sit; use hand to finger, handle, or feel; reach with hands and arms; bend and kneel; and talk and hear. The employee frequently is required to stand and walk. The employee must frequently lift and/or move objects weighing up to 50 pounds, such as tables and table carts. Specific vision abilities required for this job include close vision, distance vision, and the ability to adjust focus.
Knowledge, Skills, & Abilities	
Typical:	Ability to follow oral and written instructions; ability to learn to use janitorial equipment and supplies; ability to be courteous to the public and coworkers. Must be in good physical condition to perform strenuous work and heavy lifting; must be reliable and able to make good decisions.
Work Environment	
Typical:	The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. The noise level in the work environment is usually moderate. The employee is constantly required to work closely with others as a part of a team to perform multiple tasks simultaneously, and switch from one task to another. The employee is frequently required to work under time pressures and meet deadlines.

APPROVED


 Duane Peters
 County Judge

12/27/16
 Date



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT:

NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Consider and take action on Interlocal and Funding Agreement for the Maintenance of Roads for Brazos County Municipal Utility District Number 1.

TO: Commissioners Court

DATE: 12/21/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

Description

Type

No Attachments Available

INTERLOCAL AND FUNDING AGREEMENT FOR THE MAINTENANCE OF
ROADS

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

THIS INTERLOCAL AND FUNDING AGREEMENT FOR THE MAINTENANCE OF ROADS (the "Agreement") is made and entered into by and among BRAZOS COUNTY, a political subdivision of the State of Texas (the "County"), BRAZOS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1, a political subdivision of the State of Texas operating as a municipal utility district (the "District"), and Southern Pointe LLC, a Texas limited liability company (the "Developer"). The County, the District and the Developer may hereinafter collectively be referred to as the parties.

RECITALS

WHEREAS, the District lies within Brazos County, Texas;

WHEREAS, the Developer is developing land within the District;

WHEREAS, the District will be a mixed use community, primarily residential, in the unincorporated area of the County, with roads constructed to the standards of the City of College Station;

WHEREAS, the County owns or will own all public roads within the boundaries of the District (the "Roads");

WHEREAS, in consideration of the County's acceptance of all public roads within the District for ownership, operation, and maintenance, the County, Developer and the District desire to enter into an interlocal and funding agreement providing for the care and maintenance by the District and/or the Developer of the County's roads lying within the District's boundaries.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants and agreements expressed herein, the parties hereby agree as follows:

ARTICLE ONE

OWNERSHIP AND MAINTENANCE OF THE ROADS

1.1 Construction, Ownership and Control. The District and/or the Developer shall construct or improve new or existing roads to serve the District pursuant to a traffic impact analysis prepared by a qualified engineer, and in proportion to such traffic

generated by the District, as required by agreements with the City of College Station (the "City"). The District and/or Developer will work with the County so that roads adjacent to and servicing the District are improved to accommodate development generated by the District in accordance with then current traffic impact analysis. The Developer agrees to enter into any road development agreements with the County as might be necessary to accomplish the improvement of said roads adjacent to and servicing the District in accordance with such traffic impact analysis. The District and/or Developer shall construct such Roads to standards required by agreements with the City. Subject to such standards, the County accepts or will accept the Roads covered by this Agreement into the County's system of roads. The County will accept the Roads after submission by the District engineer of a certificate of completion of construction of the Road which will include an affidavit of all bills paid, assignment of all warranties, and a contractor's performance and maintenance bond. After acceptance, the Roads will be public roads, and the general public will have the same access as other County roadways.

1.2 Maintenance. The Parties agree that the Developer and/or District shall perform all maintenance (the "Maintenance") on the Roads at least to a standard of similar types of roads in the City. The District and/or Developer will follow all standard District procedures and state law, including competitive bidding requirements, if any, in performing all necessary repairs and maintenance on the Roads.

1.3 Payment of Maintenance Costs. The Developer and/or District will be responsible for all costs of Maintenance of the Roads and pay such Maintenance costs either through advances by the Developer or through other legally available revenues. The Developer and/or District agrees to include in the construction contract of any Road a maintenance bond from a surety that is licensed to do business in Texas, meets all applicable regulatory criteria and in which the surety guarantees the contractual Road maintenance obligations of the Developer and/or District to the County as compensation if the District and/or Developer does not fulfill its obligations. The Developer and/or District agrees to keep in place a maintenance bond in a commercially reasonable amount or some other form of guarantee generally accepted by the County until the earlier of such time as (1) said Road or portion of the Road has been annexed into the City of College Station or (2) the District maintains a segregated District account from legally available funds (including bond proceeds) for road maintenance of said Roads (the "Road Maintenance Fund") in an amount that is generally accepted and reasonable for similar types of roads in the Brazos County area for annual maintenance costs of the Roads. If the District elects to create a Road Maintenance Fund in lieu of a maintenance bond pursuant to this Section 1.3, the District will enter into an escrow agreement substantially in the form attached hereto as Exhibit "A". The terms of the escrow agreement will provide that the County may access the Road Maintenance Fund in the event that the District

does not perform Maintenance on the Roads pursuant to this Agreement and only after the County has given the District notice and opportunity to cure pursuant to Section 2.6 below. The District agrees to provide the County auditor an accounting of the Road Maintenance Fund on an annual basis or any time upon request.

ARTICLE TWO GENERAL PROVISIONS

- 2.1. Cooperation. The parties agree with each other in good faith at all times to effectuate the purposes and intent of this Agreement.
- 2.2. Other Instruments, Actions. The parties hereto agree that they will take such other and further actions and execute such other and further consents, authorizations, instruments or documents as are necessary or incidental to effectuate the purposes of this Agreement.
- 2.3. Payment from Current Revenues. A governmental entity required to make payment hereunder shall provide for payment of same from current revenues or other funds of said party lawfully available for this purpose.
- 2.4. Term; Annexation. This Agreement shall remain in effect for so long as the District remains in existence and shall terminate at such time as the City of College Station, Texas, annexes the District.
- 2.5. Notice. Any notice required or permitted to be delivered under this Agreement shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other overnight delivery service, telecopy, or hand delivery, or (ii) three business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the County or the District.

Addresses for notice shall be as follows:

County: Brazos County
 300 E. 26th Street, Suite 325
 Bryan, Texas 77803
 Attn: County Judge
 With copy to: County Attorney

District: Brazos County Municipal Utility District No. 1
 c/o Allen Boone Humphries Robinson LLP
 3200 Southwest Freeway, Suite 2600
 Houston, TX 77027
 Attn: Steve Robinson

District's Bookkeeper: F. Matuska Inc.
4600 Highway 6 North, Suite 315
Houston, TX 77084
Attn: Rose Montalbano

Developer: Southern Pointe, LLC,
17777 Texas Highway 6 South
College Station, TX 77845
Attn: William R. Mather

- 2.6. Remedies; Notice of Default. Default by a party shall occur if the party fails to perform or observe any of the terms and conditions of this Agreement required to be performed or observed by that party. The party alleging the default will give the other party written notice of the default. If the party in default fails to cure the default within sixty (60) business days of the date of the notice (and an additional reasonable time after such receipt if (A) such failure cannot be cured within such sixty (60) business day period, and (B) the party in default commences curing such failure within such sixty (60) business day period and thereafter diligently pursues the curing of such failures), the party giving the notice may pursue any remedies permitted by law including filing suit in a court of competent jurisdiction in Brazos County, Texas, and seeking specific performance of the terms of the Agreement. In addition to any other remedies permitted by law, in the event of a failure of the District or Developer to perform Maintenance of the Roads as required by this Agreement, and after the requisite notice and opportunity to cure, the County may present a demand for funds for Road Maintenance to the Escrow Agent pursuant to the terms of the Escrow Agreement, the form of which is attached hereto as "Exhibit A".
- 2.7. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior and contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.
- 2.8. Amendments. Any amendment to the Agreement must be writing and signed by the authorized representatives of all parties.
- 2.9. Interpretation and Authority. The parties acknowledge that this Agreement is entered into pursuant to the authority of Texas law, including, without limitation, the authority conferred in V.T.C.A. Govt Code, Chapter 791, et. seq., V.T.C.A. Water Code, Section 49.213. In the event of any conflict between the provisions of this Agreement and the provisions of any other agreement entered into by and between the parties, the provisions of this Agreement shall prevail with respect to the subject matter hereof. Except as set forth above, this Agreement shall not be construed so as to modify,

supplement or otherwise alter the provisions of any other agreement entered into by and between the County, the Developer and the District.

- 2.10. Assignment. No party may assign its rights and obligations under the Agreement either in whole or in part without written consent by all parties.
- 2.11. No Third Party Beneficiaries. Except as expressly provided above, nothing herein shall be construed to confer upon any person other than the parties hereto any rights, benefits or remedies under or by reason of this Agreement.
- 2.12. No Joint Venture, Partnership, Agency. This Agreement shall not be construed in any form or manner to establish a partnership, joint venture or agency, express or implied, or any employer-employee or borrowed servant relationship by and among the parties hereto.
- 2.13. Responsibilities for Manner and Means of Performance. The District is performing all its duties to this Agreement as an independent contractor. The District shall have the exclusive authority and responsibility for determining the manner and means of performance under this Agreement and for selecting and supervising the persons who perform the work. The County shall only have the authority to approve or reject the outcome of the District's efforts. Accordingly, the County shall not have any liability for intentional or negligent torts committed by the District or its agents in connection with the work contemplated by this Agreement.
- 2.14. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- 2.15. Venue. Venue for any suit arising under this Agreement shall be Brazos County, Texas.
- 2.16. Duplicate Originals. This Agreement may be executed in one or more duplicate originals, each of equal dignity.
- 2.17. Effective Date. This Agreement shall be effective on the later of the dates this Agreement is executed by the authorized representative of both parties.
- 2.18. Warranty. By execution of this Agreement, the County, the Developer and the District warrant that the duties accorded herein are within their respective powers and authority.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EXECUTED as of this 27th day of December, 2016, by the COUNTY.

COUNTY OF BRAZOS

By: [Signature]

Name: Deane Peters

Title: County Judge

ATTEST:

By: [Signature]

Name: Karen McQueen

Title: County Clerk

EXECUTED as of this ____ day of _____, 2016, by the DISTRICT.

BRAZOS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 1

By: [Signature]

Name: Kyle Davis

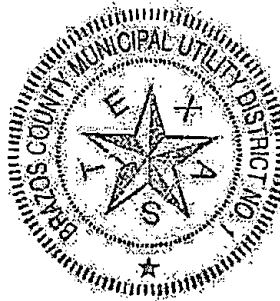
Title: Asst. Sec.

ATTEST:

By: [Signature]

Name: Charles Morcan

Title: Vice President



EXECUTED as of this 23 day of December, 2016, by the DEVELOPER.

Southern Pointe, LLC
By: Grid, Inc., It's Sole Member

By: W. R. Mathew
Name: William R. Mathew
Title: Vice President

EXHIBIT A
FORM OF ESCROW AGREEMENT

This Escrow Agreement is entered into as of _____ of _____, 20____ by and between BRAZOS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 1, a conservation and reclamation district and a political subdivision of the State of Texas (hereinafter called "District"), and _____ (the "Escrow Agent").

The District and Brazos County (the "County") entered into an Interlocal Agreement For the Maintenance of Roads dated December _____, 2016 (the "Agreement") for the purposes of providing for the ownership, operation and maintenance of roads within the District; and

The County agreed to accept all public roads within the District into the County road system and the District agreed to pay for the cost of maintaining such roads; and

The Agreement requires that the District may either keep a maintenance bond in place or maintain a segregated District account from legally available funds referred to in the Agreement as the Road Maintenance Fund to fulfill its obligations under the Agreement; and

To carry out the directives of the Agreement, the Road Maintenance Fund is hereby placed by the District in escrow (the "Escrowed Funds"), and the Escrow Agent is only authorized to release the Escrowed Funds as herein directed; Now, Therefore,

FOR AND IN CONSIDERATION OF THE PREMISES, the District and the Escrow Agent agree as follows:

Section 1: The District will deposit into the Escrowed Funds such amounts as described in the Agreement to be placed into escrow by the Escrow Agent into a segregated account (the "Escrow Account").

Section 2: The Escrowed Funds, excluding any interest earnings thereon, shall be held by the Escrow Agent in escrow and released as follows:

- (1) Upon presentation by the District's bookkeeper of a construction contract, pay estimate or work proposal for maintenance or repair of roads within the District; or

- (2) Upon presentation by the County's auditor of a construction contract, pay estimate or work proposal for maintenance or repair of roads within the District; or
- (3) Upon presentation of a District resolution with acknowledgement by the County auditor that funds in the Road Maintenance Fund are no longer required to be escrowed and may be released to the District for any public purpose.

Section 3: The Escrowed Funds shall be held by the Escrow Agent in investments authorized and secured in accordance with the District's investment policy and state law.

Section 4. The Escrow Agent will keep complete and correct books of records and accounts relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Account, and investments of the Escrow Account and all proceeds thereof. The records shall be available for inspection at reasonable hours and under reasonable conditions by the District and the County.

Section 5. This Agreement shall be governed exclusively by the applicable laws of the State of Texas. Venue for disputes shall be in Brazos County, Texas.

Section 6. No modification or amendment of this Agreement shall be valid unless the same is in writing and is signed by the District and County and consented to by the Escrow Agent.

Section 7. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 8. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule agreed to by the Escrow Agent and the District from time to time, which compensation shall be paid by the District but may not be paid directly from the Escrow Account.

Section 9. The Escrow Agent shall be authorized to accept and rely upon the certifications and documents furnished to the Escrow Agent by the District or the County and shall not be liable for the payment of any funds made in reliance in good faith upon such certifications or other documents or approvals, as herein recited.

Section 10. This Escrow Agreement shall expire upon final transfer of the funds in the Escrow Account to the District or upon annexation of the District by the City of College Station.

IN WITNESS WHEREOF the parties have executed this Escrow Agreement as of the date and year first written in this Escrow Agreement.

BRAZOS COUNTY MUNICIPAL
UTILITY DISTRICT NUMBER 1

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(SEAL)

ESCROW AGENT

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Consider and take action on Chapter 381 Development Agreement between Brazos County and ViaSat, Inc.
TO: Commissioners Court
DATE: 12/20/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

<u>File Name</u>	<u>Description</u>	<u>Type</u>
CHAPTER 381 Agreement VIASAT DRAFT.docx	Ch. 381 Agreement-Viasat	Cover Memo

CHAPTER 381 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Chapter 381 Economic Development Incentive Agreement (this "Agreement") is entered into by and between BRAZOS COUNTY, TEXAS, a political subdivision of the State of Texas (hereinafter referred to as "County"), and VIASAT, INC., a Delaware corporation (hereinafter referred to as "Company"). The County and Company may also be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, the County is authorized under Chapter 381 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity within the County, and

WHEREAS, County actively seeks economic development prospects in Brazos County through participation in and establishment of an economic development program; and

WHEREAS, County desires to stimulate business, increase the County's tax base and create new jobs for its citizens; and

WHEREAS, County desires to stimulate business and commercial activity in the Research Valley Biocorridor (hereinafter referred to as the "Biocorridor"); and

WHEREAS, Company is developing property located within the Biocorridor as commercial development for use as a administrative and network operations center to include customer support, engineering, and warehouse site; and

WHEREAS, by letter of April 20, 2016, the chairman of The Research Valley Partnership, Inc. ("RVP") informed Company he will recommend to the Board of Directors of the RVP, which includes representatives of County, the approval the incentives proposal being implemented by this Agreement; and

WHEREAS, as of December 31, 2015, Company had 130 full-time employees, and Company's calendar year 2015 payroll reported to the Texas Workforce Commission for all full-time employees (some of whom were hired during 2012) was \$7,600,000.00;

WHEREAS, in consideration of the execution of the Improvements in accordance with the performance measures set forth herein, County agrees to use available revenues calculated based on the increase in ad valorem taxes generated from the Project to grant to Company cash incentives (the "Chapter 381 Payments") as set forth herein; and

WHEREAS, to ensure that the benefits County provides under this Agreement are utilized in a manner consistent with TEXAS LOCAL GOVERNMENT CODE, Chapter 381 and other law, Company agrees to comply with certain conditions for receiving those benefits, including conditions relating to property development.

NOW, THEREFORE, for the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the parties are entering into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE I DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Affiliate" means any person or entity which directly or indirectly controls, is controlled by or is under common control with Company, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise; (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity; or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

"Base Year Taxable Value" shall mean the taxable value for the Property for the year in which this Agreement is executed (2016).

"Cash Incentive" shall mean that amount of money to be reimbursed annually by County to Company as a grant herein calculated upon a percentage of ad valorem taxes assessed for a specified year for the Property, Improvements and Tangible Personal Property in accordance with the terms of this Agreement.

"Completion of Construction" shall mean: (i) substantial completion of the Improvements; and (ii) a final certificate of occupancy has been issued for the all of the Improvements.

"Company" shall mean ViaSat, Inc., a Delaware Corporation qualified to do business in the state of Texas.

"Effective Date" shall mean the date upon which this Agreement is fully executed by all Parties, unless the context indicates otherwise.

"FTE" shall mean any person who is an employee of Company or an Affiliate (excluding temporary or seasonal employees), who is on the payroll in a budgeted position and has an officially scheduled work week of thirty-five (35) hours or more,

works at the Property for Company, and who according to Company or Affiliate Company policy is entitled to full benefits as a full-time employee.

"First year of Cash Incentive(s)" shall mean the first calendar year immediately following the date of Completion of Construction.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

"Gross Payroll" shall mean the sum of the payroll numbers that Company or an Affiliate reports to the Texas Workforce Commission quarterly for FTEs for the four preceding consecutive calendar quarters ending on or prior to a date of measurement under this Agreement.

"Improvements" shall mean the approximately 85,000 square foot facility to be constructed on the Property and other ancillary facilities such as reasonably required parking and landscaping all together which shall include a new real and personal property investment of \$20,000,000 million at time of completion and have a minimum Brazos Central Appraisal District Property Valuation of \$15,000,000 by January 1, 2019 and as depicted in Exhibit "A" attached hereto and made a part hereof.

"Incremental Taxable Value" means the Taxable Value for the Property as of January 1st of a given year less the Base Year Taxable Value.

"Maintenance and Operations Rate" means the component of the adopted tax rate of a taxing unit that will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the following year.

"Property" means the real property comprised of approximately 8.6 acres more or less and as depicted in Exhibit "A", not including any improvements constructed on such real property.

"Premises" shall mean collectively, the Property and Improvements following construction thereof, but excluding the Tangible Personal Property.

"Tangible Personal Property" shall mean tangible personal property, equipment and fixtures, excluding inventory and supplies, owned or leased by Company that is added to the Improvements subsequent to the execution of this Agreement.

"Taxable Value" means the appraised value as certified by the Brazos Central Appraisal District as of January 1st of a given year.

Article II GENERAL PROVISIONS

All of the above premises are hereby found to be true and are hereby approved and copied into the body of this Agreement as if copied in their entirety.

Company covenants and agrees that it will construct the Improvements, and operate and maintain its business on the Premises as set forth in this Agreement, and for the time period and manner as set forth herein.

Article III COMPANY OBLIGATIONS

3.1 Construction of Improvements. Subject to events of Force Majeure, construction of the Improvements on the Property must commence no later than November 30, 2016 (the "Start Date"), and Company shall notify the County of such Start Date. There shall be Completion of Construction and Company shall be fully operational by no later than April 30, 2018.

3.2 Occupancy. The Company must continuously own, occupy and use the Improvements as an administrative and network operations center including customer support (i.e. billing and technical), engineering and warehouse functions relating to Company's global technology communications business commencing upon Completion of Construction and for each year for which there is a Cash Incentive paid.

3.3 Jobs Created. Company currently employs 130 FTEs. By the end of the second year following Completion of Construction of the Improvements (December 31, 2020), Company agrees that it will have created a minimum of 150 new FTE's with an average annual salary of \$64,500 per job, for a minimum total of 280 FTEs which Company agrees to have and maintain on the Premises for a total of five (5) years from the date of Completion of Construction of the Improvements and throughout the term of this Agreement. In addition to the current annual pay roll of \$7,600,000, Company agrees that it will increase the annual pay roll by \$9,600,000 for a total annual pay roll of \$17,200,000 according to the Texas Workforce Commission records for FTE's of Company at the Premises. This payroll increase must be achieved and maintained in conjunction with the creation and maintenance of jobs as recited herein.

3.4 Company reimbursement and waiver of Cash Incentives.

a. If Company does not have timely Completion of Construction and/or fails to occupy the Premises in accordance with Sections 3.1 and 3.2 of this Agreement, Company shall be in default.

b. Company herein waives payment of any Cash Incentives for any year in which it fails to continuously have, operate and maintain the Improvements in

accordance with this Agreement, including maintaining the minimum required appraised value, FTEs, and operating in the manner represented herein and to reimburse County for any Cash Incentives paid in contravention of the terms of this Agreement.

3.5 Reporting Requirement.

(1) While this Agreement is in effect, annually within sixty (60) days following the anniversary date of the Effective Date of this Agreement, the Company will certify to the County that it has complied with the terms of this Agreement and provide sufficient written information, records, and documents, to support its certification of compliance. Additionally, Company agrees to report whether the required jobs to be created and maintained in accordance with this Article have been met by the end of the second year following Completion of Construction of the Improvements and every year thereafter that this Agreement is in effect, as certified by a Certified Public Accountant at Company's expense and signed by the chief executive officer of Company.

(2) Documentation, including, but not limited to, Texas Workforce Commission quarterly reports, demonstrating that Company met the employment and job creation targets for the preceding year when required must be provided to County within 10 days of Company's receipt.

(3) Upon County's written request, the Company will promptly provide to the County any additional information reasonably necessary for the County to determine if the Company has complied with this Agreement.

(4) The Company will allow the County access to the Property during regular business hours to inspect the Property and Improvements to verify that Company is complying with the terms of this Agreement.

3.6 Compliance with applicable law. The Property and the Improvements constructed thereon at all times shall be constructed, operated and used in the manner (i) that is consistent with the City of College Station's Code of Ordinances, as amended, including its Uniform Development Code; (ii) that is in accordance with all applicable state and local laws, codes, and regulations; and (iii) that, during the period Cash Incentives are provided hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Biocorridor.

3.7 Ownership. Company agrees to continuously own the Premises for a period of at least seven (7) years from the Effective Date; provided, (i) Company, without County consent may engage in a sale-leaseback or similar transfer of ownership of the Premises as long as Company continues to occupy and operate the Premises, (ii) Company without COUNTY consent may transfer ownership of the Premises to an Affiliate; and (iii) Company may transfer ownership of the Premises to a person that County approves as an assignee of this Agreement pursuant to Section 7.07 Assignment of this Agreement.

3.8 Disclosure Requirements. When applicable, Company agrees to comply with all disclosure requirements, including those under Section 2252.908 Texas Government Code when entering into a contract that requires approval of the governing body of the County unless falling within certain exceptions, and Chapter 176 Texas Local Government Code for vendor disclosure requirements for certain business relationships with local government officers or their family members.

Article IV COUNTY's OBLIGATIONS

4.01 Condition Precedent. The County's obligation to make the Chapter 381 Payment to Company as set forth herein is contingent and conditioned upon: (i) Company's Completion of Construction of the Improvements, and (ii) minimum Incremental Taxable Value of the Property in the then preceding calendar year of at least FIFTEEN MILLION DOLLARS (\$15,000,000.00); and (iii) Company is in compliance with all of the terms and conditions set forth in this Agreement.

4.02 Subject to the Company's compliance with the conditions precedent set forth in Section 4.01 above, County agrees to pay annually to Company an amount equal to a proportionate amount, as set forth in the table included at 4.07, of the Maintenance and Operations Rate portion of the Ad Valorem Tax Revenues collected by the County on the Incremental Taxable Value of the Property for the preceding calendar year by the Company and/or any End user in accordance with the terms of this Agreement, provided that the total amount of Chapter 381 Payments paid to Company under this Agreement shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)

4.03 In no event will the Chapter 381 Payment paid in connection with a tax year exceed the amount of ad valorem taxes actually collected by the County on the Property by July 1 for such tax year, and any rollback taxes previously collected by the County on the Property.

4.04 The County's obligation to make the Chapter 381 Payment(s) hereunder is subject to annual appropriation by the Brazos County Commissioners' Court, which the County agrees to use good faith efforts to appropriate such funds each year during the Term of this Agreement. Under no circumstances shall County's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the County's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

4.05 The total amount of Chapter 381 Payments paid by the County under this Agreement shall in no event exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), at which time County's obligation to make the Chapter 381 Payments to Company ends.

4.06 County will remit Chapter 381 Payments to Company no later than sixty (60) days after receipt by the County Auditor of a proper Payment Request from the Company in accordance with the terms of this Agreement. Beginning with the First Year of Cash Incentives, Company may only submit a Payment Request during the period commencing July 1 and ending on December 31 of any given year. The failure by Company to timely submit to the County Auditor a Payment Request will result in the forfeiture of the Chapter 381 Payment attributable to that tax year.

4.07 During the term of this Agreement, Company shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided, this Agreement does not prohibit Company from claiming any exemptions from tax provided by applicable law.

Subject to the terms and conditions of this Agreement, and provided that the combined Taxable Value for the Improvements, Property and Tangible Personal Property is at least Fifteen Million Dollars (\$15,000,000.00) additional value above Base Year Taxable Value beginning January 1st of the First Year of Cash Incentives and as of January 1st of each year thereafter this Agreement is in effect, County hereby grants an annual Cash Incentive to Company in the following amounts expressed as a percentage of ad valorem taxes assessed, paid and not contested:

Tax Year	Annual Cash Incentive
First Year (2017)	\$ 80%
2018	\$ 60%
2019	\$ 40%
2020	\$ 30%
2021	\$ 20%
2022	\$ 10%

b. The total amount of Cash Incentive will in no event exceed a total of \$200,000.00 at which time County's obligation to grant Cash Incentives to Company ends.

4.08 Right to offset. County may, at its option, offset any amounts due and payable under this Agreement, including Cash Incentive payments, against any debt (including taxes) lawfully due to County from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise.

Article V. TERM

5.01 This Agreement shall terminate upon any one or more of the following:

- (a) By mutual agreement of the Parties;
- (b) December 31, 2023;
- (c) Company has been paid the Maximum Payment Amount.
- (d) By County, if the Company suffers an event of bankruptcy or insolvency;
- (e) By County or Company in the event the other Party breaches any of the terms or conditions of the Agreement, and any such breach is not cured within thirty (30) days after written notice;
- (f) If the Company sells or otherwise conveys the Property or any portion of the Property to a third party, other than an Affiliate as defined herein, prior to the Property obtaining or maintaining a minimum Incremental Taxable Value of \$15,000,000, the County's obligations under this Agreement to make any Chapter 381 Payments to Company shall terminate as of the conveyance date.
- (g) This paragraph is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. The Company will not knowingly employ undocumented workers as that term is defined in Section 2264.001, Tex. Gov. Code. If the Company is convicted of a violation under 8 U.S.C. Section 1324a (f), the conviction is a breach of this Agreement and County will send Company written notice that the Company has violated this paragraph and that the Agreement terminates thirty (30) days from the date of the notice.

Article VI DEFAULT

6.1 If Company defaults in any term or condition of this Agreement, then County shall not be obligated to provide Cash Incentives for that year in which the default occurred.

6.2 County shall give to Company notice of any default. To the extent a default may be cured, Company shall have the right, but not the obligation, to cure the default within thirty (30) days of receiving written notice from County. If the default cannot reasonably be cured within a thirty (30) day period, and Company has diligently pursued such remedies as shall be reasonably necessary to cure such default, then County may

extend for a reasonable additional length of time the period in which the default must be cured. If Company fails to cure the default within the time provided as specified above or, as such time period may be extended, then at its sole option shall have the right to terminate, by written notice, this Agreement.

6.3 It is further understood and agreed by the parties that if Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company will reimburse County the full amount paid to the Company, with interest at the rate equal to the 90 day Treasury Bill plus one half% (.5%) per annum, within 120 days after the County notifies the Company of the violation.

6.4 The Company's obligation to reimburse the County payments made to Company if the Company breaches this Agreement survives termination of this Agreement.

6.5 It is understood and agreed by the parties that, in the event of a default by the County on any of its obligations under this Agreement, the Company's sole and exclusive remedy shall be limited to either i) the termination of this Agreement, or ii) a suit for specific performance.

Article VII MISCELLANEOUS

7.01 Notices. Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation, or personal delivery to the other Party at the address below. If no address is listed for a Party, notice to such Party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three (3) business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. Each Party may update its contact information by notice to the other. Routine business and technical correspondence must be in English, and may be in electronic form. The contact information for each Party is as follows:

County:

Brazos County
Attn: County Judge
200 South Texas Ave., Suite 332
Bryan, Texas 77803
Telephone: (979) 361-4102
Facsimile: (979) 361-4503

Company:

ViaSat, Inc.
Attn:
6155 El Camino Real
Carlsbad, California 92009
Telephone:
Facsimile:

7.02 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

7.03 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Brazos County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.04 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

7.05 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

7.06 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

7.07 Assignment. This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by Company without the prior written consent of the County which consent shall not be unreasonably withheld, conditioned or delayed.

7.08 Amendment. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of County and Company.

7.09 Venue and Jurisdiction. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America, and this Agreement shall be construed in accordance with Texas law.

7.10 Authority to Contract. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

7.11 No Debt. Under no circumstances shall the obligations of County hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided, however, County agrees during the term of this

Agreement to make a good faith effort to appropriate funds each year to pay amounts under this Agreement for the then ensuing fiscal year.

7.12 Waiver. Failure of any Party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of the Agreement, any part hereof, or the right of the Party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

7.13 Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

EXECUTED in duplicate originals to be effective as of the Effective Date.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

ViaSat, Inc.

By: _____

Name: _____

Title: _____

BRAZOS COUNTY COMMISSIONERS COURT



By: Duane Peters, County Judge 12/27/16

ATTEST:



Karen McQueen, County Clerk

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Consider and take action on a Chapter 381 Development Agreement between Brazos County and Cozumel Investor, Ltd.
TO: Commissioners Court
DATE: 12/20/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

<u>File Name</u>	<u>Description</u>	<u>Type</u>
Ch 380 Dev Agmt Ranch at Turkey Creek (10-24-16) (2).docx	Ch. 381-Cozumel Investors, Ltd.	Cover Memo

STATE OF TEXAS §

COUNTY OF BRAZOS §

COZUMEL INVESTORS, LTD.
CHAPTER 381 ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement ("Agreement") is entered into by and between the County of Brazos, Texas, a political subdivision of the State of Texas, ("County"), and Cozumel Investors, Ltd. ("Developer").

WHEREAS, the Texas Constitution prohibits any County, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 381 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, Developer is the owner of 6.17 acres of property identified by the Brazos Central Appraisal District ("BCAD") as Parcel 304076, which is more fully described in the boundary description which is attached to this Agreement as **Exhibit A** ("Property"); and

WHEREAS, the Property is located off State Highway 47, a thoroughfare the County has been focused on protecting and promoting high-quality development since before the construction of the Health Science Center and the creation of the BioCorridor; and

WHEREAS, Developer desires to redevelop the property into condominiums/apartments/townhomes, but requires upgrades to the infrastructure, specifically construction of an 8-inch water line, which will make the project economically infeasible in the long term; and

WHEREAS, in the interest of encouraging further development of this area, the County is willing to offer an incentive equal to the actual cost of the 8-inch water line, provided that the Property reaches \$5,000,000 in increased taxable value, which incentive will be paid in the form of a reimbursement out of a portion of the tax revenue generated by the Property; and

WHEREAS, the County has determined that it is in the best interests of the County to continue to develop the area around Highway 47 to spur further growth and that the project planned by Developer will be beneficial to the citizens of this County at large.

NOW, THEREFORE, for and in consideration of the premises and mutual agreements and covenants set forth herein, the County and the Developer agree as follows:

DEFINITIONS

"Base Year Taxable Value" shall mean the taxable value for the Property for the year in which this Agreement is executed. The Parties agree that this value is Thirty Two Thousand Two Hundred Fifty Dollars (\$32,250.00).

"Cash Incentive" shall mean that amount of money to be reimbursed annually by County to Developer as a grant herein calculated upon a percentage of ad valorem taxes assessed for a specified year for the Property, Improvements and Tangible Personal Property in accordance with the terms of this Agreement.

"Completion of Construction" shall mean: (i) substantial completion of the Improvements; and (ii) a final certificate of occupancy has been issued for the all of the Improvements.

"Incremental Taxable Value" means the Taxable Value for the Property as of January 1st of a given year less the Base Year Taxable Value.

"Maintenance and Operations Rate" means the component of the adopted tax rate of a taxing unit that will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the following year.

"Property" means the real property comprised of approximately 6.17 acres more or less and as depicted in Exhibit "A", not including any improvements constructed on such real property.

ARTICLE I **8-inch Water Line**

1. Developer will be responsible for engaging a contractor to construct the public infrastructure necessary to develop the Property into condominiums, apartments, and or townhomes, including construction of an 8-inch water line, as shown on the engineer's estimate attached to this Agreement as **Exhibit B**, ("Project"). Developer shall have the Project designed and constructed at its own expense.

2. Within thirty (30) days of the effective date of this Agreement, Developer shall have a professional engineer provide the County Engineer with design plans for the Project. The design plans shall be subject to final approval by the County Engineer. Prior to commencing work, Developer will obtain the necessary permits to conduct work within County right of way, including obtaining bonds, insurance, and meeting other requirements related thereto.

ARTICLE II
CHAPTER 381 GRANT

3. The County will provide a Chapter 381 Economic Development grant equal to the actual hard costs of the 8-inch water line (i.e. labor and materials, excluding overhead or design costs) up to \$80,000. The grant will be paid periodically, upon request by the Developer. Developer must have met the conditions set forth below in order to be eligible for a grant:

- a. Developer must not be in breach of this Agreement;
- b. County must have accepted all required public infrastructure;
- c. A certificate of occupancy must have been issued for the Property;
- d. All ad valorem taxes for the Property must have been paid; and
- e. The BCAD appraised value for the Property must be at least \$5,032,250.

4. County agrees to pay annually to Developer an amount equal to fifty percent (50%) of the Maintenance and Operations Rate portion of the Ad Valorem Tax Revenues collected by the County on the Incremental Taxable Value of the Property for the preceding calendar year by the Company and/or any End user in accordance with the terms of this Agreement, provided that the total amount of Chapter 381 Payments paid to Company under this Agreement shall not exceed EIGHTY THOUSAND DOLLARS (\$80,000.00)

5. The grant payments will be equal to fifty percent (50%) of the Maintenance and Operations Rate tax revenue generated by the Increased Value of the Property. The Increased Value of the Property is the BCAD appraised value of the property (following issuance of one or more certificates of occupancy by the County), less the base value of \$32,250.

6. Once the Developer has met the above conditions, and on an annual basis thereafter while this Agreement remains in effect, the Developer may submit a request for a grant payment to the County, along with copies of invoices from the contractor showing actual amounts paid. As a condition for reimbursement, Requests shall be made in the month of October, and shall be payable out of the taxes paid for that year only. The Developer must include a receipt from the Brazos County Tax Office showing that the taxes for the year have been paid. Failure to request reimbursement waives any right to a reimbursement out of that year's taxes.

7. In no event will the Chapter 381 Payment paid in connection with a tax year exceed the amount of ad valorem taxes actually collected by the County on the Property by July 1 for such tax year, and any rollback taxes previously collected by the County on the Property.

8. The County's obligation to make the Chapter 381 Payment(s) hereunder is subject to annual appropriation by the Brazos County Commissioners' Court, which the County agrees to use good faith efforts to appropriate such funds each year during the

Term of this Agreement. Under no circumstances shall County's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the County's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

9. The total amount of Chapter 381 Payments paid by the County under this Agreement shall in no event exceed EIGHTY THOUSAND DOLLARS (\$80,000.00), at which time County's obligation to make the Chapter 381 Payments to Company ends.

10. County will remit the first Chapter 381 Payment to Developer no later than sixty (60) days after receipt by the County Auditor of a proper Payment Request from the Company in accordance with the terms of this Agreement. Beginning with the First Year of Cash Incentives, Company may only submit a Payment Request during the period commencing July 1 and ending on December 31 of any given year. The failure by Developer to timely submit to the County Auditor a Payment Request will result in the forfeiture of the Chapter 381 Payment attributable to that tax year.

11. During the term of this Agreement, Developer shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided, this Agreement does not prohibit Company from claiming any exemptions from tax provided by applicable law.

ARTICLE III **TERM**

12. The term of this Agreement shall be from the effective date, which shall be the date signed by the last party to sign, and shall terminate upon the occurrence of one of the following:

- a. Developer has received a combined total of \$ 80,000 in grant payments;
- b. Developer has received ten (10) annual grant payments; or
- c. Forty-two (42) months have passed since the effective date of this Agreement and Developer has not yet qualified for, or has not yet requested, a grant payment.

ARTICLE IV **MISCELLANEOUS**

13. Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, Developer agrees not to employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Worker"). During the term of this Agreement, Developer shall notify County of any complaint brought against Developer alleging that Developer has employed Undocumented Workers. If Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of

economic development grants it has received pursuant to this Agreement, together with interest at the rate of 5% per annum from the date of each payment of an economic development grant, shall be repaid by Developer to the County not later than the 120th day after the date the County notifies Developer of the violation. Developer shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts.

14. **Indemnification.** DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE COUNTY, AND ALL OF THEIR OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF DEVELOPER, ITS OFFICERS, AGENTS, OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND DEVELOPER WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT THE COUNTY FROM ANY AND ALL SUCH CLAIMS AND DEMANDS. THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE DEVELOPER OR ANY CONTRACTOR OR SUBCONTRACTOR UNDER WORKMAN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

15. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

16. **Texas law to apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in Brazos County, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

17. **Sole Agreement.** This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

18. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

19. No Waiver. County's failure to take action to enforce this Agreement in the event of Developer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent County from taking action to enforce this Agreement on subsequent occasions.

20. Notices. County and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

COUNTY

Brazos County
County Judge
200 South Texas Ave.
Suite 332
Bryan, Texas 77803

DEVELOPER

Cozumel Investors, Ltd.
Attn: Michael J. Beckendorf
2509 River Forest Drive
Bryan, Texas 77802

21. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

22. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

23. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

24. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

25. Time is of the Essence. Time is of the essence in all matters pertaining to the performance of this Agreement. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays and federal legal holidays. In the event the date for performance of any obligation hereunder shall fall on a Saturday, Sunday or federal legal holiday, then that obligation shall be performable the next following regular business day.

[signatures to follow]

Executed to be effective this 27th day of December, 2016

BRAZOS COUNTY COMMISSIONERS COURT

A handwritten signature in black ink, appearing to read 'Duane Peters', written over a horizontal line.

By: Duane Peters, County Judge

ATTEST:

A handwritten signature in black ink, appearing to read 'Karen McQueen', written over a horizontal line.

Karen McQueen, County Clerk

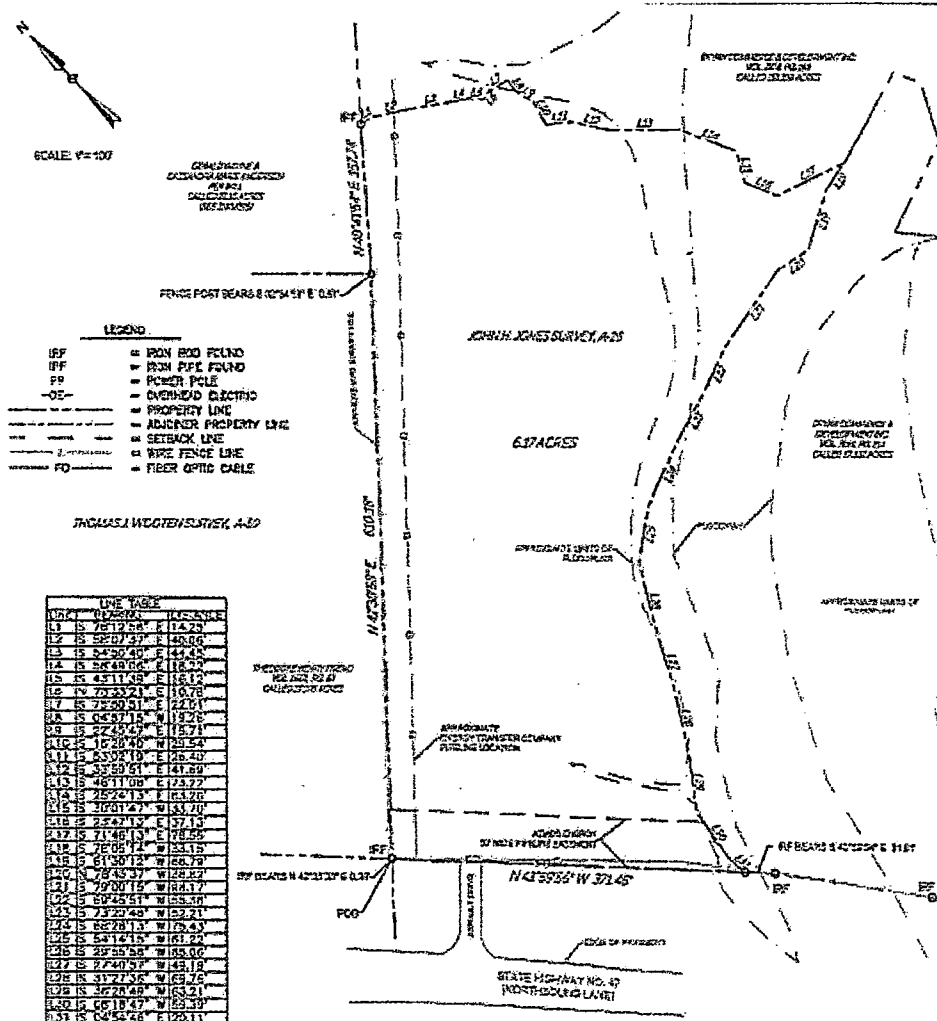
DEVELOPER

Cozumel Investors, Ltd.

By: Cozumel Group, LLC, its General Partner

By: _____
Michael J. Beckendorf, Managing Member

Exhibit A



- NOTES:**
- BEARINGS REFER TO NAD 83 TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE 441320 AS OBTAINED BY GPS OBSERVATION.
 - TITLE AND BEARS TO BE VESTED IN E & F DEVELOPMENT, INC. BY VESTURE OF ADEED RECORDED IN VOLUME 100, PAGE 78, OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.
 - PORTIONS OF THE SUBJECT PROPERTY APPEAR TO BE WITHIN THE 100 YEAR FLOOD LIMIT AS SHOWN ON THE FEMA FLOOD INSURANCE RATE MAP FOR BRAZOS COUNTY, TEXAS AND DISCONTINUED AREAS, COMMUNITY MAP NO. 10000, PHASE NO. 0000, MAP NO. 40041, CORRECTION EFFECTIVE DATE OF MAY 10, 2012.
 - PROPERTY IS SUBJECT TO TITLES AND CONDITIONS AS WELL AS SETBACKS PER THE CITY OF BRYAN CODE OF ORDINANCES.
 - PROPERTY CORNERS ARE MONUMENTED WITH IRON RODS AND SETBACKS OR OTHERWISE NOTED.

CERTIFICATE OF SURVEY

I, GREGORY HOPCUS, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6047, IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE, CORRECT, AND ACCURATELY REPRESENTS THE LINES AND DIMENSIONS OF THE PROPERTY, WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND, AND THAT IT INDICATES ALL EASEMENTS AND FENCES AS THEY APPEAR ON THE GROUND AND THAT THERE ARE NO EASEMENTS, EASEMENTS OR PROTRUSIONS, EXCEPT AS SHOWN HEREON.

Gregory Hopcus
 R.P.L.S. NO. 6047

LAND TITLE SURVEY

VOLUME 8710, PAGE 78
 CALLED 6.17 ACRE TRACT
 JOHN H. JONES SURVEY, A-25
 BRYAN, BRAZOS COUNTY, TEXAS

ADDRESS:
 STATE HIGHWAY 47
 BRYAN, TEXAS 77807



PLAN | DESIGN | SURVEY

GESSNER ENGINEERING
 2621 LAMAR BLVD
 COLLEYVILLE, TEXAS 75042
 WWW.GESSNERENGINEERING.COM

TELEPHONE: 817.433.1111
 ADDRESS: 571.000.000
 FAX: 817.433.1111
 MOBILE: 817.433.1111

SURVEY PLAT

Issue Date: 02-27-16
 Drawn By: JHN
 Checked By: GH
 Project Number: 15-0473

Exhibit B

Probable Estimate of Public Infrastructure Construction Costs The Ranch at Turkey Creek - 8" WL Offsite Extension to Villa Maria Gessner Engineering, LLC October 17, 2016					
GE Job #: 16-0473					
MISCELLANEOUS					
Item #	Item	Quantity	Units	Unit Cost	Total
100	Mobilization and Overhead	1	LS	\$ 20,000.27	\$ 20,000.27
101	Hydromulch	3,413	SY	\$ 0.60	\$ 2,048.00
102	Silt Fence Erosion Control	2,303	LF	\$ 1.50	\$ 3,454.50
Sub Total - Miscellaneous					\$ 25,502.77
Water					
Item #	Item	Quantity	Units	Unit Cost	Total
200	8" PVC Waterline (incl. fittings)	2048	LF	\$ 60.00	\$ 122,880.00
201	8" Gate Valve	5	EA	\$ 2,900.00	\$ 14,500.00
202	8" Meter	1	EA	\$ 30,000.00	\$ 30,000.00
203	Fire Hydrant Assembly w/ valve and box	2	EA	\$ 6,900.00	\$ 13,800.00
204	6" PVC Waterline (incl. fittings)	10	LF	\$ 56.00	\$ 560.00
205	Trench Safety	2058	LF	\$ 2.00	\$ 4,116.00
206	Connect to 12" Line (Cut-In Tee) (incl. appurtenances)	1	EA	\$ 6,200.00	\$ 6,200.00
Sub Total - Water System					\$ 192,056.00
Paving					
Item #	Item	Quantity	Units	Unit Cost	Total
300	6" Concrete Pavement Trench Repair	44.44	SY	\$ 55.00	\$ 2,444.20
Sub Total - Water System					\$ 2,444.20
Construction Cost					\$ 220,002.97
20% Contingency					\$ 44,000.59
Total Construction Cost					\$ 264,003.56





**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Consider and take action on a Chapter 381 Development Agreement between Brazos County and Nutrabolt, Inc.
TO: Commissioners Court
DATE: 12/20/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

<u>File Name</u>	<u>Description</u>	<u>Type</u>
Nurabolt CHAPTER 381 Agreement DRAFT.docx	Ch. 381 Agreement-Nutrabolt	Cover Memo

**NUTRABOLT
CHAPTER 381 ECONOMIC
DEVELOPMENT INCENTIVE AGREEMENT**

This Chapter 381 Economic Development Incentive Agreement (this "Agreement") is entered into by and between BRAZOS COUNTY, TEXAS, a political subdivision of the State of Texas (hereinafter referred to as "County"), and NUTRABOLT, INC., a Delaware corporation (hereinafter referred to as "Company"). The County and Company may also be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, the County is authorized under Chapter 381 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity within the County, and

WHEREAS, County actively seeks economic development prospects in Brazos County through participation in and establishment of an economic development program; and

WHEREAS, County desires to stimulate business, increase the County's tax base and create new jobs for its citizens; and

WHEREAS, County desires to stimulate business and commercial activity in the Research Valley Biocorridor (hereinafter referred to as the "Biocorridor"); and

WHEREAS, Company is developing property located within the Biocorridor as commercial development for use as a research and manufacturing site; and

WHEREAS, by letter of April 20, 2016, the chairman of The Research Valley Partnership, Inc. ("RVP") informed Company he will recommend to the Board of Directors of the RVP, which includes representatives of County, the approval the incentives proposal being implemented by this Agreement; and

WHEREAS, in 2016, the Value of Improvements is \$8,728,340, the Value of Personal Property is \$1,819,870, and Owner continues to significantly exceed employee and wage benchmarks; and

WHEREAS, in consideration of the execution of the Improvements in accordance with the performance measures set forth herein, County agrees to use available revenues calculated based on the increase in ad valorem taxes generated from the Project to grant to Company cash incentives (the "Chapter 381 Payments") as set forth herein; and

WHEREAS, to ensure that the benefits County provides under this Agreement are utilized in a manner consistent with TEXAS LOCAL GOVERNMENT CODE, Chapter 381 and other law, Company agrees to comply with certain conditions for receiving those benefits, including conditions relating to property development.

NOW, THEREFORE, for the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the parties are entering into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE I DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Affiliate" means any person or entity which directly or indirectly controls, is controlled by or is under common control with Company, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise; (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity; or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

"Base Year Taxable Value" shall mean the taxable value for the Property for January 1, 2013 (\$577,970 business personal and \$1,393,920 real property) for a total of \$1,971,890.

"Cash Incentive" shall mean that amount of money to be reimbursed annually by County to Company as a grant herein calculated upon a percentage of ad valorem taxes assessed for a specified year for the Property, Improvements and Tangible Personal Property in accordance with the terms of this Agreement.

"Completion of Construction" shall mean: (i) substantial completion of the Improvements; and (ii) a final certificate of occupancy has been issued for the all of the Improvements.

"Company" shall mean Nutrabolt, Inc., a Delaware Corporation qualified to do business in the state of Texas.

"Effective Date" shall mean the date upon which this Agreement is fully executed by all Parties, unless the context indicates otherwise.

"FTE" shall mean any person who is an employee of Company or an Affiliate (excluding temporary or seasonal employees), who is on the payroll in a budgeted position and has an officially scheduled work week of thirty-five (35) hours or more, works at the Property for Company, and who according to Company or Affiliate Company policy is entitled to full benefits as a full-time employee.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

"Gross Payroll" shall mean the sum of the payroll numbers that Company or an Affiliate reports to the Texas Workforce Commission quarterly for FTEs for the four preceding consecutive calendar quarters ending on or prior to a date of measurement under this Agreement.

"Improvements" shall mean the building to be constructed on the Property and other ancillary facilities such as reasonably required parking and landscaping all together which shall include a new real and personal property investment of \$9,000,000 at time of completion and shall maintain an Incremental Taxable Value per Brazos Central Appraisal District Property Valuation of \$8,700,000 beginning January 1, 2017 and as depicted in Exhibit "A" attached hereto and made a part hereof.

"Incremental Taxable Value" means the Taxable Value for the Property as of January 1st of a given year less the Base Year Taxable Value.

"Maintenance and Operations Rate" means the component of the adopted tax rate of a taxing unit that will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the following year.

"Property" means the real property comprised of approximately 8.6 acres more or less and as depicted in Exhibit "A", not including any improvements constructed on such real property.

"Premises" shall mean collectively, the Property and Improvements following construction thereof, but excluding the Tangible Personal Property.

"Tangible Personal Property" shall mean tangible personal property, equipment and fixtures, excluding inventory and supplies, owned or leased by Company that is added to the Improvements subsequent to the execution of this Agreement.

"Taxable Value" means the appraised value as certified by the Brazos Central Appraisal District as of January 1st of a given year.

Article II GENERAL PROVISIONS

All of the above premises are hereby found to be true and are hereby approved and copied into the body of this Agreement as if copied in their entirety.

Company covenants and agrees that it will construct the Improvements, and operate and maintain its business on the Premises as set forth in this Agreement, and for the time period and manner as set forth herein.

Article III COMPANY OBLIGATIONS

3.1 Construction of Improvements. Company shall be fully operational by no later than January 1, 2016.

a. Company shall maintain a minimum Incremental Taxable Value of the Property (Real plus Business Personal) in the then preceding calendar year, beginning January 1, 2017, of at least EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00) and maintain that minimum value throughout the term of this Agreement.

3.2 Occupancy. The Company must continuously own, occupy and use the Improvements as an administrative and network operations center including customer support (i.e. billing and technical), engineering and warehouse functions relating to Company's global technology communications business commencing upon Completion of Construction and for each year for which there is a Cash Incentive paid.

3.3 Jobs Created. By January 1, 2016, Company shall have created a minimum of Seventy-five (75) FTE's with an annual pay roll of \$3,000,000 according to the Texas Workforce Commission records for FTE's of Company at the Premises. This payroll must be achieved and maintained as recited herein.

3.4 Company reimbursement and waiver of Cash Incentives.

a. If Company does not have timely Completion of Construction and/or fails to occupy the Premises in accordance with Sections 3.1 and 3.2 of this Agreement, Company shall be in default.

b. Company herein waives payment of any Cash Incentives for any year in which it fails to continuously have, operate and maintain the Improvements in accordance with this Agreement, including maintaining the minimum required appraised value, FTEs, and operating in the manner represented herein and to reimburse County for any Cash Incentives paid in contravention of the terms of this Agreement.

3.5 Reporting Requirement.

(1) While this Agreement is in effect, annually within sixty (60) days following the anniversary date of the Effective Date of this Agreement, the Company will certify to the County that it has complied with the terms of this Agreement and provide sufficient written information, records, and documents, to support its certification of compliance. Additionally, Company agrees to report whether the required jobs to be created and maintained in accordance with this Article have been met by the end of the second year following Completion of Construction of the Improvements and every year thereafter that this Agreement is in effect, as certified by a Certified Public Accountant at Company's expense and signed by the chief executive officer of Company.

(2) Documentation, including, but not limited to, Texas Workforce Commission quarterly reports, demonstrating that Company met the employment and job creation targets for the preceding year when required must be provided to County within 10 days of Company's receipt.

(3) Upon County's written request, the Company will promptly provide to the County any additional information reasonably necessary for the County to determine if the Company has complied with this Agreement.

(4) The Company will allow the County access to the Property during regular business hours to inspect the Property and Improvements to verify that Company is complying with the terms of this Agreement.

3.6 Compliance with applicable law. The Property and the Improvements constructed thereon at all times shall be constructed, operated and used in the manner (i) that is consistent with the City of College Station's Code of Ordinances, as amended, including its Uniform Development Code; (ii) that is in accordance with all applicable state and local laws, codes, and regulations; and (iii) that, during the period Cash Incentives are provided hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Biocorridor.

3.7 Ownership. Company agrees to continuously own the Premises for a period of at least seven (7) years from the Effective Date; provided, (i) Company, without County consent may engage in a sale-leaseback or similar transfer of ownership of the Premises as long as Company continues to occupy and operate the Premises, (ii) Company without COUNTY consent may transfer ownership of the Premises to an Affiliate; and (iii) Company may transfer ownership of the Premises to a person that County approves as an assignee of this Agreement pursuant to Section 7.07 Assignment of this Agreement.

3.8 Disclosure Requirements. When applicable, Company agrees to comply with all disclosure requirements, including those under Section 2252.908 Texas Government Code when entering into a contract that requires approval of the governing body of the County unless falling within certain exceptions, and Chapter 176 Texas

Local Government Code for vendor disclosure requirements for certain business relationships with local government officers or their family members.

Article IV COUNTY's OBLIGATIONS

4.01 Condition Precedent. The County's obligation to make the Chapter 381 Payment to Company as set forth herein is contingent and conditioned upon: (i) Company's Completion of Construction of the Improvements, and (ii) minimum Incremental Taxable Value of the Property in the then preceding calendar year of at least EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00); and (iii) Company is in compliance with all of the terms and conditions set forth in this Agreement.

4.02 Subject to the Company's compliance with the conditions precedent set forth in Section 4.01 above, County agrees to pay annually to Company an amount equal to the stated percentage as found in the table contained in 4.07, below, of the Maintenance and Operations Rate portion of the Ad Valorem Tax Revenues collected by the County on the Incremental Taxable Value of the Property for the preceding calendar year by the Company and/or any End user in accordance with the terms of this Agreement, provided that the total amount of Chapter 381 Payments paid to Company under this Agreement shall not exceed ONE HUNDRED FIFTY ONE THOUSAND DOLLARS (\$151,000.00)

4.03 In no event will the Chapter 381 Payment paid in connection with a tax year exceed the amount of ad valorem taxes actually collected by the County on the Property by July 1 for such tax year, and any rollback taxes previously collected by the County on the Property.

4.04 The County's obligation to make the Chapter 381 Payment(s) hereunder is subject to annual appropriation by the Brazos County Commissioners' Court, which the County agrees to use good faith efforts to appropriate such funds each year during the Term of this Agreement. Under no circumstances shall County's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the County's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

4.05 The total amount of Chapter 381 Payments paid by the County under this Agreement shall in no event exceed ONE HUNDRED FIFTY ONE THOUSAND DOLLARS (\$151,000.00), at which time County's obligation to make the Chapter 381 Payments to Company ends.

4.06 County will remit the first Chapter 381 Payment to Company no later than sixty (60) days after receipt by the County Auditor of a proper Payment Request from the Company in accordance with the terms of this Agreement. Beginning with the First Year of Cash Incentives, Company may only submit a Payment Request during the period commencing July 1 and ending on December 31 of any given year. The failure by Company to timely submit to the County Auditor a Payment Request will result in the forfeiture of the Chapter 381 Payment attributable to that tax year.

4.07 During the term of this Agreement, Company shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided, this Agreement does not prohibit Company from claiming any exemptions from tax provided by applicable law.

Subject to the terms and conditions of this Agreement, and provided that the combined Incremental Taxable Value for the Improvements, Property and Tangible Personal Property is at least EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00) additional value above Base Year Taxable Value beginning January 1st of the First Year of Cash Incentives and as of January 1st of each year thereafter this Agreement is in effect, County hereby grants an annual Cash Incentive to Company in the following amounts expressed as a percentage of ad valorem taxes assessed, paid and not contested:

<u>Tax Year</u>	<u>Percentage Abatement</u>
2017	90 %
2018	80 %
2019	40 %
2020	30 %
2021	30 %
2022	20 %
2023	20 %

b. The total amount of Cash Incentive will in no event exceed a total of \$151,000.00 at which time County's obligation to grant Cash Incentives to Company ends.

4.08 Right to offset. County may, at its option, offset any amounts due and payable under this Agreement, including Cash Incentive payments, against any debt (including taxes) lawfully due to County from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise.

Article V. TERM

5.01 This Agreement shall terminate upon any one or more of the following:

- (a) By mutual agreement of the Parties;
- (b) December 31, 2024;
- (c) Company has been paid the Maximum Payment Amount.
- (d) By County, if the Company suffers an event of bankruptcy or insolvency;
- (e) By County or Company in the event the other Party breaches any of the terms or conditions of the Agreement, and any such breach is not cured within thirty (30) days after written notice;
- (f) If the Company sells or otherwise conveys the Property or any portion of the Property to a third party, other than an Affiliate as defined herein, prior to the Property obtaining or maintaining a minimum Incremental Taxable Value of \$8,700,000, the County's obligations under this Agreement to make any Chapter 381 Payments to Company shall terminate as of the conveyance date.
- (g) This paragraph is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. The Company will not knowingly employ undocumented workers as that term is defined in Section 2264.001, Tex. Gov. Code. If the Company is convicted of a violation under 8 U.S.C. Section 1324a (f), the conviction is a breach of this Agreement and County will send Company written notice that the Company has violated this paragraph and that the Agreement terminates thirty (30) days from the date of the notice.

Article VI DEFAULT

6.1 If Company defaults in any term or condition of this Agreement, then County shall not be obligated to provide Cash Incentives for that year in which the default occurred.

6.2 County shall give to Company notice of any default. To the extent a default may be cured, Company shall have the right, but not the obligation, to cure the default within thirty (30) days of receiving written notice from County. If the default cannot reasonably be cured within a thirty (30) day period, and Company has diligently pursued such remedies as shall be reasonably necessary to cure such default, then County may

extend for a reasonable additional length of time the period in which the default must be cured. If Company fails to cure the default within the time provided as specified above or, as such time period may be extended, then at its sole option shall have the right to terminate, by written notice, this Agreement.

6.3 It is further understood and agreed by the parties that if Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company will reimburse County the full amount paid to the Company, with interest at the rate equal to the 90 day Treasury Bill plus one half% (.5%) per annum, within 120 days after the County notifies the Company of the violation.

6.4 The Company's obligation to reimburse the County payments made to Company if the Company breaches this Agreement survives termination of this Agreement.

6.5 It is understood and agreed by the parties that, in the event of a default by the County on any of its obligations under this Agreement, the Company's sole and exclusive remedy shall be limited to either i) the termination of this Agreement, or ii) a suit for specific performance.

Article VII MISCELLANEOUS

7.01 Notices. Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation, or personal delivery to the other Party at the address below. If no address is listed for a Party, notice to such Party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three (3) business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. Each Party may update its contact information by notice to the other. Routine business and technical correspondence must be in English, and may be in electronic form. The contact information for each Party is as follows:

County:

Brazos County
Attn: County Judge
200 S. Texas Avenue, Suite 332
Bryan, Texas 77803
Telephone: (979) 209-5100
Facsimile: (979) 209-5003

Company:

Nutrabolt, Inc.
Attn:
3891 S. Traditions Drive
Bryan, Texas 77807-7595
Telephone:
Facsimile:

7.02 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

7.03 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Brazos County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.04 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

7.05 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

7.06 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

7.07 Assignment. This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by Company without the prior written consent of the County which consent shall not be unreasonably withheld, conditioned or delayed.

7.08 Amendment. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of County and Company.

7.09 Venue and Jurisdiction. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America, and this Agreement shall be construed in accordance with Texas law.

7.10 Authority to Contract. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

7.11 No Debt. Under no circumstances shall the obligations of County hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided, however, County agrees during the term of this

Agreement to make a good faith effort to appropriate funds each year to pay amounts under this Agreement for the then ensuing fiscal year.

7.12 Waiver. Failure of any Party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of the Agreement, any part hereof, or the right of the Party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

7.13 Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

EXECUTED in duplicate originals to be effective as of the Effective Date.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

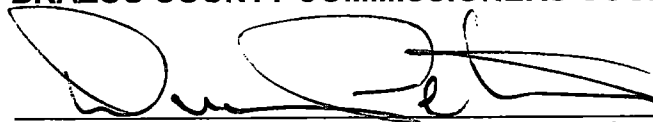
Nutrabolt, Inc.

By: _____

Name: _____

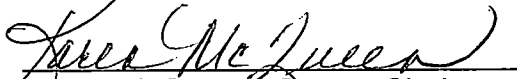
Title: _____

BRAZOS COUNTY COMMISSIONERS COURT



By: Duane Peters, County Judge 12/27/16

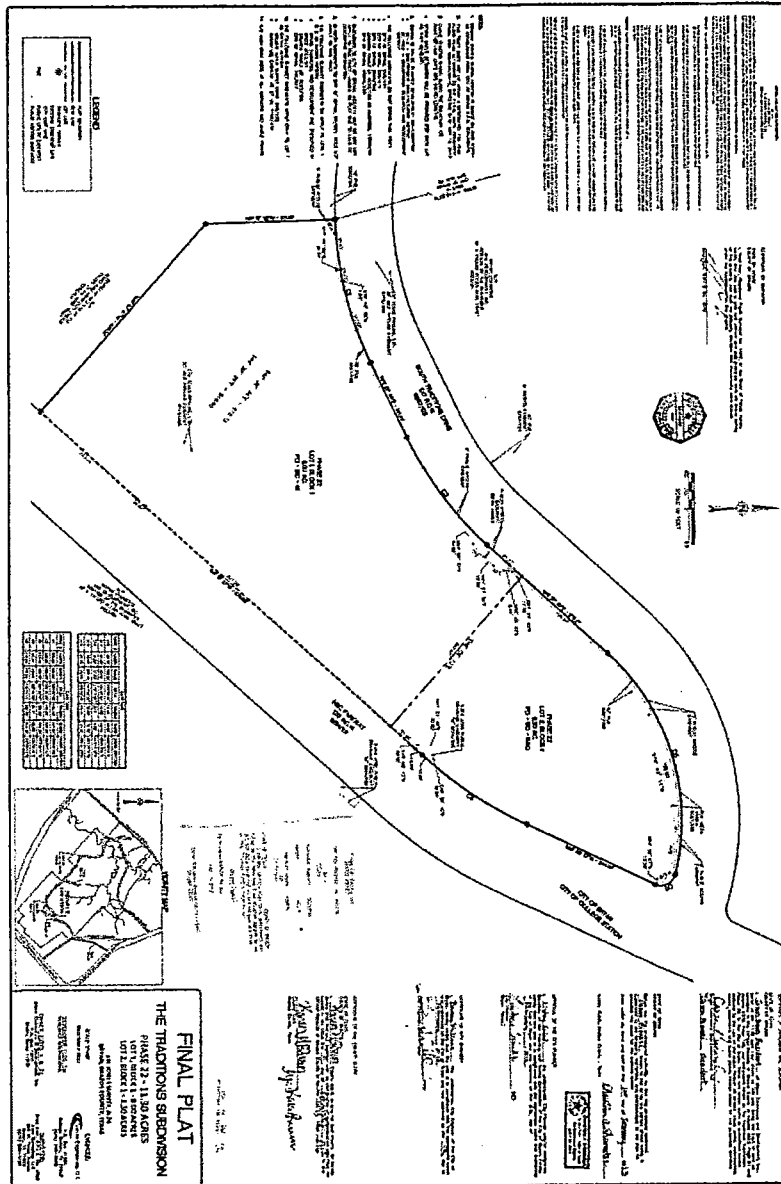
ATTEST:



Karen McQueen, County Clerk

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY





**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Juvenile Services NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Discuss and take possible action on a contract with Houston County for the contracting of pre-adjudication detention beds.

TO: Commissioners Court

FROM: Doug Vance

DATE: 12/19/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ACTION REQUESTED OR ALTERNATIVES: Approval.

ATTACHMENTS:

File Name

[HoustonCounty2016-2017.pdf](#)

Description

HoustonCountyContract

Type

Cover Memo

STATE OF TEXAS §
COUNTY OF BRAZOS §
 §

1

to secure the Outside Treatment at the expense of **Juvenile Probation** and agrees to indemnify and hold harmless Service Provider, its officers, directors, representatives, agents, shareholders and employees from any and all liability for charges for Outside Treatment. The Administrator shall notify the appropriate **Juvenile Probation** officials of Outside Treatment within twenty-four (24) hours of its occurrence.

C. Children from **Juvenile Probation** who are alleged to have engaged in delinquent conduct, or conduct indicating a need for supervision, as reflected in a Child in Need of Supervision Order (CINS) will be admitted to the facility under the authority of any juvenile court having jurisdiction or its designated official. Children not released within forty-eight (48) hours (excluding weekends and holidays) must have a detention hearing in the Madison County juvenile court in accordance with the Texas Family Code, Title III (Section 54.01). If the child is ordered detained, a certified copy of the detention order must be delivered to the detention Facility prior to the child's re-admission.

D. Each child placed in the Facility shall be required to follow the rules and regulations of conduct as fixed and determined by the facility administrator and staff of the Facility.

E. Acceptance of a child by the Facility will be determined by Brazos County Juvenile Facility Staff. Service Provider reserves the right to refuse admission of any child deemed inappropriate. Service Provider has resolved to operate the Facility in compliance with the Juvenile Justice and Delinquency Prevention Act, and therefore, Service Provider will not accept children whose detention would prevent the Facility from complying with the Juvenile Justice and Delinquency Prevention Act or those "juveniles who are charged with or has committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court order, or such non-offenders as dependent or neglected children." Section 223(a) (12) (A), Juvenile Justice Delinquency Prevention Act. No child who is intoxicated or in need of immediate medical attention will be accepted under any circumstances without having been seen, treated and released by a medical professional and given written medical clearance.

If a child is accepted by the Facility from **Juvenile Probation** and the child thereafter is determined to be, in the sole judgment of the Administrator, mentally or physically unfit, dangerous, unmanageable, unsuitable for the program or combination of such conditions or whose mental or physical conduct would or might endanger the other occupants of the Facility, then the Service Provider shall notify **Juvenile Probation** of this determination. The child shall immediately be removed from the Facility but in no event longer than twenty four (24) hours after notification. It will be the responsibility of **Juvenile Probation**, at its expense, to provide for the transportation for the removal of the child. Any child not removed from the facility within 24 hours will be transported by Service Provider to **Juvenile Probation** and **Juvenile Probation** will be charged the cost of staff, time and fuel for the transportation. The daily rate of detention shall increase to \$200.00 for any child not removed within the 24 hour period.

Any damage to county property or juvenile facility fixtures will be paid for by the **Juvenile Probation** Department and charges will be filed against the juvenile with the Brazos County Sheriff's Department.

F. Service Provider agrees that the facility will accept any child who qualifies, without regard to such child's religion, race, creed, sex or national origin.

G. It is further understood and agreed by the parties that children placed in pre-adjudication care in the Facility shall be removed from the Facility by the appropriate authorities from **Juvenile Probation**, or its agents, servants or employees at the conclusion of the ten (10) day working period authorized by the court order issued at the conclusion of the initial detention hearing by the Judge of the appropriate juvenile court unless a new order has been issued authorizing the continued detention, and a copy of the new order has been delivered to the Facility, or unless a waiver of the ten (10) working day hearing has been executed and a signed copy of the waiver is received by the Facility. A copy of the order issued pursuant to the waiver shall be furnished to the Facility. The same understanding and agreement between the parties exists with the exception that court orders may authorize detention for up to fifteen (15) working days after the initial hearing and detention period.

H. It is further understood and agreed by the parties that, children may be released to the Probation Officer or other appropriate authority of Juvenile Probation pursuant to: (a) paragraph E of this Article, (b) an Order of Release signed by the Judge of the Juvenile Court of Madison County.

I. Service Provider shall be in compliance with all standards and requirements of the Texas Juvenile Justice Department and all applicable State and Federal law.

J. Service Provider shall provide twenty (24) hour supervision for each child, including the supervision by detention staff during sleeping hours in a Secure Facility.

K. Each child placed in the Facility shall be provided the opportunity to complete the Massachusetts Youth Screening Instrument (MAYSI-2) as required by the Texas Juvenile Justice Department. Facility personnel administering the MAYSI-2 shall be properly trained, sign the warning page, and document time and date administered. The MAYSI-2 shall then be promptly provided to Juvenile Probation of the detaining county.

L. Each child placed in the Facility shall be enrolled in an educational program. Special steps shall be taken to comply with requirements of Special Education students and their needs.

M. It is further understood and agreed by the parties that nothing in this contract shall be construed to permit Juvenile Probation, its agents, servants, or employees any way to manage, control, direct or instruct Service Provider, its directors, officers, employees, agents, shareholders and designees in any manner respecting its work, duties functions pertaining to the maintenance and operation of the Facility. However, it is also understood that the Juvenile Court of Houston County shall control the conditions and terms of detention supervision as to a particular child pursuant to the Texas Family Code, Section 51.12.

ARTICLE IV COMPENSATION

- 4.01 For and in consideration of the above-mentioned services, Juvenile Probation agrees to pay Service Provider the sum of \$135.00 per day; the cost includes any duration during a 24 hour period for each child. The daily rate shall be paid to Service Provider for each day a child is in detention. The cost is based on the projected actual cost of care for children in the facility.
- 4.02 Every child shall receive basic detention services. Additional services that require or request special accommodations, medications, including, but not limited to: psychological assessments, mental health care, medical treatment, Chapter 55 evaluations (fitness to proceed), special accommodation services, interpreters, special dietary needs, will be paid for by the Department.
- 4.03 Psychological services may be provided to the child on an as needed basis at the request of the Juvenile Probation Department and shall be paid for by the Department.
- 4.04 Service Provider will submit an invoice for payment of services to Juvenile Probation on a monthly basis. Said invoice shall be submitted with ten (10) working days following the end of the invoiced month and shall include information deemed necessary for adequate fiscal control, including but not limited to: to be attributed to specific clients if appropriate, date service was rendered, total daily cost, and total monthly cost. Each invoice received for payment will be reviewed by Juvenile Probation in order to monitor Service Provider for financial compliance with this Agreement. Invoices submitted by Service Provider in proper form shall be paid by Juvenile Probation in a timely manner.
- 4.05 Service Provider shall account separately for the receipt and expenditure of any and all state funds received from Juvenile Probation under this contract. Service Provider shall account separately for state funds received and expended utilizing the following Generally Accepted Accounting Practices (GAAP):
1. Service Provider has an outside audit completed on a yearly basis which specifies

receipt and expenditure of State funds. Service Provider shall forward a copy of the annual outside audit to Juvenile Probation by March 1 following the end of the fiscal year.

2. If Service Provider does not obtain an annual outside audit, then Service Provider shall provide a separate accounting of funds received from Juvenile Probation in whole or in part paid from state funds. the accounting shall clearly list the state funds received from Juvenile Probation and account for expenditures of said funds including documentation of appropriate expenditures as well as the year's tax forms and documentation. The accounting shall be provided to Juvenile Probation thirty (30) days prior to the renewal date of the contract.

- 4.06 It is understood and agreed by Service Provider that this Agreement is funded in whole or in part with grant or state funds and shall be subject to termination without penalty, either in whole or in part, if funds are not available or are not appropriated by the Texas Legislature.
- 4.07 Service Provider agrees to make claims for payment or direct any payment disputes to Juvenile Probation's Fiscal Officer. Service Provider will not contact other department employees regarding any claims of payment.
- 4.08 Service Provider will provide certification of eligibility to receive State funds as required by Texas Family Code Section 231.006.
- 4.09 Except to the extent that a party to this Agreement seeks emergency judicial relief, the parties agree to negotiate in good faith in an effort to resolve any disputes related to this contract that may arise, no matter when the dispute may arise. If a dispute cannot be resolved by negotiation, the dispute shall be submitted to mediation before the parties resort to arbitration or litigation. The parties shall choose a mutually acceptable mediator to mediate the dispute, and the parties shall pay the costs of mediation services equally.

ARTICLE V ADDITIONAL TERMS & AGREEMENTS

- 5.01 Prior to transporting a child to the Facility for placement in detention, Juvenile Probation shall call the Facility to ensure the child will be considered for acceptance. Placement of children by authorized officers of Juvenile Probation may be denied as determined by the Facility.
- 5.02 A child will only be accepted in the Facility upon receipt by the Facility Administrator of a proper order/authorization from the Juvenile Court of Houston County.

ARTICLE VI EXAMINATION OF PROGRAM & RECORDS

- 6.01 Service Provider agrees that it will permit Juvenile Probation to examine and evaluate its program of services provided under the terms of this agreement and/or to review its record periodically. This examination and evaluation of the program may include site visitation, observation of programs in operation, interview and the administration of questionnaires to the staff of Service Provider and the children when deemed necessary.
- 6.02 Service Provider shall provide to Juvenile Probation such descriptive information on contracted children as requested on forms provided by Juvenile Probation.
- 6.03 For purpose of evaluation, inspection, auditing or reproduction, Service Provider agrees to maintain and make available to authorized representatives of the State of Texas or Juvenile Probation any and all books, documents or other evidence pertaining to the costs and expenses of this Agreement.
- 6.04 Service Provider will keep a record of services provided to Juvenile Probation under this Agreement, and upon reasonable notice will provide information, records, papers, reports, and other documents regarding services

furnished as may be requested by Juvenile Probation. Service Provider will maintain the records (as referenced above) for seven (7) years after the termination of this Agreement.

- 6.05 Service Provider understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards."

ARTICLE VII
CONFIDENTIALITY OF RECORDS

- 7.01 Service Provider shall maintain strict confidentiality of all information and records relating to children involved in Juvenile Probation, and shall not re-disclose the information except as required to perform the services to be provided pursuant to this Agreement, or as may be required by law.

ARTICLE VIII
DUTY TO REPORT

- 8.01 Allegations Occurring Inside the Facility. As required by Texas Family Code Chapter 261 and Title 37 Texas Administrative Code Chapter 358, or successor provisions, Service Provider, and any of its employees, interns, volunteers or contractors, shall report any allegation or incident of abuse, neglect, exploitation, death or other serious incident involving a child in a juvenile justice facility or juvenile justice program in the following manner:
- A. For all allegations and incidents except sexual abuse and serious physical abuse: within twenty-four (24) hours from the time the allegation is made, to the following:
 - 1. Local law enforcement agency; and
 - 2. Texas Juvenile Justice Department by submitting a TJJD Incident Report Form to facsimile number 1-512-424-6716 (or if unable to complete the form within 24 hours, then by calling toll-free 1-877-786-7263, followed by submitting the report within 24 hours of said call). In addition, for serious incidents, a treatment discharge form or other medical documentation that contains evidence of medical treatment pertinent to the reported incident shall be submitted to the Texas Juvenile Justice Department within 24 hours of receipt; and
 - 3. With respect to juveniles placed by Juvenile Probation, the TJJD Incident Report Form shall also be sent to Juvenile Probation within 24 hours at facsimile number (936) 241-6231 and Service Provider shall contact Juvenile Probation by telephone at (936) 241-6230 within 24 hours.
 - B. For allegations and incidents of sexual abuse or serious physical abuse:
 - 1. Local law enforcement agency immediately, but no later than one (1) hour from the time a person gains knowledge of or suspects the alleged serious physical abuse or sexual abuse. The initial report shall be made by phone to law enforcement;
 - 2. Texas Juvenile Justice Department shall be notified immediately, but no later than four (4) hours from the time a person gains knowledge of or suspects the alleged serious physical abuse or sexual abuse. The initial report shall be made by phone by calling toll-free 1-877-786-7263. Within 24 hours of the report by phone, the completed TJJD Incident Report Form shall be submitted by facsimile number 1-512-424-6716 or by email at abuseneglect@tjjd.texas.gov and

3. With respect to children placed by Juvenile Probation, the TJJD Incident Report Form shall also be sent to Juvenile Probation within 24 hours at facsimile number (936) 241-6231.

8.02 Allegations Occurring Outside the Facility. Any person who witnesses, learns of, receives an oral or written statement from an alleged victim or other person with knowledge or who has a reasonable belief as to the occurrence of alleged abuse, neglect, exploitation, death or other serious incident involving a juvenile, but that is not alleged to involve an employee, intern, volunteer, contractor, or service provider of a program or facility, shall be immediately reported to law enforcement or to other appropriate governmental unit as required in Texas Family Code Chapter 261.

8.03 As used within this Agreement:

- A. An allegation or incident includes the witnessing, learning, or receiving an oral or written statement from an alleged victim or other person with reasonable belief or knowledge as to the occurrence or an alleged abuse, neglect, exploitation, death or other serious incident involving a juvenile in a juvenile justice facility or juvenile justice program.
- B. A serious incident is attempted escape, attempted suicide, escape, reportable injury, youth-on-youth physical assault or youth sexual conduct.
- C. Sexual abuse is conduct committed by any person against a juvenile that includes sexual abuse by contact or sexual abuse by non-contact.
- D. Serious physical abuse is bodily harm or condition that resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect or exploitation, if the bodily harm or condition requires medical treatment by a physician, physician assistant, licensed nurse practitioner, emergency medical technician, paramedic or dental.
- E. A juvenile justice facility is a facility, including its premises and affiliated sites, whether contiguous or detached, operated wholly or partly by or under the authority of the governing board, juvenile board or by a private vendor under a contract with the governing board, juvenile board or governmental unit that serves juveniles under juvenile court jurisdiction. The term includes: a public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with the Texas Family Code; and a public or private non-secure juvenile post-adjudication residential treatment facility housing juveniles under juvenile court jurisdiction.
- F. A juvenile justice program is a program or department operated wholly or partly by the governing board, juvenile board or by a private vendor under contract with the governing board or juvenile board that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction. The term includes a juvenile justice alternative education program and a non-residential program that serves juvenile offenders while under the jurisdiction of the juvenile court or juvenile board jurisdiction and a juvenile probation department.

ARTICLE IX CRIMINAL HISTORY SEARCHES

9.01 Criminal history searches shall be conducted by Service Provider for any and all of its employees, interns, volunteers or contractors providing services in a juvenile justice facility or juvenile justice program that may have direct unsupervised access to children in the facility or program.

9.02 Criminal history searches shall include the following:

- A. Texas criminal history fingerprint-based criminal history background search through the Texas Department of Public Safety.

B. Local law enforcement sex offender registration records check through the Public Sex Offender Registry on the Texas Department of Public Safety website.

C. Federal Bureau of Investigation fingerprint-based criminal history background search at the National Crime Information Center; internet-based searches shall not be used to conduct this background search.

9.03 A copy of the initial criminal history report required by this Agreement and any reports reflecting subsequent criminal activity shall be maintained for monitoring purposes for whichever of the following occurs later: duration of the individual's employment or period of service; minimum of three (3) years; or until any pending litigation, claim, audit or review and all questions arising there from have been resolved.

9.04 As used within this Agreement, a disqualifying criminal history is a history that includes any one of the following:

A. A felony conviction against the laws of this state, another state, or the United States within the past ten (10) years;

B. A deferred adjudication for a felony against the laws of this state, another state, or the United States within the past ten (10) years;

C. A current felony deferred adjudication, probation or parole;

D. A jailable misdemeanor conviction against the laws of this state, another state, or the United States within the past five (5) years;

E. A deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past five (5) years;

F. A current jailable misdemeanor deferred adjudication, probation or parole; or

G. The requirement to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure.

9.05 In addition to the criteria and time frames set forth in the above definition of disqualifying criminal history, an individual must not have direct unsupervised access to children in a facility or program until at least one year has elapsed since the completion of any period of incarceration, community supervision, or parole.

9.06 Any of Service Provider's employees, interns, volunteers or contractors with a disqualifying criminal history shall be prohibited from having direct unsupervised access to children in a juvenile justice facility or a juvenile justice program.

9.07 Juvenile Probation reserves the right, in its sole discretion, to prohibit any individual with a prior criminal history from being placed in a position that involves direct unsupervised contact with children.

ARTICLE X DISCLOSURE OF INFORMATION

10.01 Service Provider warrants that, prior to entering this contract, it has verified and disclosed the following information to Juvenile Probation, and agrees that it shall have an ongoing affirmative duty under this Agreement to promptly ascertain and disclose in sufficient detail this same information to Juvenile Probation:

A. Any and all corrective action required by any of Service Provider's licensing authorities;

B. Any and all litigation filed against Service Provider, or against its employees, interns, volunteers, subcontractors, agents and/or consultants that have direct contact with children;

- C. Any arrest of any employee, intern, volunteer, subcontractor, agent and/or consultant of Service Provider that has direct contact with children;
 - D. Any finding of "Reason to Believe" by a state regulatory agency in a child abuse, neglect and exploitation investigation where an employee, intern, volunteer, subcontractor, agent and/or consultant of the Service Provider that has direct contact with children was the alleged or designated perpetrator;
 - E. The identity of any of the Service Provider's employees, interns, volunteers, subcontractors, agents and/or consultants that have direct contact with children that are registered sex offenders; and
 - F. The identity of any of Service Provider's employees, interns, volunteers, subcontractors, agents and/or consultants that have direct contact with children that have a criminal history. For the purpose of this Agreement, the term "criminal history" shall include: (1) current felony or misdemeanor probation or parole; (2) a felony conviction or deferred adjudication within the past ten years; or (3) a jailable misdemeanor conviction or deferred adjudication within the past five years.
- 10.02 Service Provider agrees and understands it has an affirmative and ongoing duty to ascertain and disclose to Juvenile Probation any and all of the foregoing information as to any individual, whether an existing employee, intern, volunteer, subcontractor, agent and/or consultant of the Service Provider, prior to placing that individual in a position that involves direct unsupervised contact with juveniles in a juvenile justice facility or juvenile justice program.

ARTICLE XI
EQUAL OPPORTUNITY

- 11.01 Service Provider agrees to respect and protect the civil and legal rights of all children and their parents. It will not unlawfully discriminate against employee, prospective employee, child, childcare provider, or parent on the basis of race, sex, religion, disability or national origin. Service Provider shall abide by all applicable federal, state and local laws and regulations.

ARTICLE XII
ASSIGNMENT & SUBCONTRACT

- 12.01 Service Provider may not assign or subcontract any of its rights, duties and /or obligations arising out of this Agreement without the written consent of Juvenile Probation.

ARTICLE XIII
OFFICIALS NOT TO BENEFIT

- 13.01 No officer, employee or agent of Juvenile Probation and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried who exercise any functions or responsibilities in the project, shall participate in any decision relating to this Agreement which affects or conflicts with his/her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XIV
DEFAULT

- 14.01 Juvenile Probation may, by written notice of default to Service Provider, terminate the whole or any part of this Agreement, as it deems appropriate, in any one of following circumstances:

- A. If Service Provider fails to perform the work called for by this Agreement within the time specified herein or any extension thereof; or
- B. If Service Provider fails to perform any of the other material provisions of this Agreement, including failure to achieve the defined goals, outcomes, and outputs, or so fails to prosecute the work as to endanger the performance of this Agreement in accordance with its terms and in either of these two circumstances after receiving notice of default, Service Provider does not cure such failure within a period of ten (10) days.

ARTICLE XV
TERMINATION

15.01 This Agreement may be terminated for any reason:

- A. By either party upon ten (10) days written notice to the other party of the intention to terminate; or
- B. Upon expenditure of available funds.

15.02 If at any time during the term of this agreement Juvenile Probation, in its sole discretion, determines that the safety of children being served under this Agreement may be in jeopardy, Juvenile Probation may immediately suspend the effect of this Agreement, including but not limited to the obligation to pay, upon giving notice to the Service Provider.

ARTICLE XVI
WAIVER OF SUBROGATION

16.01 Service Provider expressly waives any and all rights it may have of subrogation to any claims or rights of its employees, agents, owners, officers, or subcontractors against Juvenile Probation. Service Provider also waives any rights it may have to indemnification from Juvenile Probation.

ARTICLE XVII
REPRESENTATIONS & WARRANTIES

17.01 Service Provider hereby represents and warrants the following:

- A. That it has all necessary right, title, license and authority to enter into this Agreement;
- A. That it is qualified to do business in the State of Texas; that it hold all necessary licenses and staff certifications to provide the type (s) of services being contracted for; that it is in compliance with all statutory and regulatory requirements for the operations of its business and that there are no taxes due and owing to the State of Texas, the County of Brazos or any political subdivision thereof;
- B. Brazos County will maintain in force policies of general liability insurance against loss to any person (\$100,000.00) or property occasioned by acts (\$100,000.00) or omissions of Service Provider providing limits of \$300,000.00 per occurrence for bodily injury and \$100,000.00 per occurrence of property damage. Certificate of Liability Insurance shall be furnished to Juvenile Probation. Furthermore Juvenile Probation shall be notified immediately upon any changes in the status of the insurance policy and shall promptly furnish updated certificates of insurance to Juvenile Probation.
- C. That all of its employees, interns, volunteers, subcontractors, agents and/or consultants will be properly trained to report allegations or incidents of abuse, exploitation, neglect, death or serious incidents involving a child under the supervision of Juvenile Probation in accordance with the requirements of Texas Family Code Chapter 261 and any applicable Texas Juvenile Justice Department administrative rules regarding abuse,

neglect, exploitation, death or serious incidents; and that, if it has employees, interns, volunteers, subcontractors, agents and/or consultants that have contact with children in a juvenile justice facility or juvenile justice program, then it shall prominently post in all public and staff areas of any and all of its offices/facilities, both the English and Spanish language versions of the following official notice forms that are available on the Texas Juvenile Probation Commission website: *Notice to Public Regarding Abuse, Neglect and Exploitation* and *Notice to Employees Regarding Abuse, Neglect and Exploitation*.

ARTICLE XVIII
TEXAS LAW TO APPLY

- 18.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Brazos County, Texas.

ARTICLE XIX
VENUE

- 19.01 Exclusive venue for any litigation arising from this Agreement shall be in Brazos County, Texas.

ARTICLE XX
LEGAL CONSTRUCTION

- 20.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceable provision shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein.

ARTICLE XXI
PRIOR AGREEMENTS SUPERSEDED

- 21.01 This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understandings or written or oral Agreement between the parties respecting the within subject matter.

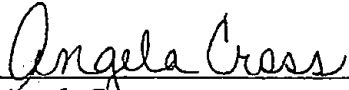
This Contract and Agreement is executed with the declared intention of the parties that this Contract and Agreement is a contract providing for the care of children who have allegedly committed an act of delinquency or an act indicating a need for supervision, and payment for such care will be made by Juvenile Probation for the children placed in the Facility by the Judge of Houston County having juvenile jurisdiction

ARTICLE XXII
PRISON RAPE ELIMINATION ACT

- 22.01 Service Provider shall adopt and comply with all federal, state, county, and city laws, ordinances, regulations and standards applicable to the provision of services described herein and the performance of all obligations undertaken pursuant to this Contract, including the Prison Rape Elimination Act of 2003 (PREA) which establishes a zero-tolerance standard against sexual abuse and sexual harassment of incarcerated persons, including juveniles, and addresses the detection, elimination, prevention, and reporting of sexual abuse and sexual harassment in facilities housing adult and juvenile Offenders. [PREA §115.312(a)]

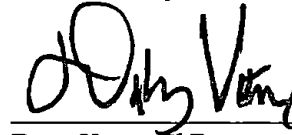
Under PREA, Service Provider is complying with PREA standards [PREA §115.312(b)] shall make available to the CJPO all incident-based aggregated data reports of sexual abuse at its facility within 24-hours of the allegation, and all such data may be requested by the Department of Justice from the previous calendar year no later than June 30th [PREA §115.387(e) and (f)]

Houston County
Probation Department



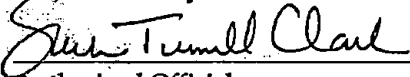
Angela Cross
Chief Juvenile Probation Officer

Brazos County Juvenile Justice Center


 12-19-16

Doug Vance, PhD
Executive Director

Houston County




Authorized Official
Sarah Tunnell Claib
County Court at Law Judge
Houston County, Texas



Duane Peters
Chairman, Juvenile Board

BRAZOS COUNTY COMMISSIONERS COURT

ON December 27, 2016, FULLY EXECUTED IN DUPLICATE, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL.

By: 

Duane Peters, County Judge
200 S. Texas Ave., Ste. 332
Bryan, TX 77803
Phone: 979-361-4102
Fax: 979-361-4503



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Juvenile Services NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Discuss and take possible action on a contract with Harris County for sex offender residential services.

TO: Commissioners Court

FROM: Doug Vance

DATE: 12/19/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ACTION REQUESTED OR ALTERNATIVES: Approval.

ATTACHMENTS:

File Name

[HarrisCounty2017.pdf](#)

Description

HarrisCountyContract

Type

Cover Memo

**HARRIS COUNTY JUVENILE PROBATION DEPARTMENT
REGIONALIZATION AGREEMENT
(secure post-adjudication residential services)**

STATE OF TEXAS

COUNTY OF HARRIS

§
§
§

1. PARTIES

1.1 Parties.

The Parties to this Agreement are Brazos Juvenile Board (SENDING BOARD), on behalf of Brazos County Juvenile Probation Department (DEPARTMENT), and Harris County Juvenile Board (RECEIVING BOARD), which operates secure post-adjudication facilities in Harris County by and through the Harris County Juvenile Probation Department (HCJPD).

2. PURPOSE

2.1. State Regionalization Priorities. The 84th Texas Legislature through Senate Bill 1630 authorized the Texas Juvenile Justice Department (TJJD) to adopt a regionalization plan designed to keep children committed to TJJD closer to home instead of placing them at remote TJJD facilities. As result of this plan, TJJD has established a regionalization plan that has identified HCJPD as having post-adjudication facilities that can provide appropriate research-based programs to serve target populations under the regionalization plan. HCJPD operates secure post-adjudication facilities that are annually inspected by the SENDING BOARD and are registered by TJJD.

2.2 Residential Probation Services. HCJPD operates programs and facilities for certain pre-adjudicated and adjudicated youths and is responsible for providing various services, including medical, psychological, educational, and diagnostic services to these youth.

2.3 Description. HCJPD will offer secure residential services for DEPARTMENT clients, which will include appropriate educational services, along with individual, group, and family therapy performed by appropriately licensed and credentialed professional staff members, as needed.

2.4 Recidivism Goal. DEPARTMENT's goal is to reduce recidivism in Brazos County and the state by helping delinquent children become productive functioning citizens.

3. HARRIS'S REPRESENTATIONS

3.1 Applicable Expertise. HCJPD and the person executing this Agreement on behalf of HCJPD certify and represent that HCJPD and its HCJPD's agents, employees, volunteers, and subcontractors possess the skills, qualifications, experience, education, ability, and financial resources to perform all services contemplated in this Agreement.

3.2 Licensing. HCJPD represents that its agents, employees, volunteers, and subcontractors possess all special certifications, licenses, inspections and permits required by law to perform these services. Prior to performing any services required by this Agreement, HCJPD will, *upon written (including electronic) request*, provide proof of valid licensure to DEPARTMENT (including a listing of all licenses and expiration dates).

3.3 Professional Standards. Where specifically applicable standards are not explicitly set forth in this Agreement, HCJPD must provide the work, products, services, licenses and/or deliverables (called "services" throughout this Agreement) in accordance with generally accepted standards applicable to the profession or industry ordinarily providing such services.

3.4 Certified Post-Adjudication Secure Facilities. Each of HCJPD's secure correctional facilities HCJPD used to place children in the performance of this Agreement has been certified and registered in accordance with the Texas Family Code, including sections 51.12, 51.125 and 51.126, and meets the applicable TJJD minimum standards, including Chapters 342, 343 and 351 of the Texas Administrative Code, and the Juvenile Justice Delinquency Prevention Act.

3.5 Prison Rape Elimination Act. HCJPD is certified as Prison Rape Elimination Act of 2003 (PREA) compliant, and will adhere to all federal, state, county and city laws, ordinances, regulation and standards applicable to the provision of services and the performance of all obligations of this Agreement. PREA establishes a zero-tolerance standard as to sexual assault against incarcerated persons, including juveniles, and addresses the detection, elimination, prevention, and reporting of sexual assaults in facilities housing adult and juvenile offenders. Under PREA, HCJPD will make available to DEPARTMENT, the Federal Corrections Program Office, and the Texas Juvenile Justice Department (if required) all incident-based aggregated data reports for every allegation of sexual abuse at its facility or facilities, and all such data that may be requested by the Department of Justice from the previous calendar year no later than June 30th of each year. [PREA§115.387(e) and (f)].

3.6 Delinquent Child Support Certification. HCJPD certifies that it is not ineligible to receive the specified grant, loan, or payment for the performance of this Agreement (see Section 231.006 of the Texas Family Code pertaining to State-funded grants).

4. SCOPE OF SERVICES

4.1 Specific Work, and/or Services. HCJPD will furnish the work and/or services as outlined in Attachment A, which is attached and incorporated in this Agreement.

4.2 Location. HCJPD operates post-adjudication programs, services and facilities at the following locations: Burnett-Bayland Rehabilitation Center located at 6500 A Chimney Rock, Houston, Texas 77081; and, Harris County Youth Village located at 210 J.W. Mills, Seabrook, Texas 77586.

4.3 Care and Supervision. HCJPD will provide physical care and supervision of children placed in HCJPD's residential treatment center by DEPARTMENT, including, but not limited to, sleeping facilities, meals, education, necessary materials, supplies, and services for personal care and grooming, and individual counseling.

5. REQUIREMENTS

5.1 Independent Contractor. HCJPD is an independent contractor. All of the work and services required by this Agreement will be performed under the exclusive supervision, direction and control of HCJPD. Unless otherwise required by law or regulation, SENDING BOARD will make no decisions pertaining to HCJPD's performance except those that pertain to the goals to be attained and the results to be achieved as contemplated by this Agreement. Unless contained in a written memorandum, any method of achieving those goals or results discussed by the parties is not mandatory. HCJPD is not required to maintain set hours or set number of hours to fulfill the obligations of this Agreement. Nothing in this Agreement will be deemed to create a joint venture, partnership, agency or any other employment relationship between HCJPD and DEPARTMENT. Contractor is responsible for the acts of its employees, agents and subcontractors in the performance of any requirement of this Agreement and is solely responsible their supervision, direction and control and for the payment of salaries and the provision of benefits, if any, to them.

5.2 Employment Eligibility. HCJPD represents that the personnel and staff of HCJPD performing any service required by this Agreement are authorized to work in the United States, and HCJPD has properly completed and retained all required Employment Eligibility Verification forms (Form I-9).

5.3 Non-Assignability. Neither party will assign this Agreement or any obligation required by it without the express written permission of the other party, which will not be unreasonably withheld, conditioned or delayed. Nothing in this paragraph is intended, however, to prevent HCJPD from making an assignment to an affiliate that it controls, is controlled by, or is under common control with, so long as the assignment is made with prior written notice to DEPARTMENT. This provision is not intended to restrict any assignment that is required by Section 9.406 of the Texas Business and Commerce Code.

5.4 Criminal History Background Check. HCJPD and its agents, employees, volunteers, and subcontractors who provide services required by this Agreement will conduct criminal history checks on any individual who may have unsupervised, direct contact with youth. HCJPD will adhere to a 2-tiered, and in some cases, a 3-tiered criminal history check process that will include a Texas Crime Information Center/National Crime Information Center (TCIC/NCIC) check, a fingerprint-based check through a Texas Department of Public Safety contractor, and a Texas Department of Family and Protective Services check, if applicable.

5.4.1. Disqualifying Criminal History. HCJPD will not allow any individual with a criminal history that would preclude him/her from certification as a Juvenile Probation Officer, Juvenile Supervision Officer, or employment by the Department under Section 344.400 to have unsupervised direct contact with youth. A disqualifying criminal history includes any one of the following:

- A felony conviction against the laws of this state, another state, or the United States within the past ten (10) years;
- A deferred adjudication for a felony against the laws of this state, another state, or the United States within the past ten (10) years;
- A current felony deferred adjudication, probation, or parole;
- A jailable misdemeanor conviction against the laws of this state, another state, or the United States within the past five (5) years;
- A deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past five (5) years;
- A current jailable misdemeanor deferred adjudication, probation, or parole; or
- The requirement to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure.

No such individual will be allowed direct contact with youth participating in Department programs for at least one (1) year after the completion of any period of incarceration, community supervision, or parole. This provision applies to employees, interns, volunteers, or contractors working with the HCJPD in the performance of this Agreement. The Department may prohibit any individual with a disqualifying or other criminal history from having direct contact with juveniles.

5.5 Outputs. HCJPD's performance will be evaluated based on the following DEPARTMENT outputs to be achieved during the Agreement term

- The number of youth placed in HCJPD's facilities.
- The number of youth successfully discharged from HCJPD's facilities.
- The number of youth rejected from placement at HCJPD's facilities, if space is available.
- The number of youth who did not recidivate within 180 days of program completion.

5.6 Outcomes. Consistent with requirements in the Texas Human Resources Code, and understanding

that the goal of the Program is to provide juvenile offenders with residential and structured services designed to assist each juvenile in achieving goals and developmental milestones incorporated into each long-term resident's Individualized Program Plan utilizing the 9 Domains defined in the Texas Health & Human Services Commission Substitute Care Provider Outcome Standards. HCJPD will achieve measurable outcomes, which relate directly to Program objectives:

Percentage of the youth in the HCJPD's care will show improvement in at least 50% or more of the goals established in the following domains: Medical; Safety and Security; Recreational; Educational; Mental/Behavioral Health; Relationship; Socialization; Permanence; and Parent and Child Participation.

5.7 Performance Monitoring and Document Inspection. Texas Human Resources Code and/or other requirements provide that SENDING COUNTY or its designee is responsible for monitoring HCJPD's performance of this Agreement and exercising reasonable care in the enforcement of all terms and conditions of any applicable grant or state or federal agency requirement relating to the provision of any funds for this Agreement. SENDING COUNTY is responsible for collecting and/or maintaining all appropriate information, records, papers, reports, and other documents regarding any aspect of the services provided by HCJPD. If permitted by law and any established ethical requirements applicable to specific professionals, HCJPD will furnish such information upon written (*including electronic*) request by DEPARTMENT and HCJPD will make all records, books, documents, and papers that directly pertain to and involve transactions relating to this Agreement (the Records) available for **inspection, audit, examination, and copying** by DEPARTMENT, the State of Texas and its agencies, the United States and its agencies, including the U.S. Department of Justice, Department of Education, Comptroller General, Department of Health and Human Services (HHS), or their duly authorized representatives. HCJPD agrees to cooperate fully in the monitoring process. HCJPD must permit SENDING COUNTY or its designee to inspect HCJPD's performance for the purpose of evaluating the services. In addition, HCJPD agrees to cooperate in any pre-monitoring activities requested by regulatory government agencies (such as the Texas Juvenile Justice Department, Texas Education Agency, Texas Department of Family and Protective Services), which may include, but are not limited to, completion of self-assessment checklists, questionnaires, or other documentation supplied by the government agency.

5.8 Applicable Laws. Each Party will comply (and assure compliance by Each Party's agents, employees, volunteers, and subcontractors as applicable, providing work, products, services, licenses and/or deliverables under this Agreement) with all applicable state, federal, and local laws, ordinances, regulations, executive orders, rules, directives, standards, guidelines, and instructions relating to the work to be performed, including those that prohibit discrimination in Federally assisted programs or activities, such as the Civil Rights Acts, the Age Discrimination Act, the Religious Freedom Restoration Act, the Omnibus Crime Control and Safe Streets Acts, the Victims of Crime Act, the Americans with Disabilities Act, and the Rehabilitation Act. If laws or regulations change, and affect any provision of this Agreement, this Agreement will be deemed amended to conform to those changes in the laws or regulations on the date such laws or regulations become effective. To permit effective enforcement of such laws, HCJPD agrees to compile data, maintain records, and submit reports as required. This assurance is binding on HCJPD (as well as successors, transferees, and assignees, if any) as long as they receive or retain federal or state funds. HCJPD agrees that any government agency or entity may seek judicial enforcement of this assurance under this Agreement. The person whose signature appears on this Agreement is authorized to sign this assurance on the behalf of HCJPD.

5.9 Federal Lobbying Certification. This certification applies only to this Agreement and is a material representation of fact upon which SENDING BOARD relied when entering into this transaction. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 or 32, U.S. Code (entitled 'Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions'), which generally prohibits recipients of Federal grants and cooperative agreements from using Federal appropriated funds for lobbying the

Executive or Legislative Branches of the Federal Government in connection with a specific grant or cooperative agreement. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. HCJPD certifies, to the best of HCJPD's knowledge or belief, that no federally appropriated funds have been paid or will be paid, by or on behalf of HCJPD, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federally funded contract, subcontract, or cooperative agreement, HCJPD will complete and submit Standard Form-LLL (Disclosure Form to Report Lobbying), in accordance with its instructions. HCJPD will require that the language of this certification be included in the award documents for all covered sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all covered sub-recipients will certify and disclose accordingly.

5.10 Environmental Tobacco Smoke Certification. If the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee, Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18. Public Law 103-227 also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, HCJPDs whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. HCJPD and the person executing this Agreement on behalf of HCJPD certify that HCJPD will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. HCJPD agrees that HCJPD will require that the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients will certify accordingly.

5.11 Drug Free Workplace Certification. If the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee, as applicable, profit or non-profit agencies or organizations receiving state or Federal grant funds must certify, on an annual basis, their compliance with the requirements of the Drug Free-Workplace Act of 1988. Employees are specifically prohibited from manufacturing, distributing, possessing, purchasing, and using illegal drugs or controlled substances in the workplace or in any other facility, location or transport in which the employee is required to be present in order to perform his or her job function. HCJPD and the person executing this Agreement on behalf of HCJPD certify that HCJPD will comply with the requirements of the Act. HCJPD agrees that HCJPD will require that the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients will certify accordingly.

5.12 Audit of HCJPD and Sub-contractors by State Auditor. HCJPD understands that acceptance of state funds for performance of an obligation of this Agreement acts as an acknowledgment and an acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds (see Chapter 2262 of the Texas Government Code

(pertaining to receipt of state funds), HCJPD will cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing complete access to all records requested pertaining to this Agreement. HCJPD will ensure that this clause (concerning the authority of the State Auditor to audit funds received indirectly by subcontractors through HCJPD and the requirement to fully cooperate) is included in any subcontract that HCJPD can award under this Agreement.

5.13 Adverse Actions Reporting. If at any time a license of HCJPD's agents, employees, volunteers, and subcontractors as applicable, providing work, products, services, licenses and/or deliverables under this Agreement required to be maintained to fulfill the Commitments in this Agreement is suspended, revoked or out of compliance in Texas or any other state, this Agreement may be terminated immediately without prior notice, at the option of SENDING BOARD, effective the date of the suspension, revocation or non-compliance. HCJPD is not entitled to receive payment for services that were performed by HCJPD while the license was suspended or revoked. HCJPD agrees to immediately inform SENDING BOARD, in writing, of any adverse professional review action that is taken by a professional association or society and that is based on the professional competence or professional conduct of HCJPD's agents, employees, volunteers, and subcontractors as applicable, providing work, products, services, licenses and/or deliverables under this Agreement.

5.14 Nondisclosure and Confidentiality of Information. To the extent permitted by law, HCJPD must keep confidential the contents of all discussions with local, state, and federal officials, as well as the contents of all local, state, and federal records and all other information obtained during performance under this Agreement. HCJPD and the person executing this Agreement on behalf of HCJPD acknowledge that (a) access to this information (whether electronic, written or oral, formal or informal) is provided solely to HCJPD for the purpose of discharging the duties in this Agreement, (b) premature or unauthorized disclosure of this information can irreparably harm the interests of SENDING BOARD and may constitute a violation of state and/or federal law, and (c) the information may represent confidential or proprietary information, the release of which may be restricted or prohibited by law.

5.15 HIPAA Statement. To the extent that HCJPD uses, discloses or has access to protected health information (PHI) as defined at 45 C.F.R. Section 160.103, HCJPD agrees to fully comply with any applicable rules and regulations of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (including its security rules, which are codified at 45 C.F.R. Parts 160 and 164), as amended (HIPAA); privacy and security regulations promulgated by the United States Department of Health and Human Services (DHHS); Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended (HITECH Act); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended; and TEX. HEALTH & SAFETY CODE ANN. §§ 81.046, as amended, 181.001 *et seq.*, as amended, 241.151 *et seq.*, as amended, and 611.001 *et seq.*, as amended (collectively referred to herein as the 'Privacy and Security Requirements'). If required by HIPAA, HCJPD will sign a separate HIPAA assurances agreement with SENDING COUNY.

5.16 Child Abuse and Misconduct Reporting. HCJPD will immediately report any suspected or alleged instances of child abuse or neglect of SENDING BOARD's clients to DEPARTMENT, to the appropriate law enforcement agency or other required entity, within the time period required by applicable statutes and DEPARTMENT policy, including TEX. FAM. CODE ANN. §261.103(a)(4). In addition, HCJPD will report all suspected or potential misconduct and inappropriate behavior by a HCJPD employee or contractor (or any other person) that could potentially pose a danger to a DEPARTMENT client in a HCJPD program (including emotional or psychological abuse), after de-identifying or removing any information that cannot be divulged as a matter of law.

5.17 Sexual Harassment. HCJPD understands and agrees that sexual harassment of clients served under this Agreement, either explicit or implicit, is strictly prohibited, and will be a material breach of this Agreement.

5.18 Disclosure of Allegations. To the extent permitted by Law, HCJPD will disclose and release, and will cause any of its agents, employees, volunteers, and subcontractors performing services who may come in contact with SENDING BOARD's clients, Program participants, or their records to disclose and release, any allegation made against HCJPD, or any of its agents, employees, volunteers, and subcontractors performing or providing services who may come in contact with SENDING BOARD's clients, Program participants, or their records, alleging the commission of an act of abuse, neglect or exploitation of children, the elderly or persons with disabilities; criminal history or current criminal indictment involving an offense against the person, the family, property, public order or decency, public health, safety, or morals; an offense involving public indecency under the Texas Penal Code; an offense under Chapter 481 of the Texas Health and Safety Code (Texas Controlled Substances Act), or any other offense that can reasonably be associated with potential risk of harm or loss to SENDING BOARD's clients. This disclosure and release is required of all individuals who have, or will have, direct contact with SENDING BOARD's clients and/or access to their records, prior to such contact or access and will be accomplished through use of (a) a criminal history background check; (b) a TDFPS abuse and neglect history check and (c) a signed disclosure and release by each such person attesting to this information, which will be maintained by HCJPD, available for review by DEPARTMENT, and renewed at intervals not to exceed 24 months while this Agreement is in effect. HCJPD will allow any employee to testify concerning the services covered under this Agreement in judicial proceedings and administrative hearings at the request of DEPARTMENT or the governmental funding entity.

5.19 False Claims Act Reporting. HCJPD must promptly refer to the United States Department of Justice Office of Inspector General any credible evidence that any person has either 1) submitted a false claim for grant funds as defined under the False Claims Act; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict-of-interest, bribery, gratuity, or similar misconduct involving grant funds. HCJPD will comply with all applicable federal anti-fraud and anti-corruption statutes, e.g., 18 U.S.C.A. 286 (regarding conspiracy to defraud the Federal Government with Respect to Claims); the False Claims Act (31 U.S.C.A. 3729 *et seq.*); 18 U.S.C.A. 287 relating to False, Fictitious and Fraudulent Claims; 18 U.S.C.A. 245, as amended, relating to Federally Protected Activities; 18 U.S.C.A. 1001, as amended, regarding General Statements or Entries; the Program Fraud Civil Remedies Act (31 U.S.C.A. 3801 *et seq.*); the Federal Claims Collection Act of 1966 (31 U.S.C.A. 3701, 3711, 3716 to 3718), as amended by the Derby Collection Act of 1982; the Meritorious Claims Act (31 U.S.C.A. 3702); the Tucker Act (28 U.S.C.A. 1346, 1491 and 2501 *et seq.*); the Wunderlich Act (41 U.S.C.A. 321-322); the Anti-Deficiency Act (31 U.S.C.A. 1341 *et seq.*); and Section 208(a) of the Intergovernmental Personnel Act of 1970.

5.20 Federal Funding Accountability and Transparency Act Reporting. HCJPD will promptly submit all information to DEPARTMENT that SENDING BOARD is required to submit to the funding entity, including HCJPD employee compensation information.

5.21 Personnel Removal. HCJPD will prevent and promptly remove any employee, subcontractor or volunteer from direct client contact and/or from access to client records who is alleged to have committed acts of abuse, neglect or exploitation of children, the elderly or persons with disabilities; or an offense against the person; an offense against the family; or an offense involving public indecency under the Texas Penal Code; or an offense under Chapter 481 of the Texas Health and Safety Code (Texas Controlled Substances Act); or any act or offense that can reasonably be associated with potential risk of harm or loss to SENDING CLIENT's clients based on the job duties or role of the person in question at any time during the Agreement period. If it is determined, with certainty, that the person in question has not committed the acts or offenses alleged, that person may again be assigned to direct client contact and /or access to client records; however, HCJPD will notify DEPARTMENT and the state funding entity of its intent to do so at least 10 working days prior to the reassignment. HCJPD must provide DEPARTMENT with further information concerning the reasons for the reassignment upon request. If the person in question is found to have committed any of the acts or offenses listed in this paragraph, that person will not be reassigned to duties involving any direct contact with clients and/or access to

client records.

5.22 Reports. DEPARTMENT may require a monthly report on the progress of each client served or placed. The Reports will include the items specified below. HCJPD will furnish operating reports to DEPARTMENT in an appropriate format and on a timely basis on a mutually agreed schedule. HCJPD will not release any reports or evaluations to third parties, unless required by law. Failure to submit any required reports may be considered cause for termination and withholding payments otherwise due and owing. **Reporting required by HCJPD will include: Individual Case Plans (ICP) that will be developed and signed by all required parties within thirty calendar days after the placement of the child in the program. The ICP will be reviewed and updated every ninety (90) calendar days, or more frequently as circumstances or need requires. Periodic progress reports will be provided to Department every six weeks, or more frequently as the need arises. These reports will be based on treatment, academic, and behavior progress.**

5.23 Funding Entity Requirements. HCJPD will comply with all *applicable* funding entity and grant policies, procedures, requirements, terms and conditions (including those found in any Notice of Award and the underlying Agreement between the funding entity and SENDING BOARD, which will control over this Agreement), and guidelines, including those applicable to federal (available at <http://www.whitehouse.gov/OMB/circulars/>) and state funds, in the performance of this Agreement, including but not limited to:

5.23.1 Uniform Grant Management Standards (UGMS) adopted pursuant to the Uniform Grant and Contract Management Act of 1981, Chapter 783, Texas Government Code, and the applicable administrative code regulations, such as 40 T.A.C. §732.240 - 256;

5.23.2 The standard financial management conditions and uniform assurances, pursuant to UGMS and Chapter 2105, Texas Government Code, which are applicable to all grants and grant agreements executed between state agencies, local governments and other affected entities;

5.23.3 Office of Management and Budget (OMB) Super Circular (2 CFR Part 200); and Office of Justice Programs (OJP) Financial Regulations;

5.23.4 If applicable, Office of Justice Programs--Office for Civil Rights Limited English Proficiency guidelines and the Equal Employment Opportunity Program requirements, including E.O. 11246, 'Equal Employment Opportunity,' as amended by E.O. 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulations at 41 CFR part 60, 'Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor';

5.23.5 Executive Order 12372 governing the review and coordination of Federally Assisted Programs and Projects; and,

5.23.6 All the applicable provisions in the appropriate year's Texas Juvenile Justice Department State Financial Assistance Contract, including the Fiscal Year beginning 2017.

5.24 Insurance. HCJPD is self-insured for general liability exposure including bodily injury, death and property damage through HCJPD County. The limits of liability are set in part by the Texas Tort Claims Act. The Department self-insures workers compensation and employer's liability under the Texas Workers Compensation Act.

5.25 Accounting Records. In accordance with funding-entity requirements, HCJPD is required to account separately for the receipt and expenditure of state and federal funds received from SENDING BOARD. HCJPD and its subcontractors will not co-mingle grant funds and will maintain records which adequately identify the source and application of funds provided for financially assisted activities. These

records will contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

5.26 Records Retention and Management. HCJPD will maintain complete and accurate records necessary to fulfill the obligations in this Agreement, including a copy of this Agreement. HCJPD will maintain them and make them available for inspection for a minimum of 3 years and 90 days following either the end of the federal fiscal year in which any services were provided or the termination date of this Agreement (or longer if necessary to resolve any litigation, claims, financial management review, or audit findings). SENDING BOARD or its designee may (but will not be required to) assist HCJPD to establish a set of records that complies with the requirements of the grant or the government agency providing the funds for this Agreement and may periodically inspect such records to ensure that they are properly kept.

5.27 Youth Placement. DEPARTMENT will call HCJPD before transporting youth to HCJPD to ensure bed space is available for them. Acceptance of youth may be denied if space is not available. HCJPD agrees not to deny placement of any qualified youth on the basis of that individual's religion, race, creed, sex, gender identity, sexual orientation or national origin.

5.28 Acceptance and Release. SENDING BOARD will send and HCJPD will accept only youth accompanied by a valid court order from the sending jurisdiction. It is further understood that HCJPD will release youth to DEPARTMENT only, or in accordance with the valid court order from the sending jurisdiction.

5.29 Removal. A DEPARTMENT youth who, in HCJPD's discretion, is determined to be dangerous or unsuitable for HCJPD's program may be removed from the program and transferred back to the DEPARTMENT. HCJPD will notify DEPARTMENT that a youth in their custody must be returned to the DEPARTMENT, and the DEPARTMENT will be responsible for arranging transportation and picking up the youth within five (5) days.

5.30 Overnight Field Trips. HCJPD will not permit children placed with it to participate in any trip requiring an overnight stay, furlough, or home visit without DEPARTMENT's prior consent.

5.31 Visitation Prohibitions. HCJPD will not permit children placed with it to visit with their parents and relatives without DEPARTMENT's prior consent unless otherwise stipulated in writing by DEPARTMENT.

5.32 Absence without Leave Notification. HCJPD will immediately notify DEPARTMENT if a child makes an unauthorized departure from the facility.

6. AMOUNT AND BASIS FOR PAYMENT, METHOD, AND LIMITATIONS

6.1 Compensation. SENDING BOARD agrees to pay HCJPD \$162.30 per day for each child admitted under TJJD "Specialized" service level. The Residential Substance Treatment Program, Sex Offender Treatment, IMPACT Program, GIFT Program/Girls Program are recognized as "Specialized" service levels of care. Prior to sending youth to RECEIVING COUNTY, SENDING BOARD will provide written authorization (sometimes referred to as a purchase order or task order) allocating a maximum amount to be spent for the services described in this Agreement.

6.1.1 Maximum Legal Rate for Residential Services. All other sections notwithstanding, SENDING BOARD will pay no more than the rates published by the Texas Juvenile Justice Department for Registered Facilities that are applicable during the contract period. For applicable services not listed in such published rates, SENDING BOARD will not be obligated to pay more than fair market value to HCJPD. However, additional payments over the maximum allowable rates may be made if documented educational, medical, dental, therapeutic, or extraordinary transportation costs are

necessary in the circumstances of a particular case if the additional payment does not exceed the actual cost of the additional services.

6.1.2 Daily Including Costs. The daily unit cost includes costs for dietary, facility, routine daily services, administration, transportation and therapy at all levels except primary care. Costs not included are medical, dental, extraordinary transportation costs, therapeutic needs of an individual which exceeds services for each particular level of care defined herein.

6.1.3 Medical Expenses. HCJPD will offer routine medical and dental care to SENDING BOARD's youth as part of the allowable per diem TJJD rate. HCJPD may, but is not required to seek reimbursement for medical care through the parent's and the youth's Medicaid or private insurance benefits before submitting any remaining amounts to the DEPARTMENT for payment. DEPARTMENT will be responsible for medical and dental care that is in excess of routine care, and are extraordinary costs. Except, however, if a youth sustains an injury while in custody of HCJPD and such injury is caused by its negligent acts or omissions, SENDING BOARD will not be responsible for these costs, including follow-up. SENDING BOARD and DEPARTMENT agree to indemnify and hold harmless HCJPD, its board, officers, administrators, superintendents, representatives, agents, and employees from any and all liability for extraordinary medical and dental costs.

6.1.4 Emergency Medical Expenses. HCJPD is authorized to obtain outside emergency treatment for a DEPARTMENT youth who is in need of an emergency examination, EMS treatment, and/or hospitalization. If emergency medical services are required, HCJPD must notify DEPARTMENT of emergency treatment with twenty-four (24) hours of the initial incident requiring emergency treatment.

6.1.5 Psychiatric Services. HCJPD will provide appropriate psychological and psychiatric services for each DEPARTMENT youth's TJJD service level. Psychiatric services in excess of designated TJJD service levels must be paid by DEPARTMENT. HCJPD will notify DEPARTMENT within twenty-hours (24) hours of the initial incident requiring psychiatric treatment.

6.2 Billing Statements. Unless otherwise indicated in this Agreement, no later than the 10th day after the end of each calendar month during which services were performed or provided, HCJPD will submit to DEPARTMENT a billing statement for all *unpaid* services. The data in the billing statement must be in a format designated by DEPARTMENT and include HCJPD federal tax ID number and any purchase order number. HCJPD must certify and swear under penalty of perjury that each statement is true and correct. All services billed must be rendered during the term of this Agreement. HCJPD will submit to DEPARTMENT billing statements limited to services provided or performed as required by this Agreement, and HCJPD will not include in any such statement any services provided or performed as required by any other agreements with SENDING COUNTY. DEPARTMENT will review each statement and approve it with any modifications DEPARTMENT deems appropriate after consultation with and agreement with HCJPD. DEPARTMENT will then forward the approved statement to the County Auditor for payment. SENDING BOARD agrees to pay HCJPD within 30 days of receipt of the approved statement. The billing statement must identify those clients for whom services were provided. Each statement must include a monthly inventory of services provided during the billing period and any other details DEPARTMENT reasonably requests for verification purposes, including:

- a. The date(s) work, products, services, licenses and/or deliverables were provided;
- b. Meetings and lists of attendees as appropriate;
- c. Detailed description of the work, products, services, licenses and/or deliverables provided;
- d. The total amount billed, and any other details of the work, hours, or services as may be reasonably requested by the County Auditor for verification purposes; and,
- e. If applicable, the case number for which services were performed.

6.3 No Reimbursement for Unauthorized Expenses. SENDING BOARD will not pay HCJPD for any other expense not expressly authorized by this Agreement. HCJPD will NOT be entitled to any additional compensation for any service for which no specific rate is set forth in this Agreement.

HCJPD agrees not to seek reimbursement for, nor is SENDING BOARD obligated to pay for any expenses unless expressly authorized by this Agreement, in which case HCJPD must submit detailed itemized receipts to DEPARTMENT.

6.4 Overpayments. Within thirty (30) days after request by DEPARTMENT, HCJPD must reimburse to SENDING BOARD all funds paid by it to HCJPD that any funding entity or auditor determines have been improperly paid to, or expended by, HCJPD. SENDING BOARD may withhold, suspend, or reduce any and all payments due to HCJPD until any overpayments are reimbursed.

6.5 Billing Audits. SENDING BOARD and its designee may examine and audit all of HCJPD's billings and all backup and support data for those billings. Upon DEPARTMENT's request, HCJPD will make such data and supporting documentation available to the County Auditor or designee in Brazos County, Texas. All payments made by SENDING BOARD are subject to re-evaluation and refund or withholding of future payments conditioned on the results of the audit.

7. TERM OF THE AGREEMENT

7.1 Time Period. The time period for performance (term) of this Agreement will start February 1, 2017 and end January 31, 2018. Any provided or performed outside the term of this Agreement will not be considered to be a required obligation of this Agreement for which HCJPD is entitled to compensation.

7.2 Renewal. If SENDING BOARD is awarded an additional year of grant funding, it may extend the term of this Agreement for four (4) additional year(s), renewable for one year at a time by extending the termination date one year from the prior term's end date and upon the same *terms and conditions* and pricing as contained in this Agreement for the original term. Without affecting the agreed unit pricing, DEPARTMENT may decrease or increase the *total maximum funds* from the current year that are certified as available to pay the obligations of the Agreement. DEPARTMENT may exercise this option by giving written notice to HCJPD of the intent to extend the term, at least 30 days prior to the expiration date of the then current term. The renewal will not become effective until SENDING BOARD has funded any financial obligation for the renewal, as evidenced in writing, such as a certification of funds contained on a purchase order.

8. TERMINATION PROVISIONS

8.1 Termination for Non-Material Breaches. If either party refuses or fails to perform any of its obligations, the other party may give written notice of the failure, regardless of whether the failure to perform would rise to the level of a *default* or *material* breach of the Agreement. If the party fails or refuses to cure the failure stated in the notice within 10 days after notice is given, the party sending the notice may immediately terminate this Agreement without further notice. DEPARTMENT is authorized to give notice for SENDING BOARD.

8.2 Suspension of Agreement. DEPARTMENT may suspend this Agreement immediately by including a notice of suspension in the 30-day notice referenced above. DEPARTMENT is authorized to suspend on behalf of SENDING BOARD. As soon as the notice of suspension is received (or if there was no notice of suspension, upon the termination's effective date), HCJPD will discontinue all services and any subcontracts in connection with the performance of this Agreement.

8.3 Termination for Material Breach. Either party may immediately terminate this Agreement without prior notice or an opportunity to cure in the event of a material breach of any of its provisions by the other party.

8.4 Termination for Health and Safety Violations. SENDING BOARD may immediately terminate this Agreement without prior notice if HCJPD fails to perform any of its obligations in this Agreement

and the failure (a) created a potential threat to health or safety or (b) violated a law, ordinance, or regulation designed to protect health or safety. DEPARTMENT is authorized to give notice for SENDING BOARD.

8.5 Termination Without Cause. Either any Party may terminate this Agreement at any time prior to its expiration, without cause, by giving 30 days written notice to the other party, specifying the effective date of termination. DEPARTMENT is authorized to give notice for SENDING BOARD. Upon the termination's effective date, HCJPD will discontinue all services and any subcontracts in connection with the performance of this Agreement.

8.6 Termination Statement. As soon as practicable after receiving notice of termination, HCJPD must submit a statement to DEPARTMENT that complies with the requirements in this Agreement. This statement must show in detail the *unbilled* services performed for SENDING BOARD under this Agreement to the date of termination. If the payments were to be made in lump sums and services were rendered after the last lump sum payment, the statement will reflect the prorated amount due.

8.7 Additional Remedies. The remedies contained in this section are *not* intended to waive or preclude any other remedy the parties may otherwise have in law, equity, or elsewhere in this Agreement, and the right to terminate for a non-material breach is in addition to and not in lieu of any other remedies.

9. IMMUNITY

9.1 No Waiver of Governmental Immunity. Neither Party waives any immunity or defense on behalf of itself, its employees or agents as a result of the execution of this Agreement.

10. MISCELLANEOUS

10.1 Notices. Any notice required or permitted to be given may be given by hand delivery, facsimile, email, or certified United States Mail, postage prepaid, return receipt requested, addressed to:

TO HCJPD -

Executive Director/Chief Juvenile Probation Officer
Harris County Juvenile Probation Department
1200 Congress St, 8th Floor
Houston TX 77002-1956
Fax: 713-222-4840
Email: thomas.brooks@hcjpd.hctx.net

TO SENDING BOARD -

Director/Chief Juvenile Probation Officer
Brazos County Juvenile Justice Center
1904 Hwy 21 W
Bryan, Texas 77803
Email: DVance@brazoscountytexas.gov

10.2 Receipt of Notice. Notices will be considered given and complete upon successful electronic transmission or upon deposit in the United States Mail, properly addressed and with adequate postage affixed.

10.3 Change of Address. Either party may change its address for notice by giving the other party 10 days prior written Notice specifying the new address.

10.4 Force Majeure. Neither Party will be liable for any failure or delay in performing its obligations if such failure or delay is due to any cause beyond the reasonable control of that Party and if such cause is generally recognized by Texas law as constituting impossible conditions. The existence of such causes will extend the period of performance in the exercise of reasonable diligence until after the causes have

been removed. A party who fails or delays to perform must inform the other in writing with proof of receipt within 10 business days of the existence of such *Force Majeure* event or this right as a defense will be waived.

10.5 E-Mail Addresses. Each party affirmatively consents to the disclosure of e-mail addresses that are provided to the other party. This consent is intended to comply with the requirements of the Texas Public Information Act, Texas Government Code §552.137, and will survive termination of this Agreement. This consent will apply to e-mail addresses provided by each Party and any agents acting on each Party's behalf and will apply to any e-mail address provided in any form for any reason whether related to this Agreement or otherwise.

10.6 Entire Agreement. This document contains the entire agreement and understanding between the parties relating to the rights granted to and the obligations of the parties. Any oral representation or modification concerning this Agreement will be of no force or effect.

10.7 No Oral Modifications. This Agreement cannot be changed except by a written subsequent modification authorized by all parties.

10.8 Inducements. In making the award of this Agreement, SENDING COUNTY relied on HCJPD's assurances and representations contained in this Agreement. Any false assurances and representations by HCJPD will be immediate grounds for termination of this Agreement without prior notice at the option of SENDING COUNTY.

10.9 Agreement Construction. The titles assigned to the various Articles of this Agreement are for convenience only. Titles will not be considered restrictive of the subject matter of any Article or other part of this Agreement. Likewise, the provisions of purpose in this Agreement are intended to be a general introduction and are not intended to expand the scope of the Parties obligations or alter the plain meaning of the terms and conditions in this Agreement.

10.10 Ambiguities. Ambiguities, if any, will not be interpreted against the drafter of this Agreement.

10.11 No Waiver of Default. Any waiver by either party of one or more defaults on the part of the other party in the performance of obligations under this Agreement is not a waiver of any subsequent defaults.

10.12 Remedies Cumulative. Unless otherwise specified elsewhere in this Agreement, the rights and remedies of SENDING BOARD are not exclusive, but are cumulative of all rights and remedies that exist now or in the future.

10.13 No Third Party Beneficiaries. Unless explicitly provided in this Agreement, there is no intent by either party to create or establish third party beneficiary status or rights in any third party. No such third party will have any right to enforce any right or enjoy any benefit created or established under this Agreement.

10.14 Non-Exclusivity. Unless explicitly provided in this Agreement, nothing will prevent either Party from contracting with other parties for the provision of the same or similar services or deliverables that are contemplated by this Agreement.

10.15 Limited Personal Liability. Nothing in this Agreement will be construed as creating any personal liability on the part of any officer, director, employee, or agent of either Party.

10.16 Dispute Resolution Process. The Parties will meet and confer in good faith to work together to resolve problems or disputes that may arise. In the event a dispute arises between the parties involving the provisions or interpretation of any term or condition of the Agreement, and if both parties desire

to attempt to resolve the dispute prior to termination or expiration of the Agreement, or withholding payments, then the parties may refer the issue to a mutually agreeable dispute resolution process.

10.17 Savings/Severability Clause. If any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement, or the application of same to any person or set of circumstances, is held to be invalid, void, or unenforceable by a court of competent jurisdiction, that part of this Agreement will be reformed, if reasonably possible, to comply with the applicable provisions of law. In any event, the remaining provisions will continue in full force and effect provided that the unenforceable or invalid provision is not material to the overall purpose and operation of this Agreement. If necessary in order to make this Agreement valid and enforceable, the Parties will meet to confer upon an amendment or modification.

10.18 Information Certification. HCJPD and the person executing this Agreement on its behalf certify that all information submitted as required by this Agreement is true, complete, accurate, and correct to the best of HCJPD's knowledge. HCJPD and the person executing this Agreement on its behalf understand that deliberately misrepresenting or withholding information, or making any false, fictitious, or fraudulent statements or claims violates this Agreement and may result in prosecution under applicable statutes as well as criminal, civil, or administrative penalties.

10.19 Electronic or Facsimile Signatures and Duplicate Originals. This Agreement may be conducted by electronic means (see Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and Federal Electronic Signatures in Global and National Commerce Act, beginning at 15 U.S.C. Section 7001). Therefore, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document will be deemed an original, but all multiple copies together will constitute one and the same instrument.


10.20 Signatory Authorized to Execute Agreement. The person executing this Agreement on behalf of each Party represents that he or she is duly authorized by the policy of the party's governing body to execute this Agreement on behalf of the party.

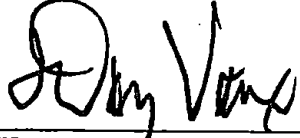
SIGNATURES ON NEXT PAGE

HCJPD COUNTY JUVENILE BOARD

BY: _____
Thomas D. Brooks (date)
Executive Director/Chief Juvenile Probation
Officer

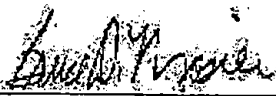
BRAZOS COUNTY JUVENILE BOARD

BY:  12/15/16
Duane Peters (date)
Juvenile Board Chairman

By:  12.19.16
Doug Vance, PhD (date)
Director/Chief Juvenile Probation Officer

APPROVED AS TO FORM:

VINCE RYAN
County Attorney

By:  _____
Bruce D. Mosier
Assistant County Attorney
C.A. File No. 16GEN2048

ATTACHMENT A

SCOPE OF RESIDENTIAL SERVICES

In the event any provision of this Agreement conflicts with Attachment A, provisions in Attachment A will supersede and replace any inconsistent terms.

I. Overview

General Scope of Residential Services: HCJPD will provide program components, room, board, supervision, and care (24) twenty-four hours per day to those juveniles accepted by the Facility. At a minimum, program components will include educational programs, counseling programs, and process groups. Additional programs provided for the long-term residential program include, but are not limited to, anger management, life skills, individual counseling, group counseling, substance abuse prevention education, and AIDS awareness.

II. Levels of Care

Each juvenile placed in a Facility will be placed therein under pursuant to a proper order of the Juvenile Court. At a minimum, the order will require each juvenile to follow the rules and regulations of conduct as fixed and determined by the Facility Administrator and the staff of the Facility. DEPARTMENT must remove the juvenile before the expiration of the order. DEPARTMENT agrees and understands that all Texas Juvenile Justice Department required documents for admission to a Detention Center, or Residential Program will be submitted to HCJPD at the time of placement. HCJPD retains the right and responsibility to refuse the admission of any juvenile from the DEPARTMENT if said documents are not supplied at the time of admission, and retains the option to require DEPARTMENT to supply pre-placement packets on children being considered for placement in the Residential Program, thirty days before placement. Each juvenile placed will be supervised utilizing the following Texas Juvenile Justice Department Post-Adjudication Secure Correctional Facility Level of Care Descriptions (TJPC-FIS-01-10):

A. BASE LEVEL OF CARE-Basic Level of Care consists of a structured, supportive residential setting that is designed to maintain or improve the child's functioning. It includes routine guidance and supervision to ensure the child's safety, involvement in age-appropriate structured activities, rehabilitative services and guidance from professionals or paraprofessionals to help the child attain or maintain functioning appropriate to the child's age and development. Basic Level of Care requires the facility meet all the applicable standards under Title 37 of the Texas Administrative Code. All Secure Post-Adjudication facilities that are registered with the Texas Juvenile Justice Department and are certified by the local juvenile board qualify for the current TJJD per diem rate.

B. SPECIALIZED LEVEL OF CARE-Specialized Level of Care consists of a structured, controlled residential treatment setting that is designed to provide appropriate supervision and moderate level of therapeutic services to maintain or improve the child's functioning. These services reflect a full range of social, psychosocial, and rehabilitative interventions and may include, but are not limited to, substance abuse services, sex offender treatment, special populations, mental health services, and services for pregnant females. Specialized programming is developed and implemented by appropriately credentialed professionals.

1. The provision of individual, group, and family therapy and other therapeutic interventions and programs, are managed and administered by appropriately licensed mental health professionals (examples, psychiatrists, psychologists, therapists, counselors or paraprofessional staff under the direct supervision of professional therapists or counselors).

2. Review of child's continued need for specialized services will be conducted at least

every 90 days by an appropriate mental health professional and/or treatment team.

Specialized Level of Care requires the facility meet all applicable standards under Title 37 of the Texas Administrative Code. Secure Post-Adjudication facilities that are registered with the Texas Juvenile Justice Department certified by the local juvenile board may qualify for the higher per diem rate of funding specified in this agreement by submitting an application for the higher to TJJD for approval.

C. INTENSIVE LEVEL OF CARE-Intensive Level of Care consists of a highly specialized and structured therapeutic setting that serves a clearly identified unique population of youth (example, identified range of clinical/behavioral health/mental health diagnoses, including complete DSM-V multi-axial diagnoses). The clinical program structure and service combination will be used to effectively manage and treat this population in a developmentally appropriate fashion.

Appropriately licensed medical and mental health professionals manage and administer this intensive service model. Review of a child's continued need of the Intensive Level of Care will be conducted at least every 30 days by an appropriate mental health professional or treatment team.

Acceptance of the juvenile into the detention Facility will be determined by space availability. In the event overcrowding exists in the detention Facility, HCJPD maintains the right to ask DEPARTMENT to remove the juvenile within eight (8) hours from the time notified. DEPARTMENT may reserve Post-Residential beds.

HCJPD reserves the right to refuse custody to any juvenile who is deemed inappropriate.

HCJPD has resolved to operate the Facility in compliance with the Juvenile Justice and Delinquency Prevention Act, and therefore, HCJPD will not accept into custody juveniles whose detention would prevent the Facility from complying with the Juvenile Justice and Delinquency Prevention Act or those juveniles who are charged with or has committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court order, or such non-offenders as dependent or neglected children. Section 223(a)(12)(A).

If a juvenile from DEPARTMENT is accepted by the Facility and such juvenile thereafter is found, in the sole judgment of the Facility Administrator, to be either mentally or physically unfit, dangerous, unmanageable, unsuitable for the program or combination of such conditions or characteristics, or whose mental or physical health condition would or might endanger the juvenile or the other occupants of the Facility, then upon such determination and notification by the Facility Administrator to DEPARTMENT, DEPARTMENT will remove or cause to be removed such juvenile from the Facility when notified that the juvenile has become unmanageable. Pre-adjudicated youth must be removed within eight (8) hours of notification; post- adjudicated youth must be removed as soon as practicable, but in no event longer than seven (7) working days after notification. Juveniles who are intoxicated or in need of immediate medical attention will not be accepted under any circumstances without having been seen, treated and released by a medical professional.

III. HCJPD will identify specific goals and outputs for each long term resident, and documents measurable outcomes related to program objectives as outlined in Title 1 Texas Administrative Code Section 351.13, and any goals, outputs, and measurable goals based on the Texas Health and Human Services Commission substitute Care Provider

Outcome standards. These goals and outputs will be incorporated into an Individualized Program Plan (IPP) for each child in the Residential Program. The IPP will address the nine domain areas of medical, safety and security, recreational, educational, mental/behavioral health, relationship, socialization, permanence, and parent/child relationship, as specified in the substitute care provider standards.

BRAZOS COUNTY COMMISSIONERS COURT

ON December 27, 20 16, FULLY EXECUTED IN
DUPLICATE, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN
ORIGINAL.

By: 

Duane Peters, County Judge
200 S. Texas Ave., Ste. 332
Bryan, TX 77803
Phone: 979-361-4102
Fax: 979-361-4503

12/27/16
Date



**BRAZOS COUNTY
BRYAN, TEXAS**

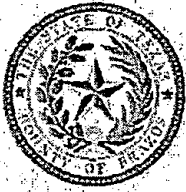
DEPARTMENT: NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Request approval of the Agreement for the Operation and Maintenance of the Brazos
County Exposition Complex Concession with Baily Concessions
TO: Commissioners Court
FROM: Tom Quarles
DATE: 12/14/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

Description

Type



Brazos County Purchasing Department

200 SOUTH TEXAS AVE SUITE 352 BRYAN, TX 77803
PHONE (979) 361-4290 FAX (979) 361-4293

December 14, 2016

Shirley Bailey
Bailey Concessions
6430 CR 313
Nayasota, TX 77868

Re: Renewal of Contract for Concession Services #17-003R with Bailey Concessions.

Brazos County appreciates the quality work your company has provided and would like to exercise the renewal option *for Contract for Concession Services with Bailey Concessions.*

All terms, conditions, and pricing shall remain the same. This renewal will be for one year and will start January 01, 2017 and will continue until December 31, 2017.

To accept the renewal option, please fill out the information and sign below. Return the signed documents by email to cnorton@brazoscountytexas.gov or fax to (979) 361-4293. Please then submit the original signed documents and an updated Certificate of Insurance by mail to the address listed above. Please return acceptance as soon as possible. If you have any questions, I may be reached at (979) 361-4291.

Contact Name: Shirley Bailey Telephone: 936-672-3533

E-Mail: sjb41369@yahoo.com Fax: _____

SHIRLEY BAILEY: D/B/A BAILEY CONCESSIONS

Shirley Bailey
Authorized Signature

12-14-16
Date

BRAZOS COUNTY

[Signature]

Duane Peters, County Judge

12/27/16
Date

Agreement for the Operation and Maintenance of The Brazos County Exposition Complex Concession ("Agreement")

This Agreement is effective on the date of signature by the Brazos County Judge hereto, after formal approval by the Brazos County Commissioners Court, and is made and entered into between Brazos County, a political subdivision of the State of Texas (hereinafter "County"), on behalf of the Brazos County Exposition Complex (hereinafter "Facility") and Shirley J. Bailey, d/b/a Bailey Concessions, (hereinafter "Bailey Concessions" or "Concessionaire").

WHEREAS the County seeks a Concessionaire to undertake and provide services to the public which includes the selling of food and beverages at the Facility; and,

WHEREAS, the County further finds Bailey Concessions meets the criteria set forth in TEX. LOCAL GOV'T CODE ANN. §262.024; and,

WHEREAS, the principal purpose of County in entering into this Agreement is to serve the public by providing concession service, subject to all legal requirements and obtaining all necessary permits;

NOW, THEREFORE, in consideration of the Premises, as defined below, and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

SECTION 1. DEFINITIONS

For the purpose of this Agreement, the following words and phrases are defined and shall be construed as hereinafter set forth:

Concession Services: The sale of all food and non-alcoholic beverages to the general public in attendance at an Facility sanctioned event, but does not include meal/beverage catering.

SECTION 2. PERMISSION GRANTED

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of this Agreement, County hereby grants to Concessionaire, subject to all of the terms and conditions of this Agreement, the exclusive right and obligation within the Concession to: provide concession service, to include the sale of food and non-alcoholic beverages subject to all legal requirements and obtaining of all necessary permits; and not for any other purpose without the prior written consent of the County. The Concession right herein granted shall be carried on at the Facility solely within the limits and confines of said areas designated as Premises (Exhibit A) in This Agreement. No temporary stands or other places of operation shall be allowed at any other time without the express written permission of the County, through the Director of Special Event Facilities for the County ("Director"). The County shall have the right, at a maximum of four times per year, to authorize and permit concession food and beverage sales by other vendors in designated areas outside of permanent concession stands. For

purposes of illustration, such events include, but are not necessarily limited, to the Brazos County Youth Livestock Show, a future regional/mid major fair or any other future major/mid major fair or festival.

Concessionaire shall: Serve quality food and beverages; schedule and provide full maintenance of the Premises under its control; employ, train and supervise personnel with appropriate qualifications and experience to assist in such functions; perform or supervise employees in the performance of all other tasks related to the operation, maintenance and/or repair of the Premises; and pay for and obtain all licenses and permits necessary for the operation of the Concession granted. The Concession rights herein granted to Concessionaire are exclusive and shall include eight (8) permanent concession stands in the Facility; the sale of food; the sale of non-alcoholic beverages; and a storage area in the Facility. Other temporary points of sale may be added as County and Concessionaire may agree.

SECTION 3. PREMISES

The Premises subject to this Agreement are located at 5827 Leonard Road, Bryan, TX 77807. The Premises to be authorized for use by Concessionaire shall include the food services and eight (8) permanent concession stands ("Concession Facilities") at the Facility.

SECTION 4. TERM OF AGREEMENT

The initial term of this Agreement shall be twelve (12) months, commencing January 1, 2017, with two (2) one-year options to renew. Both parties must provide written notice to the other at least thirty (30) calendar days prior to the expiration date of this Agreement of the intent to renew this Agreement for the following year. Neither County, nor any officer, or employee thereof shall be liable in any manner to Concessionaire because of any action taken to revoke, decline to exercise an option or disapprove a renewal of the Agreement.

SECTION 5. TIME OF EXECUTION

Unless otherwise provided, this Agreement shall be deemed executed when (1) it has been signed on behalf of the Concessionaire by the person or persons authorized to bind the Concessionaire; (2) the Agreement has been approved by the Brazos County Commissioner's Court; and (3) it has been signed on behalf of the County by the County Judge or his delegate authorized to enter into the Agreement.

SECTION 6. RENTAL FEE AND PAYMENT

A. Monthly Rental Fee. As part of the consideration for County's granting the Concession rights herein above set forth, Concessionaire shall pay to County a monthly rental fee as follows:

Twenty percent (20%) of the gross receipts for all events, ticketed and non-ticketed, for all non-alcoholic beverages sales; and twenty percent (20%) of the gross receipts for all outside (all Pavilions, all Arenas and all other outside space) ticketed events and five percent (5%) of the gross receipts for non-ticketed

outside events and ticketed/non-ticketed inside (Exhibit Hall and Ballrooms) events produced by food sales each month;

less applicable retail sales tax or other direct taxes imposed upon receipts collected from consumer sales for the time period(s) under this Agreement.

The sale of other items must be expressly permitted and approved in writing by the Director or designee. A percentage of gross receipts will apply and will be negotiated prior to approval of said items for sale.

B. Payment Due. Said payment shall be due and payable by the fifteenth (15th) day of each calendar month based on the gross receipts received in each previous month. Each monthly payment shall be accompanied by a monthly report showing concession sales during the preceding month with detail on gross sales by event. The payment and monthly rental report shall be addressed to:

Brazos County Treasurer
200 South Texas Ave., Suite 240
Bryan, TX 77803

With a copy to:
Sales Coordinator Brazos County Exposition Complex
5827 Leonard Road
Bryan, TX 77807

C. Gross Receipts Defined. The term "gross receipts" is defined as the total amount charged for the sale of any goods or services (whether or not such services are performed as a part of or in connection with the sale of goods) provided in connection with this Concession, but not including any of the following: Cash discounts allowed or taken on sales; any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by Concessionaire; receipts from the sale of waste or scrap materials resulting from the Concession operation; receipts from the sale of or the trade-in value of any furniture, fixtures, or equipment used in connection with the Concession and owned by Concessionaire. Concessionaire shall not reduce or increase the amount of gross receipts, as herein defined, as a result of any of the following:

1. Any error in cash handling by Concessionaire or Concessionaire's employees or agents;
2. Any losses resulting from bad checks received from the consumers or purchasers; or from dishonored credit, charge, or debit card payments; or any other dishonored payment to Concessionaire by customer or purchaser;
3. Any arrangement for a rebate, kickback, or hidden credit given or allowed to customer.

D. Rental Reports.

1. Rental Reports by Event. For the first six (6) months of operation, Concessionaire shall transmit, at the completion of each event in which Concessionaire has conducted sales, an inventory rendition and statement of Gross Receipts and such other information as the County Auditor may by written memorandum require.

2. Monthly Rental Reports. Commencing in the seventh (7) month of operations and thereafter, and with the written consent of the County Auditor, Concessionaire shall transmit a rental payment containing monthly gross receipts and a rent report for each month in which rent is submitted. The completed form shall include a statement of the Gross Receipts by source of sales and such other information as the County Auditor may require.

E. Late Payment Fee. In the event of late or delinquent payments by Concessionaire, the latter recognizes that County will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, Concessionaire agrees to pay the County a late fee the of \$150.00 for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount. Payments shall be considered past due if postmarked after the fifteenth (15th) day of the month in which payment is due.

F. Annual Accounting Adjustment. At the end of the initial twelve (12) month period (and at the end of each twelve (12) month period of any renewal term thereafter), Concessionaire shall prepare and submit to the County Auditor a statement showing the total gross receipts for the said twelve (12) month period and the rental paid for the said twelve (12) months.

SECTION 7. HOURS AND DAYS OF OPERATION

A. Concessionaire must be open for business in the specific permanent locations, applicable to the event(s) visible to the public and the event clients. Concessionaire must be open for business during the hours agreed upon in advance with Facilityxpo management and each specific event client. Convenient concessions must be available in both the North and South Arenas or the appropriate combination of locations when there are two or more events happening at the same time. Hours of may not be changed without prior written approval of Director or the Facility management staff in charge at the time. Concessionaire may not arbitrarily close a concession location or cease operations while events are still in progress without appropriate Facility management approval.

B. Any deviation from the hours specified shall be subject to prior written approval of Director.

C. The Concession premises shall be open for all events according to the schedule provided by the Director.

SECTION 8. OPERATING RESPONSIBILITIES.

Concessionaire shall, at all times during the term of the Agreement, comply with the following conditions:

A. Cleanliness: Concessionaire shall, at its own expense, keep the Premises and the surrounding area [at least twenty-five (25) feet] clean and sanitary at all times. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, nor any material detrimental to the public health, shall be permitted to remain thereon, and Concessionaire shall prevent any such matter or material from being or accumulating upon said Premises. If, as determined by the Director, the Concession is deemed unclean, unsanitary, or does not meet the standards of the County or Brazos County Public Health District, and after giving ten (10) days written notice to correct such deficiencies, Concessionaire fails to correct such deficiencies by the end of the ten (10) days, then the County may, terminate the Agreement and all terms and conditions contained herein. Concessionaire, at its own expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the main dumpster. Concessionaire shall furnish all equipment and materials necessary.

B. Conduct: Concessionaire and its representatives, agents, servants, and employees shall at all times conduct its business in an orderly manner to the satisfaction of the Director. During an event, if there is any perceived issue, on the part of the Concessionaire, with the public, vendors or Facility clients, the concessionaire or their representatives must provide specific information regarding the issue to the appropriate Expo staff member managing the event. In no circumstances shall the concessionaire address or discuss any issue with anyone other than the Expo staff member in charge at the time. The Concessionaire shall never make direct contact regarding an issue with any guest. Any conduct less than a positive, professional attitude with and/or between the Concessionaire or their representative and Facilityxpo management will not be tolerated and can be grounds for immediate termination of the current contractual Agreement.

C. Disorderly Persons: Concessionaire shall use its best efforts to permit no intoxicated person(s), profane or indecent language, or boisterous or loud conduct in or about the Premises and shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the Premises. Concessionaire will call upon peace officers to assist in maintaining peaceful conditions.

D. Non-Discrimination/Equal Employment Practices/Affirmative Action.

Concessionaire, in its Concession operations at the Facility, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that:

(1) no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation, denied the benefits of or be otherwise subjected to unjust discrimination in access to or in the use of the facilities covered herein;

(2) Concessionaire, during the term of the Agreement, agrees not to unjustly discriminate in its employment practices against any employee or applicant for

employment because of the employees or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation. All subcontracts entered into by Concessionaire shall be approved in advance by County and shall contain a like provision.

E. Personnel:

1. Food Handler Certificate: For the Concession Food Manager and other applicable employees or agents, if any, required by statute, rule and ordinance, including the Texas Food Establishment rules and Bryan City Ordinance Ch 50 (sec 50-33), Concessionaire shall provide the Director with proof of food handler certificates on applicable employees.

2. Qualified Personnel: Concessionaire will, in the operation of the Concession, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the County. All such personnel, while on or about the Premises, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. No person employed by Concessionaire, while on or about the Premises, shall be under the influence of illegal drugs, controlled substances or alcohol, or use inappropriate language, or engage in inappropriate conduct for a work environment. In the event an employee is not satisfactory, the Director may direct Concessionaire to remove that person from the Premises.

3. Concession Manager: Concessionaire shall appoint, subject to written approval by Director, a Concession Manager of Concessionaire's operations at the Facility. If Concessionaire elects to subcontract the management of any or all of the Concession operations to a managing entity or entities, the provisions of this section shall also apply to any such entity. Such person must be a qualified and experienced food service manager or supervisor of food service operations, vested with full power and authority to accept service of all notices provided for herein and regarding operation of the Concession, including the quality and prices of Concession goods and services, and the appearance, conduct, and demeanor of Concessionaire's agents, servants, and employees. The Concession Manager shall be available during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available.

4. Approval of Employees, Volunteers and Subcontractors: County shall have the right to approve or disapprove, with cause, all employees, volunteers and subcontractors (including all employees and volunteers for any subcontractor) of Concessionaire.

F. Price Schedules and Merchandise.

1. County agrees that Concessionaire's merchandise (other than the merchandise discussed below), including its prices for same, shall be within Concessionaire's discretion; subject, however, to disapproval by Director if the selection of items offered is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of Director. Such determination shall not be unreasonable and shall take into account the business considerations presented by Concessionaire.

2. All menu items and service, offered for sale and/or sold by Concessionaire in said Premises, shall be of high quality and must be related to the ordinary business of the Concession.

3. The sale of alcoholic beverages is not permitted under the terms of this Agreement. Should Concessionaire desire to provide for the sale of alcoholic beverages, Concessionaire will be required to negotiate an addendum to this Agreement to provide for same and provide proof of obtaining necessary permits and compliance with all rules and regulations of the Texas Alcoholic Beverage Control Board.

4. The sale of specific non-alcoholic beverage products must be approved by the Director and conform to the terms of any existing sponsorship agreement between the Facility and a specific designated company or from any similar successor sponsor. If, or when, an exclusive provider of non-alcoholic beverages ceases to be the exclusive provider at the Facility, the Director shall inform the Concessionaire of the termination of the sponsorship agreement with the company and the terms of any new or successor agreement, if any. Concessionaire is obligated under the terms of this Agreement to purchase non-alcoholic beverages from any sponsor designated by the Facility. However, if the Facility does not enter into a sponsorship agreement with a bottler, the Concessionaire may purchase its non-alcoholic beverages at its discretion, provided that the monthly rental fees for non-ticketed events are renegotiated, agreed upon and approved in advance by the Director and the Concessionaire.

G. Equipment, Furnishings, and Expendables:

1. All equipment, furnishings, and expendables required for said Concession shall be purchased and installed by Concessionaire at its sole expense. A refrigerator and freezer will be provided by the County.

2. County reserves the right to replace any and all items of County-owned equipment at this Concession with functionally equivalent equipment.

3. If County does not renew said Agreement, Concessionaire shall have the right to remove its own equipment, furnishings, and expendables, but not improvements, from the Premises and shall be allowed a period of thirty (30) calendar days to complete such removal. If not removed within that period, said equipment, furnishings and expendables become the property of County.

H. Maintenance of Equipment. Concessionaire shall, at all times and at its own expense, keep and maintain all equipment in the same condition as received by Concessionaire, except for normal wear and tear, whether owned and/or installed by Concessionaire or County. Maintenance of County owned equipment due to normal wear and tear shall be the responsibility of the County.

I. Signs and Advertisements.

1. Concessionaire shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of County property without the prior written approval from the Director.

2. Concessionaire shall not permit vendors to display wares inside or outside the building or on said property unless written permission is secured from the Director in advance of installation.

3. Upon the expiration or termination of the Agreement, Concessionaire shall, at its own expense, remove or paint out, as Director may direct, any and all of its signs and displays on the Premises.

J. Mobile Food Cart: Concessionaire may, with the written consent of the Director, provide a mobile food cart for food and beverage service with items stocked from the main Concession Premises.

K. Safety: Concessionaire shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or Director notifies Concessionaire of said condition. Concessionaire shall cooperate fully in the investigation of accidents occurring on Concession Premises.

SECTION 10. MAINTENANCE OF PREMISES.

During all periods that the Premises are used or are under the control of the Concessionaire for the uses, purposes, and occupancy aforesaid, Concessionaire shall be responsible for all necessary janitorial duties and damage and maintenance repairs, to the satisfaction of the Director.

A. Interior of Premises:

1. Areas to be Maintained by Concessionaire: Concessionaire shall, at its own expense, keep and maintain all the interior walls and surfaces of Concession Premises and all improvements, fixtures, and utility systems which may now or hereafter exist thereon, whether installed by County or Concessionaire.

2. Interior and Exterior of Common areas of the Premises and Common Passageways: County shall maintain the interior and exterior of all walls and surfaces of the facility, as well as all common passageways.

SECTION 11. LIABILITY

A. Indemnification. Except for the active negligence or willful misconduct or intentional conduct of County, Concessionaire undertakes and agrees to defend, indemnify and hold harmless County and any and all of County's officers, agents, and employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including Concessionaire's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the performance of this Agreement on the part of Concessionaire, its officers, agents, employees, or sub-contractor of any tier.

B. Insurance:

1. General Conditions: Concessionaire shall obtain and keep in force during each term of this Agreement an insurance policy or policies which covers all

operations conducted pursuant to this Agreement. Such insurance policy or policies must name the County as additional insured. Without limiting Concessionaire's indemnification of County, Concessionaire shall provide and maintain at its own expense during the entire term of the Agreement the following insurance having the limits as set forth and the certificate of insurance must specify the following requirements:

Commercial General Liability	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate \$1,000,000 Products-Come/OSH Agency \$1,000,000 Personal and Advertising Injury \$ 100,000 Fire Damage (any fire)
Automobile Liability	\$ 100,000 Bodily Injury-Per Person \$ 300,000 Bodily Injury-Each Accident \$ 100,000 Property Damage-Each Incident

a. Additional Insured: County, its Officers, Agents and Employees shall be included as additional insureds in all liability insurance policies except: Workers' Compensation Employer's Liability, Professional Errors and Omissions and second-party Legal Liability coverages (such as Fire Legal). County shall be named Loss Payee as its interest may appear in all required property, fidelity or surety coverages.

b. Primary Insurance: Such insurance shall be primary with respect to any insurance maintained by County and shall not call on County's insurance program for contributions.

c. 30-Day Notice: With respect to the interest of County, such insurance shall not be canceled, materially reduced in coverage or limits or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier) has been given to the County Risk Manager.

d. Aggregate Limits/Blanket Coverage: If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of Concessionaire outside this Agreement, Concessionaire shall give County prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in Concessionaire's best judgment will diminish the protection such insurance affords County.

SECTION 12. PROHIBITED ACTS

Concessionaire shall not:

1. Place any additional lock of any kind upon any window or interior or exterior door in the Premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the Premises, nor refuse, upon the expiration or sooner termination of the Agreement, to surrender to Director any and all keys to the interior or exterior doors on the Premises, whether said keys were furnished to or otherwise procured by Concessionaire, and in the event of the loss of any keys furnished by Director, Concessionaire shall pay county, on demand, the cost for replacement thereof;

2. Do or permit to be done any act or thing upon the Premises which will invalidate, suspend or increase the rate of any insurance policy required under the Agreement, or carried by County, covering the Premises, or the buildings in which the same are located or which, in the opinion of Director, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the Agreement, provided, however, that nothing contained herein shall preclude Concessionaire from bringing, keeping or using on or about the Premises such materials, supplies, equipment and/or machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;

SECTION 13. INDEPENDENT CONTRACTORS AND CONSULTANTS

The Concessionaire is acting hereunder as an independent contractor and not as an agent or employee of the County. The Concessionaire shall not represent or otherwise hold itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the County.

SECTION 14. TAXES. PERMITS. AND LICENSES

A. Concessionaire shall obtain and maintain at its sole expense all approvals, permits, or licenses that may be required in connection with the operation of the Concession including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.

B. Concessionaire shall pay all taxes of whatever character that may be levied or charged upon the rights of Concessionaire to use the Premises, or upon Concessionaire's improvements, fixtures, equipment, or other property thereon or upon Concessionaire's operations hereunder.

SECTION 15. ASSIGNMENT/SUBLEASE

The Concessionaire may not, without prior written permission of the County, assign or otherwise alienate any of its rights hereunder, including the right to payment or delegate, subcontract, or transfer any of its duties hereunder.

SECTION 16. BUSINESS RECORDS

Concessionaire shall maintain during the term of the Agreement and for three (3) years thereafter, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to the Agreement. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by the County Auditor, or a duly authorized representative, during ordinary business hours at any time during the term of this Agreement and for at least three (3) years thereafter.

A. Cash and Record Handling Requirements: If requested by the County or the County Auditor, Concessionaire shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the Concession which shall be submitted to Director for approval. Concessionaire shall be required to maintain a method of accounting of the Concession which shall correctly and accurately reflect the gross receipts and disbursements

received or made by Concessionaire from the operation of the Concession. The method of accounting, including bank account is, established for the Concession shall be separate from the accounting systems used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method shall include the keeping of the following documents:

1. Regular books of accounting such as general ledgers.
2. Journals including supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
3. State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown.
4. With the exception of a limited number of large events in which the County Auditor has or may have granted Concessionaire prior written permission to utilize an inventory control system in lieu of cash registers, cash register tapes shall be retained so that day to day sales can be identified. A cash register must be used in public view which prints a dated double tape, indicating each sale and the daily total. Permission to utilize an inventory control system in lieu of cash registers must be given to and received by the Auditor and Director at least thirty days prior to a scheduled event.
5. Any other accounting records that County, in its sole discretion, deems necessary for proper reporting of receipts.

B. Method of Recording Gross Receipts: Unless otherwise specified in the Agreement, Concessionaire shall obtain and install a cash register(s) on which it shall record all gross sales. The cash register shall be non-resettable and sufficient to supply an accurate recording of all sales on tape. The purchase price, terms, make and/or model of such cash register shall be within the Concessionaire's discretion. However, Concessionaire shall not purchase or install the cash register before obtaining the Director's written confirmation that the register to be purchased meets the requirements of this provision. All cash registers shall have a price display which is and shall remain at all times visible to the public.

C. Annual statement of gross receipts and expenses: Concessionaire shall transmit a Statement of Gross Receipts and Expenses (Profit and Loss Statement) for the Concession operations as specified in the Agreement, in a form acceptable to the County Auditor, on or before April 30th of each calendar year during each term of the Agreement. An extension may be granted in writing, prior to the April 30th due date, by the County Auditor, provided sufficient verification of the need for the extension is provided. County may also from time to time conduct an audit and re-audit of the books and business conducted by Concessionaire and observe the operation of the business. If the report of gross sales made by Concessionaire to County shall be found to be less than the amount of gross sales disclosed by such audit and observation, Concessionaire shall pay County within 30 days after billing any additional rentals disclosed by

such audit. If discrepancy exceeds 2% and no reasonable explanation is given for such discrepancy, Concessionaire shall also pay the cost of the audit.

SECTION 17. REGULATIONS, INSPECTION, AND DIRECTIVES

A. The operations conducted by Concessionaire pursuant to the Agreement shall be subject to:

1. All rules, regulations, orders, and restrictions enacted by the County with respect to the operation of the Facility;
2. Any and all applicable laws, ordinances, statutes, rules, regulations, and of any governmental authority, federal, state or municipal, lawfully exercising authority over the Concessionaire's operations; and,

B. Permissions: Any permission required by the Agreement shall be secured in writing by Concessionaire from County and any errors or omissions therefrom shall not relieve Concessionaire of its obligations to faithfully perform the conditions therein. Concessionaire shall immediately comply with any written request or order submitted to it by County.

C. Right of Inspection: County, its authorized representatives, agents and employees shall have the right to enter upon the Concession Premises at any and all reasonable times for the purpose of inspection, evaluation, and observation of Concessionaire's operation. During these inspections, they shall have the right to photograph, film, or otherwise record conditions and events taking place upon the Premises. The inspections may be made by persons identified to Concessionaire as County Employees, or may be made by independent contractors engaged by County. Inspections may be made for the purposes set forth below, and for any other lawful purpose for which the County or another governmental entity with jurisdiction is authorized to perform inspections of the Premises:

1. To assess compliance with terms and conditions of the Agreement; or
2. To observe transactions between the Concessionaire and patrons to evaluate the quality of services provided or quality and quantities of items sold or dispensed.

SECTION 18. TERMINATION

A. By County: County shall have the right, via 30 (thirty) day written notice, to terminate the Agreement in its entirety and all rights ensuing therefrom as provided by applicable law if any one or more of the following events occur:

1. Concessionaire fails to keep, perform and observe any promise, covenant and condition set forth in the Agreement on its part after receipt of written notice of default from County;
2. The interest of Concessionaire under the Agreement is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of County;

3. Concessionaire becomes, without the prior, written approval of County a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;

4. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with Concessionaire's use of the Premises or with its operations under the Agreement;

5. Concessionaire becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the Concession areas;

6. Cessation or deterioration of service for any period which, in the opinion of County, materially and adversely affects the operation or service required to be performed by Concessionaire under the Agreement; or

B. County's Right of Reentry: County shall, as an additional remedy, upon the giving of written notice of termination as above provided, have the right to reenter the Premises and every part thereof on the effective date of termination without further notice of any kind, remove any and all persons therefrom and may regain and resume possession either with or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of Concessionaire under the Agreement.

C. Additional Rights of County: County, upon termination of the Agreement, or upon reentry, regaining, or resumption of possession of the Premises, may occupy said Premises and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such occupation by others may be of only a part of the Premises, or the whole thereof or a part thereof together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder, and on terms and conditions the same as or different from those set forth in the Agreement.

D. Survival of Concessionaire's Obligations: In the event the Agreement is terminated by County, or in the event County reenters, regains, or resumes possession of the Premises, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of the Agreement, subject to County's obligation to mitigate damages.

By Concessionaire:

The Agreement may be terminated by Concessionaire, via 30 (thirty) day written notice, upon the happening of one or more of the following events:

1. The permanent abandonment of the Facility;
2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Facility or any substantial part thereof, in such manner as to materially restrict Concessionaire from operating thereon;
3. The complete destruction of all or a substantial portion of the Premises from a cause other than the negligence or omission to act of Concessionaire, its agents, officers, or employees, and the failure of County to repair or reconstruct said Premises;
4. Any exercise of authority under the Agreement which interferes with Concessionaire's use and enjoyment of the Premises as to constitute a termination, in whole or in part, of the Agreement by operation of law; or

SECTION 19. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants or conditions of the Agreement due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, acts of the public enemy, acts of superior governmental authority, floods, riots, or any other circumstance for which such party is not responsible and which is not in its power to control.

SECTION 20. AGREEMENT BINDING UPON SUCCESSORS

The Agreement shall be binding upon and shall inure to the benefit of the successors, heirs, executors, administrators, and assigns of the parties hereto.

SECTION 21. LAW AND VENUE

The Agreement shall be construed under the laws of the State of Texas and venue of any action brought under the Agreement shall lie in Brazos County.

SECTION 22. ATTORNEY'S FEES

If County shall, without any fault, be made a party to any litigation commenced by or against Concessionaire arising out of or related to Concessionaire's use or enjoyment of the Premises and as a result of which Concessionaire is finally adjudicated to be liable, then Concessionaire shall pay all costs and reasonable attorney's fees incurred by or imposed upon County in connection with such litigation.

SECTION 23. NOTICES

A. To County: Unless otherwise stated in the Agreement, written notices to County hereunder shall be addressed as follows:

Brazos County Judge
200 So. Texas Ave., Suite 332
Bryan, Texas 77803

With a copy to:

General Manager, Brazos County Expo Complex
5827 Leonard Road
Bryan, Texas 77807

All such notices may either be delivered personally or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt. County shall provide Concessionaire with written notice of any address change within thirty (30) days of the occurrence of said address change.

B. To Concessionaire: Written notices to Concessionaire shall be addressed to Concessionaire as follows:

Shirley J. Bailey, d/b/a Bailey Concessions
6430 CR 313
Navasota, Texas 77868

All such notices may either be delivered personally to the Concessionaire or to any officer or responsible employee of Concessionaire or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt. Concessionaire shall provide County with written notice of any address change within thirty (30) days of the occurrence of said address change.

SECTION 24. INTERPRETATION

The language of the Agreement shall be construed according to its fair meaning and not strictly for or against either County or Concessionaire. The section headings appearing herein are for the convenience of the parties and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of the Agreement. If any provision of the Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of the Agreement, and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of the Agreement is capable of two constructions, one of which render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

SECTION 25. AGREEMENT CONTAINS ENTIRE AGREEMENT

The provisions of the Agreement contain the entire Agreement between the parties hereto and said Agreement may not be modified except by formal, written amendment fully executed by both County and Concessionaire.

IN WITNESS WHEREOF, Brazos County has caused this Agreement to be executed and Concessionaire has executed the same as of the day and year herein below written.

BRAZOS COUNTY



Duane Peters, County Judge

Brazos County Judge

Date: _____

BAILEY CONCESSIONS



Shirley J. Bailey

Proprietor

Date: 12-14-16

Attest:



Karen McQueen

Brazos County Clerk

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Bailey Concessions
Navasota, TX United States

Certificate Number:
2016-147049

Date Filed:
12/15/2016

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Brazos County

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

17-003R
Serves Food to public

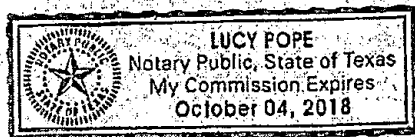
4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
Bailey, Shirley	Navasota, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6. AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

Shirley Bailey
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Shirley Bailey, this the 16th day of Dec, 20 16, to certify which, witness my hand and seal of office.

Lucy Pope
Signature of officer administering oath

Lucy Pope
Printed name of officer administering oath

Notary Public
Title of officer administering oath



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Purchasing NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Approval of amendment to contract with SZH Architecture for Expo Expansion Phase III project.

TO: Commissioners Court

FROM: Leslie Contreras

DATE: 12/21/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

<u>File Name</u>	<u>Description</u>	<u>Type</u>
Contract Amednment with SZH Architect.pdf	Amendment	Backup Material
Original Contract.pdf	Original Contract	Backup Material

**Amendment to Brazos County Architect Services Contract
Agreement Between Owner and Architect**

The following provisions modify and amend provisions of the "Brazos County Architect Services Contract", document, between Brazos County and SZH Architecture ("Architect") dated December 11, 2015. The effective date of this Amendment is December 21, 2016.

1. Article 2 Payment. Delete the following,

"2.01 In consideration of the Architect's provision of the professional services in compliance with all terms and conditions of this Contract, the County shall pay the Architect according to the terms set forth in Exhibit "A" and Exhibit "B". Except in the event of a duly authorized change order(s), approved by the County as provided in this Contract, the total cost of the professional services provided under this Contract may not exceed 4.5% (four point five percent) of construction cost plus the cost to design Alternates as stated in "Exhibit B." and replace with:

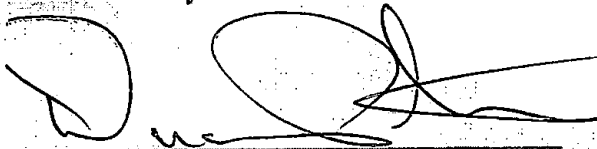
"2.01 In consideration of the Architect's provision of the professional services in compliance with all terms and conditions of this Contract, the County shall pay the Architect according to the terms set forth in Exhibit "A" and Exhibit "B". Except in the event of a duly authorized change order(s), approved by the County as provided in this Contract, the total cost of the professional services provided under this Contract may not exceed 3.35% (three point three five percent) of construction cost plus the cost to design Alternates as stated in "Exhibit B."

2. The Architect will credit the amount already paid by County up to the date of this amendment. County shall only be responsible for the remaining balance of the revised contract amount.

3. Except as modified and amended herein, the terms and conditions of the Agreement shall continue in full force and effect and are hereby ratified in their entirety.

OWNER

Brazos County

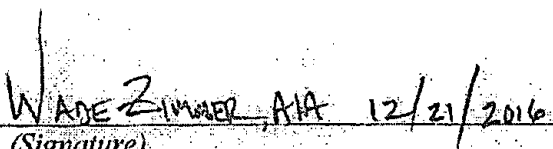


(Signature)

Duane Peters, County Judge

ARCHITECT

SZH ARCHITECTURE



(Signature)

Wade Zimmer, Principal

Original Architect Services Contract Document

Fees outlined on Page 1

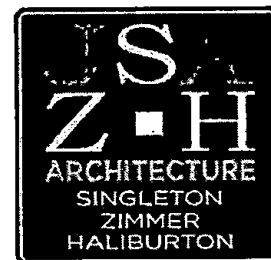
Agreement Signed:

Signed / Dated 2015.12.11 by Wade Zimmer, AIA

Signed / Dated 2015.12.15 by Duane Peters, County Judge

December 21, 2016

Charles Wendt
Purchasing Agent
200 S. Texas Avenue, Suite 352
Bryan, Texas 77803



**RE: ARCHITECTURAL SERVICES BILLING
Brazos Expo Complex Phase 3**

As Per Contract: A/E FEE: 3.35% of Construction for New Construction:
3.35% of \$4,427,000 = \$148,304.50

SZH Architecture construction proposal amounts for estimating purposes only at this time and will adjust the billing costs once the actual construction costs are known.

SERVICES: NEW CONSTRUCTION

Schematic Design:	15% of fee = \$ 22,245.68
Design Development:	20% of fee = \$ 29,660.90
Contract Documents:	40% of fee = \$ 59,321.80
Bidding/Negotiations:	5% of fee = \$ 7,415.23
Contract Administration:	20% of fee = \$ 29,660.90

SERVICES RENDERED TO DATE:

100% Complete of Schematic Design	\$ 22,245.68	
100% Complete of Design Development:	\$ 29,660.90	
100% Complete of Contract Documents:	\$ 59,321.80	
50% Complete of Bidding/Negotiations:	\$ 3,707.61	
0% Complete of Contract Administration:	\$ -	114,935.99

ADDITIONAL SERVICES:

100% LED Lighting Retrofit	Exhibit B to Contract	\$ 3,550.00	3,550.00
100% Storage Bin	Exhibit B to Contract	\$ 1,550.00	1,550.00
100% Add 400 Amp Electrical Panel	Exhibit B to Contract	\$ 5,100.00	5,100.00
100% Add Commercial Vent Hood	Exhibit B to Contract	\$ 2,600.00	2,600.00
100% Owner Requested Plan Revisions		\$ 9,000.00	9,000.00

TOTAL COMPLETED TO DATE:..... 136,735.99

LESS PREVIOUS INVOICES:..... 103,669.00

TOTAL NOW DUE:..... 33,066.99

Balance to Finish: \$33,368.51

THANK YOU!

Wade Zimmer
Wade Zimmer AIA

1711 CAVITT AVENUE
BRYAN, TX 77801
TEL: 979-779-5757
Wade@SZHArchitecture.com

BRAZOS COUNTY
ARCHITECT SERVICES CONTRACT

Agreement

This Architect Services Contract ("Contract") is between Brazos County, Texas, ("the County") and SZH Architecture PC. ("SZH" or the "Architect"). The Architect agrees to provide the County with certain professional services as described herein, and the County agrees to pay the Architect for those services. This Agreement, Exhibit A (Scope of Services), Exhibit B, and Exhibit C collectively comprise the Contract and shall be read together unless otherwise indicated. However, in the event of any conflict, this Agreement shall prevail. The "Project" contemplated herein is the design and construction of the Brazos County Expo, Phase III.

ARTICLE I
Scope of Services

1.01 In consideration of the compensation stated in paragraph 2.01 herein below, the Architect agrees to provide the County with the professional services as described in Exhibit "A", the Scope of Services ("Scope of Services" or "Scope"), incorporated herein by reference for all purposes.

ARTICLE II
Payment

2.01 In consideration of the Architect's provision of the professional services in compliance with all terms and conditions of this Contract, the County shall pay the Architect according to the terms set forth in Exhibit "A" and Exhibit "B". Except in the event of a duly authorized change order(s), approved by the County as provided in this Contract, the total cost of the professional services provided under this Contract may not exceed 4.5% (four point five percent) of construction cost plus the cost to design Alternates as stated in "Exhibit B."

ARTICLE III
Time of Performance

3.01 The Architect shall exercise a degree of care and diligence in the performance of all services under this Contract in accordance with the professional standards prevailing among Architects in the location in which the Architect practices or Brazos

County, Texas, skilled in design for projects of similar scope, and all of the Architect services shall be performed as expeditiously as is consistent with said standards and the orderly progress of the work.

3.02 Time is of the essence of this Contract. The Architect shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work in a timely manner. Promptly after the execution of this Contract, Architect shall prepare and submit for the County to approve in writing, a detailed schedule for the performance of the Architect's services. The Architect's schedule shall include allowances for periods of time required for the County's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which Architect has control shall not be exceeded without written approval from the Commissioner's Court.

3.03 The Architect's services consist of all of the services required to be performed by the Architect, Architect employees and Architect consultants under the terms of this Contract. Such services include normal structural, mechanical, electrical and plumbing engineering services, and any other design services that are normally or customarily furnished and reasonably necessary for a project of this type. The Architect shall contract and employ, at his expense the above mentioned consultants for the design of the Project, and such consultants shall be licensed as required by the State of Texas and approved in writing by the County. Any other consultants requested or required by the county shall be hired by the Architect at a fee approved by the County. Costs incurred for such consultants shall be treated as a reimbursable expense.

3.04 The Architect shall designate a principal of the firm reasonably satisfactory to the County who shall, so long as employed by the Architect and acceptable to the County, remain in charge of professional services through completion of the design and be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the County, prior to replacement.

3.05 The Architect shall be responsible for the coordination of all drawings and design documents used on the Project. The Architect shall also be responsible for the completeness and accuracy of all drawings and specifications submitted by or through the Architect and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.

3.06 The Architect's evaluations of the preliminary estimates of construction cost and detailed drawings, prepared by the Architect shall represent the Architect's best judgment as a design professional familiar with the construction industry.

ARTICLE IV Schematic Design

4.01 Upon the Architect's approval from Commissioner's Court and receipt of a letter of authorization to commence the Schematic Phase, the Architect shall meet with each department of the County that is included in the design or re-design for the purpose of determining the nature of the Project. The Architect shall use the County's Long Range Planning documents to assist in space requirements. The County shall designate a representative to act as the contact person on behalf of the County.

4.02 The Architect shall determine the County's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons. The Architect shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases.

4.03 The Architect shall prepare a conceptual design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The conceptual design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the County's request, the Architect shall meet with the Commissioner's Court or appointed Committee to make a presentation of his or her report.

ARTICLE V Design Development

5.01 The County shall direct the Architect to commence work on the Design Development Phase by the approval of the Commissioner's Court or its designee. The Architect shall meet with the County for the purpose of determining the extent of any revisions to the Schematic Design. Authorization by the County to commence Design Development signifies an acceptance of the Schematic Design and its associated scope. Revisions to the scope of the Project requested by the county after such time shall require an adjustment to any or all of the following: budget, schedule, and design fees.

5.02 The Architect shall prepare the preliminary design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Architect shall submit to the County a detailed design and estimate of the construction costs of the Project, based on current area, volume, or other unit costs.

5.03 Upon completion of the Design Development Phase of the Project, the Architect shall meet with approved committee for Brazos County and make a presentation of the preliminary design of the Project. The Architect shall provide an explanation of the Design Development and cost estimate and shall verify that, to the best of Architect's belief, the Project requirements and construction can be completed within the project budget and schedule.

ARTICLE VI Construction Documents

6.01 The County Commissioners Court or its designee shall direct the Architect to commence work on the Construction Documents phase of the Project by sending to the Architect a "letter of authorization" to begin work on the Construction Documents phase of the Project. Upon receipt of the Letter of Authorization to proceed with the Construction Documents phase of the Project, the Architect shall immediately prepare the Construction Documents, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The final design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations. Revisions to the scope of the Project requested by the county after such time shall require an adjustment to any or all of the following: budget, schedule, and design fees.

6.02 Upon approval of the Construction Documents, the Architect shall warrant that the final design shall be sufficient and adequate to fulfill the purposes of the Project.

6.03 The Architect shall assist the County Purchasing Department to obtain bids for the completion of the construction Project. The Architect hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the Project unless warranted by necessity and approved by the Commissioner's Court or its designee.

6.04 The Architect shall provide the County, in sufficient quantity and media, with complete Contract documents sufficient to be advertised for bids by the County. Electronic copies in adobe portable document format are included as part of this contract. The cost of all printed media requested by the county for bidding or construction purposes shall be billed as a direct reimbursable with a 10% (ten percent) coordination mark up. The Contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the final design of the Project, with the submission of the complete Contract documents, and upon request of the County, the Architect shall meet with the approved Construction Committee for Brazos County and/or the Commissioner's Court to present the final design of the Project. The Architect shall provide an explanation of the final design and cost estimate.

ARTICLE VII
RFP Preparations, Bidding & Evaluation

7.01 The Architect shall assist the County in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Architect shall meet with the approved Committee and/or the Commissioner's Court to present and make recommendations on the bids submitted for the construction of the Project.

7.02 The Architect shall review the construction Contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Architect shall evaluate each bid and provide these evaluations to the County along with a recommendation on each bid. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the final design of the Project, then the Architect, at his sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the final design of the Project. Revisions to the plans shall derive from a revision to the scope or budget approved by the County.

7.03 Where substitutions are requested by a construction contractor, the Architect shall review the substitution requested and approve or disapprove such substitutions only after such recommendation by the Architect is approved by the County.

ARTICLE VIII
Construction Administration

8.01 The Architect shall be a representative of, and shall advise and consult with, the County (1) during construction, and (2) at the County's direction from time to time during the correction, or warranty, period described in the construction contract ("Construction Administration"). The Architect shall have authority to act on behalf of the County only to the extent provided in this Agreement unless modified by written instrument.

8.02 The Architect shall make visits to the site, with a frequency appropriate to the scope of the Project, to inspect the progress and quality of the executed work of the construction contractor and his subcontractors and to determine if such work is proceeding in accordance with the Contract documents. The Architect shall periodically review the as-built drawings, produced under a separate contract, for accuracy and completeness, and shall report their findings to the County.

8.03 The Architect shall keep the County informed of the progress and quality of the work by meeting regularly at agreed to times and dates with the approved County Committee. The Architect shall exercise the normal and customary standard of care and diligence in discovering and promptly reporting to the County any defects or

deficiencies in such work and shall disapprove or reject any work failing to conform to the Contract documents.

8.04 The Architect shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Architect's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the Contract documents.

8.05 The Architect shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Architect shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.

8.06 The Architect shall issue all instructions of the County to the construction contractor as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. The Architect shall interpret the contract documents and judge the performance by the contractor constructing the Project, and the Architect shall, within a reasonable time, render such interpretations and clarifications as deemed necessary for the proper execution and progress of the Work. The Architect shall receive no additional compensation for providing clarification of the Drawings and Specifications.

8.07 The Architect shall review the amounts owed to the construction contractor and recommend to the County, in writing, payments to the construction contractor of such amounts. The Architect's recommendation of payment, being based upon the Architect's on-site inspections and experience and qualifications as a design professional, shall constitute a recommendation by the Architect to the County that the quality of such work is in accordance with the Contract documents and that the work has progressed to the point reflected in Architect's recommendation for payment.

8.08 Upon notification from the construction contractor that the Project is substantially complete, the Architect shall conduct a review of the site to determine if the Project is substantially complete. The Architect shall review and amend a checklist of items, prepared by the contractor, that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Architect for completion have been completed, the Architect shall inspect the Project to verify final completion.

8.09 The Architect shall not be responsible for the work of the construction contractor or any of the subcontractors, except that the Architect shall be responsible for the

construction contractor's schedules or failure to carry out the work in accordance with the Contract documents if such failures result from the Architect's negligent acts or omissions. This provision shall not alter the Architect's duties to the County arising from the performance of the Architect's obligations under this Contract.

8.10 The Architect shall conduct at least one on-site review during the warranty period and shall report to the County as to the continued acceptability of the work.

8.11 The Architect shall not execute change orders on behalf of the County or otherwise alter the financial scope of the Project without advance, written authorization from the County.

8.12 The Architect shall perform all of his or her duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.

8.13 The Architect shall assist the construction contractor and County in obtaining an Occupancy Permit by accompanying governing officials during inspections of the Project if requested to do so by the County.

ARTICLE IX Change Orders & Documents & Materials

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized personnel of the County. The Architect shall not execute change orders on behalf of the County or otherwise alter the financial scope of the Project.

9.02 Written change orders must be approved by Commissioner's Court if the amount owed to Architect or Contractor changes. Change Orders that do not alter the approved budget shall be approved by the committee appointed by Commissioner's Court. **Any request by the Architect for an increase in the Scope of Services or an increase in the amount listed in paragraph 2.01 of this Contract shall be made and approved by the County Commissioners prior to the Architect providing such services or the right to payment for such additional services shall be waived.** If there is a dispute between the Architect and the County respecting any service provided or to be provided hereunder by the Architect, including a dispute as to whether such service in addition to the Scope of Services included in this Contract, the Architect agrees to continue providing on a timely basis all services to be provided by the Architect hereunder, including any service as to which there is a dispute.

9.03 The Architect shall furnish the County electronic plans and specifications in PDF format. It is hereby agreed that additional copies shall be provided to the County at the County's expense as outlined in Article VI, Section 6.04. The Architect shall provide copies of documents, PDF and image files if available, surveys, notes, and tracings used or prepared by the Architect. Building Information Models generated, maintained and used by the Architect shall remain the sole property of the Architect. The Architect shall also furnish one set of digital image files representing the final as-designed files as prepared under separate contract.

9.04 The Architect shall prepare Change Orders and Construction Change Directives for the County's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

9.04.1 The Architect shall review properly prepared timely requests by the County or Contractor for changes in the work, including adjustments. These requests shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a Minor Change in the Work or deny the request.

9.04.2 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the County, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change including any additional costs attributable to a changes in services of the Architect. Upon the County's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the County's execution or negotiation with the Contractor.

9.04.3 The Architect shall maintain records relative to changes in the work.

ARTICLE X Project Completion

10.01 The Architect shall conduct inspections to determine the date or dates of substantial completion and the date of final completion, shall receive from the

Contractor and forward to the County's review and records, written warranties and related documents required by the Contract documents and assembled by the Contractor, and shall issue a final certificate for Payment based upon a final inspection indicating the work complies with the requirements of the Contract document.

10.02 The Architect's inspection shall be conducted with the County's representative for the conformance of the work with the requirements of the contract documents and to verify the accuracy and completeness of the list submitted by the Contractor of work to be completed or corrected.

10.03 When the work is found to be substantially complete, the Architect shall inform the County about the balance of the contract sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the work.

10.04 The Architect shall receive from the Contractor and forward to the County: (1) consent of surety or sureties, if any to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

ARTICLE XI Warranty, Indemnification & Release

11.01 As an experienced and qualified design professional, the Architect warrants that the information provided by the Architect reflects high professional and industry standards, procedures, and performances. The Architect warrants the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of other services under this Contract, pursuant to a high standard of performance in the profession. The Architect warrants that the Architect will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the County shall not constitute, or be deemed, a release of the responsibility and liability of the Architect, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the County's approval be deemed to be the assumption of responsibility by the County for any defect or error in the aforesaid documents prepared by the Architect or the Architect's employees, associates, agents, and subcontractors.

11.02 The Architect shall promptly correct any defective designs or specifications furnished by the Architect at no cost to the County. The County's approval, acceptance, use of, or payment for, all or any part of the Architect's services hereunder or of the Project itself shall in no way alter the Architect's obligations or the County's rights hereunder.

11.03 In all activities or services performed hereunder, the Architect shall be deemed an independent contractor, and not an agent or employee of the County. The Architect and his or her employees are not the agents, servants, or employees of the County. As an independent contractor, the Architect shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the County, the Architect shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract.

11.04 The Architect must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of his or her employees for the Project.

11.05 Indemnity/ Comparative Negligence: The Architect shall indemnify the County only to the extent of the liability that was caused by the Architect. To the fullest extent by law, the Architect agrees to and shall indemnify, hold harmless, and defend the County, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability, of every kind including all expenses of litigation, court costs, and attorney's fees for injury to or death of any person, for damages to any property, or for any breach of contract, arising out of or in connection with the work done by the Architect under this Contract, provided and only to the extent that any such claim, loss, damage, cause of action, suit, or liability is caused in whole or in part by an act or omission of the Architect.

ARTICLE XII Insurance

12.01 The Architect shall procure and maintain required insurance at his or her sole cost and expenses for the duration of this Agreement and according to the minimum standards as set out in "Exhibit C."

ARTICLE XIII Use of Drawings, Specifications and Other Documents

13.01 Copies of the drawings, specifications and other documents prepared by the Architect for this Project shall become the property of the County whether or not the Project is completed. The County shall be furnished and permitted to retain reproducible copies and electronic versions of Architect's drawings, specifications and other documents.

13.02 The documents prepared by the Architect may be used as a prototype for other facilities by the County. The County may elect to use the Architect to perform the site adaptation and other architectural services involved in reuse of the prototype. If so, the Architect may elect to perform the work for an additional compensation that will

equitably compensate the Architect and required consultants only for the additional work involved. It is reasonable to expect that the equitable additional compensation will be significantly less than the fee provided for under this Contract.

13.03 In the event of termination of this Agreement for any reason, the County shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

13.04 Only the details of the drawings relating to this Project may be used by the Architect on other projects, but they shall not be used as a whole without written authorization by the County. The County's furnished forms, conditions, and other written documents shall not be used on other projects by the Architect.

ARTICLE XIV Termination

14.01 The County may terminate the Architect at any time upon **thirty (30)** calendar day's written notice. Upon the Architect's receipt of such notice, the Architect shall cease work immediately. The Architect shall be compensated for the services satisfactorily performed prior to the termination date.

14.02 If, through any cause, the Architect fails to fulfill his or her obligations under this Contract, or if the Architect violates any of the agreements of this Contract, the County has the right to terminate this Contract by giving the Architect **five (5)** calendar days written notice to the Architect. The Architect will be compensated for the services satisfactorily performed before the termination date.

14.03 No term or provision of this Contract shall be construed to relieve the Architect of liability to the County for damages sustained by the County because of any breach of contract and/or negligence of the Architect.

ARTICLE XV Miscellaneous Terms

15.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

15.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

County of Brazos
Attn: Wm. Charles Wendt, Purchasing Agent
200 South Texas Ave., Suite 352
Bryan, TX 77803

Architect:
SZH Architecture
1711 Cavitt Ave.
Bryan, TX 77801

15.03 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

15.04 This Contract represents the entire and integrated agreement between the County and the Architect and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

15.05 This Contract and all rights and obligations contained herein, may not be assigned by the Contractor without the prior written approval of the County.

15.06 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

15.07 The Architect and his or her employees must comply with all applicable federal and state laws and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Architect must obtain all necessary permits and licenses required for the completion of the Architect's work as outlined in this contract.

15.08 The Architect acknowledges that he or she has read, understood, and intend to be bound by the terms and conditions of this Contract.

15.09 This Contract will be effective when signed by the Architect and approved and signed by Commissioner's Court.

15.10 Notice of Indemnification. County and Architect hereby acknowledge and agree that this Contract contains certain indemnification obligations and covenants.

SZH Architecture, PC

Brazos County

Architect: Jim Singleton, FAIA

Brazos County Judge: Duane Peters

Signature: _____

Signature: _____

Date: _____

Date: _____

Exhibit "A" Scope of Services

It is Brazos County's intent that the Architect will be involved for the full duration of the design development, preparation of construction, bidding documents, and construction administration of the Project.

The Following List, dated September 16, 2015 as received via email from Tom Quarles, Expo Complex Manager, represents Architect's Scope of Service as well as those of the County's.

List of projects, in priority order, to be included in Phase III:

- (1) Design the last half of the Stall Barn (East side of the South Arena) that is now being used as a covered warm up arena. This entire Barn should include all amenities included in the West Stall Barn. In other words, when completed, it should duplicate the West Stall Barn. Provide LED lighting in the new addition
- (2) Design five (5) bays of a new Stall Barn (South end of the West side of the South Arena), including electrical drops, high volume, low speed fans and all other amenities included in the South five Bays of the West Stall Barn. This to be used as a replacement covered warm up arena. Provide LED lighting.
- (3) Upgrade sound system in the North Arena, East/West Pavilions and use the upgraded system in all new facilities. Upgrade specifications to be provided by Expo staff and sound consultant.
- (4) Build approximately 32 full hook up RV spaces near Jones Road, East of the former TAMU facility entrance road. All utilities are very close on site. RV spaces should be 18' wide and be configured into 4 rows. The last four spaces of each row, 16 total, should contain 50 amp electrical service. The remaining spaces should have 30 amp electrical service. Design by civil engineer under separate contract to be coordinated and bid with project.
- (5) Design approximately 64 additional parking spaces, southeast side of the property between the last gate entrance off Jones Road and the drainage ditch. Design by civil engineer under separate contract to be coordinated and bid with project.

Alternates listed in order of importance:

- (1) Design a replacement existing outdoor warm up arena (approximately 90' x 110'), displaced by new covered warm up arena, and place a simple gable galvalume roof cover with end panels. North/south sides should extend approximately 10' past the 90' width roof line on both sides leaving approximately a 14' eave height. Performance dirt to be specified by Expo staff. LED lighting included and four HVLS fans to be included down the middle (same size as those down the middle of the North Arena).
- (2) Include LED lighting for the current East/West Pavilions.
- (3) Design a block, divided storage bin, for different types of performance dirt, on the concrete pad that was used by the TAMU Equestrian Team.
- (4) Design the addition of a 400 amp panel of electrical power on the north east side of the West Pavilion opposite the back of the Ballrooms
- (5) Design the addition of a commercial vent hood in the South Arena concession stand with appropriate venting and roof penetration.

- (6) Replace current north arena lighting with LED lighting. (North arena includes offices, concessions, restrooms, etc.)
- (7) Replace current south arena lighting with LED lighting.
- (8) Replace current emergency power backups with stand-alone generators for the Exhibit Hall, North arena and South arena.
- (9) Sound improvements in East and West pavilions and adjacent areas. Upgrade specifications to be provided by Expo staff and sound consultant. Steve Hodge to provide PDF version of specifications, to be incorporated by SZH.

Exhibit "B"
Payment Terms

Compensation is based on an agreed fee, as outlined in the contract dated December 15, 2015. The County will reimburse the Architect for *actual*, non-salary expenses at the Architect's actual costs. Architect professional services fee for each of the five alternates is:

- | | |
|---|----------------|
| 1. LED Lighting Retrofit | \$3,550 |
| 2. Storage Bin | \$1,550 |
| 3. Add 400 amp panel | \$5,100 |
| 4. Add Commercial vent Hood to existing concession stand in south arena | <u>\$2,600</u> |
| Subtotal Professional Service Design Fee for Alternates: \$12,800 | |

Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount agreed upon.

The Architect must submit *monthly* invoices to the County, accompanied by an explanation of charges, professional fees, services, and expenses. Normal payment terms are no later than thirty (30) calendar days after the Auditor's office receives the invoice. Payments will be made after approval at a regular scheduled meeting of the Brazos County Commissioner's Court. The Brazos County Commissioner's Court normally meets every Tuesday of each month.

Exhibit "C"

PROFESSIONAL SERVICES INSURANCE REQUIREMENTS

Before commencing work, the successful firm shall be required, at his own expense, to furnish Brazos County Purchasing Department with evidence showing insurance coverage, meeting the minimum levels set forth below, to be in force throughout the term of the contract:

The following listed Insurance Requirements are considered the "Minimum" for any Contractor / Professional Service Provider to work on behalf of BRAZOS COUNTY

- | | |
|--|-----------------------|
| 1) Commercial General Liability | |
| General Liability with a minimum limit of | \$1,000,000 per occur |
| General Aggregate limit shall apply per project | \$2,000,000 |
| Products-Comp/Ops Aggregate | \$1,000,000 |
| Personal Injury & Adv. Liability | \$1,000,000 |
| | |
| 2) Automobile Liability | |
| Owned/Non-Owned and Hired | \$1,000,000 |
| | |
| 3) Workers Compensation Coverage | Statutory |
| & Employers Liability w/waiver of subrogation | \$1,000,000 |
| | |
| 4) Umbrella / Excess Liability | \$1,000,000 (Minimum) |
| | |
| 5) Architect's Professional Liability (E & O) | \$1,000,000 (Minimum) |
| | |
| 6) Additional Requirements: | |
| a. Additional Insured: The General Liability and Umbrella/Excess Liability Insurance Programs will be endorsed to add the following as Additional Insured: Brazos County (ISO Policy Endorsements CG 20 10 or equivalent). | |
| b. Additional Insured: The Auto Liability Insurance Program will be endorsed to add the following as Additional Insured: Brazos County | |
| c. Waiver of Subrogation: All Insurance Programs including Professional will be endorsed to provide a Waiver of Subrogation in favor of: Brazos County. | |
| d. Subcontractor's General Liability, Auto Liability and Umbrella/Excess Liability Insurance Programs will be endorsed as "Primary" to that of the General Contractor and Brazos County. | |

- e. Subcontractor will be responsible for the "Same" Insurance Compliance of other Contractors / Professional Services Providers hired by the General Contractor.
- f. All Insurance Programs are to be endorsed to provide a 30-Day Notice of Cancellation to the Certificate Holder.
- g. Subcontractor's General Liability and Umbrella Insurance Program are to be endorsed with the Aggregate Per Project Endorsement.
- h. An "Original Certificate" of Insurance will evidence compliance with the Insurance Requirements.
- i. It will be the Subcontractor's responsibility to insure their owned or rented tools and equipment required for this project.
- j. Insurance Carrier's AM Best's Rated A-7 or better and licensed to do business in the State of Texas.

Before commencing work, the successful firm shall be required, at his own expense, to furnish Brazos County Purchasing Department with evidence showing insurance coverage, meeting the minimum levels set forth below, to be in force throughout the term of the contract:

Please state the limits of each policy you have in effect:

- A. Architect's Professional Liability (E & O) with a minimum limit of \$ 1,000,000.
- B. General Liability with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate. General aggregate limit shall apply per project.
- C. Auto Liability with a combined limit of \$1,000,000.
- D. Statutory Worker's Compensation with waiver of subrogation.

All insurance shall be occurrence form only. The proof of insurance shall be made on an Accord 25 form and the form shall have an original signature of an authorized representative, not the agent. Description of operations shall include the name of the project.

Brazos County is to be named as ***additional insured*** on Comprehensive Coverage.

The Architect agrees to indemnify, defend and hold harmless the County, it's employees, and agents from and against any loss damage.

Each insurance policy to be furnished by the successful party shall include, by endorsement to the policy, a statement that a notice shall be given to Brazos County by certified mail thirty (30) days prior to cancellation or upon any material change in coverage.

The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The Contractor's insurance coverage shall be primary insurance with respect to the County, its officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees or volunteers shall be considered in excess of the Contractor's insurance and shall not contribute to it. Further, the Contractor shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. **All Certificates of Insurance and endorsements shall be furnished to the County's Representative and approved by the County *before* work commences.**

1. GENERAL REQUIREMENTS APPLICABLE TO ALL POLICIES

- a. Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
- b. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- c. "Claims Made" policies will not be accepted.
- d. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Brazos County.
- e. Upon request, certified copies of all insurance policies shall be furnished to Brazos County.

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Worker's Compensation Commission, or a coverage agreement)TWCC-81), TWCC-83, or TWCC-84), showing statutory worker's compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in section 406.096 {of the Texas Labor Code}) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not

include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on the proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Contractor providing services on the project, for the duration of the project.*
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file providing services on the project, and certificates of coverage showing coverage for all person; and*
 - (2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.*
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:*
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, that meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;*

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person know or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (a)-(g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or, in the case of a self-insured, with the commission's Division of Self-Insurance regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

2. **CERTIFICATES OF INSURANCE** shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

a. The company is licensed and admitted to do business in the State of Texas.

- b. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
- c. All endorsements and insurance coverage according to requirements and instructions contained herein.
- d. The form of the notice of cancellation, termination, or change in coverage provisions to Brazos County.
- e. Original endorsements affecting coverage required by the section shall be furnished with the certificates of insurance.

Brazos County is to be named as ***additional insured*** on Comprehensive Coverage.

The Architect agrees to indemnify, defend and hold harmless the County, its employees, and agents from and against any loss damage.



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Purchasing NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Approval of evaluation committee for RFP 17-253, Expo Expansion - Phase III:

- a. Gary Arnold
- b. Irene Jett
- c. Duane Peters
- d. Tom Quarles
- e. Legal (non-voting)
- f. Purchasing (non-voting)

TO: Commissioners Court

FROM: Leslie Contreras

DATE: 12/21/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

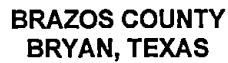
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File Name


Description

Type

No Attachments Available



APPROVED



12/27/16

Date

Duane Peters
County Judge



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Purchasing NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Approval to issue county diners club credit cards for Constable Pct. 3 with a credit limit of \$1,000.00 for travel purposes to the following:

- a. J.P. Ingram
- b. Calder Lively

TO: Commissioners Court

FROM: Leslie Contreras

DATE: 12/19/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

[Constable_3_Request.pdf](#)

Description

Request from Department

Type

Backup Material



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Purchasing NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Approval of Amendment No. 2 and extension of contract #17-087R for Full Service Computerized Indexing, Optical Imaging Systems and Services for Vital and Real Property Records with Xerox Government Records Services, Inc.

TO: Commissioners Court

FROM: Leslie Contreras

DATE: 12/19/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

[Original Contract.pdf](#)

[17-087R_contract_extension_with_Xerxo.pdf](#)

Description

Original Contract

17-087R Renewal letter

Type

Backup Material

Backup Material



**Contract for Full Service Computerized Indexing,
Optical Imaging Systems and Services for
Vital and Real Property Records, Brazos County, Texas**

Amendment No. 2

Government Records Services, Inc.

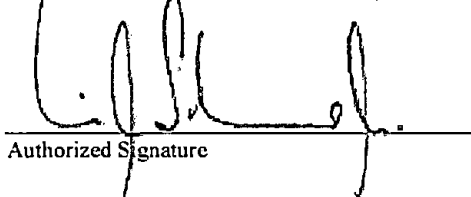
Brazos County, Texas

This second amendment ("Amendment No. 2"), to the Contract for Full Service Computerized Indexing, Optical Imaging Systems and Services for Vital and Real Property Records, Brazos County, Texas dated January 26, 2010, as amended by sales order dated February 26, 2013 and by amendment in May 2013, and extended by sales orders dated January 6, 2015 and December 22, 2015 ("Agreement") is made by and between **Government Records Services, Inc.**, 8600 Harry Hines Blvd., Dallas, TX 75235 ("Xerox") and **Brazos County**, 300 E. 26th Street, #120, Bryan, TX 77803 ("Client"). Xerox and Client (each individually a "party" and collectively, the "parties") agree as follows:

1. This Amendment No. 2 is effective on January 26, 2017.
2. In accordance with the provisions of the paragraph entitled "Duration", the parties agree to extend the Term of the Agreement for an additional twelve (12) months from January 26, 2017 through January 25, 2018.
3. All other terms and conditions of the Agreement except as modified by this Amendment No. 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned authorized representatives of Xerox and Client have executed this Amendment.

Government Records Services, Inc.



Authorized Signature

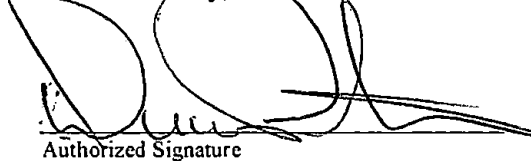
Louis Schiavone, Jr.

Name (Type/Print)

VP and Managing Director

Title (Type/Print)

Brazos County, Texas



Authorized Signature

Duane Peters

Name (Type/Print)

County Judge

Title (Type/Print)



**Contract for Full Service Computerized Indexing,
Optical Imaging Systems and Services for
Vital and Real Property Records, Brazos County, Texas**

Amendment No. 2

Government Records Services, Inc.

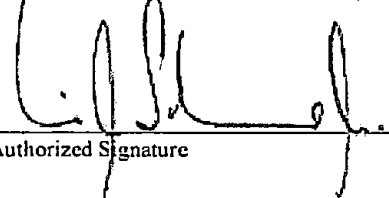
Brazos County, Texas

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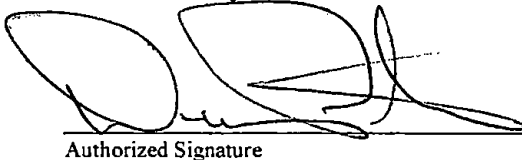
Louis Schiavone, Jr.

Name (Type/Print)

VP and Managing Director

Title (Type/Print)

Brazos County, Texas


Authorized Signature

Duane Peters

Name (Type/Print)

County Judge

Title (Type/Print)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2016-147520

Date Filed:
12/19/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Xerox Government Systems LLC
Dallas, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Brazos County, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

17-087

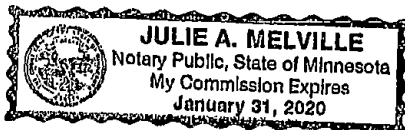
Software, Systems, Business Services, Land Records Recording System

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Xerox Corporation	Norwalk, CT United States	X	X
	Xerox Business Services LLC	Dallas, TX United States	X	X

5 Check only if there is NO Interested Party. ☐

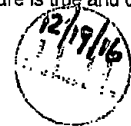
6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



John Hlavac

Signature of authorized agent of contracting business entity



AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said JOHN HLAVAC, this the 19th day of DECEMBER, 2016, to certify which, witness my hand and seal of office.

Julie A. Melville
Signature of officer administering oath

JULIE MELVILLE
Printed name of officer administering oath

NOTARY
Title of officer administering oath

**CONTRACT FOR FULL SERVICE COMPUTERIZED INDEXING,
OPTICAL IMAGING SYSTEMS AND SERVICES FOR VITAL AND REAL
PROPERTY RECORDS, BRAZOS COUNTY, TEXAS**

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF BRAZOS §

This Contract for Full Service Computerized Indexing, Optical Imaging Systems and Services for Vital and Real Property Records (herein the "Contract"), is made and entered into by and between BRAZOS COUNTY, a political subdivision of the State of Texas, on behalf of its County Clerk, hereinafter referred to as "Client" or "Brazos County", and GOVERNMENT RECORDS SERVICES, INC., 2800 W. Mockingbird Lane, Dallas, Texas 75235, hereinafter referred to a "Provider", individually referred to as "party" and collectively as "parties".

RECITALS

WHEREAS, Provider provides microfilming, digital imaging, indexing and storage and maintaining on-line Real Property Records and Vital Statistics Records for various counties throughout the State of Texas; and

WHEREAS, Brazos County wishes for Provider to microfilm, digitize, index, store and maintain Brazos County Records on-line.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the services and product stated herein the parties agree to the terms and conditions set forth herein.

CONSIDERATION

Client agrees to pay for Real Property Recording, Full-Service Computerized Indexing, and Digital Imaging Systems and Internet Services, as those services are specifically described in this Contract and the Exhibits attached hereto, as follows:

See Exhibit "A" attached – Pricing of Systems and Services

See Exhibit "B" attached – Equipment

See Exhibit "C" attached – Description of Processing

See Exhibit "D" attached – Description of Computerized Indexing System

See Exhibit "E" attached – Description of Microfilm Conversion, Loading, Linking to Real Property Computer System

Exhibits A, B, C, D and E are attached hereto and made a part hereof for all purposes.

The costs of the systems and services described herein have been negotiated by the Department of Information Resources of the State of Texas. These negotiated prices are offered to Brazos County through the Department of Information Resources Contract # SSD-1010.

DURATION

This Contract shall commence on Jan. 26, 2010 (signing date) and shall expire 5 years from signing date or on Jan. 25, 2015 subject to the annual appropriation of currently available funds by the Brazos County Commissioners Court. Client shall have three consecutive twelve month renewal options to commence upon expiration of the previous term upon the same terms and conditions then in effect. The Client shall notify the Provider in writing of its decision to exercise this option 30 days prior to the expiration of the original term or a renewal term. Such renewal terms shall be upon the then existing terms and conditions.

CONFLICT OF INTEREST

No public official shall have interest in this Contract, in accordance with Vernon's Texas Codes Annotated Local Government Code Title 5, Subtitle C, Chapter 171.

CONFIDENTIALITY

All information disclosed by Client to Provider for the purpose of the work and services to be done in performance of the Contract, or information that comes to the attention of the Provider during the course of performing such work is to be kept strictly confidential. Provider shall not publish, distribute, or reproduce in any way the Client's records without the express written authorization of the Brazos County Clerk.

SYSTEM AND PROCESS

Provider represents that the mechanical process to be used to create the records to be imaged and stored hereunder is as set forth on Exhibit "C". Provider further warrants and represents that the indexing system to be leased hereunder shall conform to the specifications and descriptions set forth in Exhibit "D".

CHANGE ORDERS

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the Contract. All change orders to the Contract shall be made in writing and signed by both parties. Either party may request a change order. Within 5 days of receiving or initiating a written change order, Provider will prepare a written cost estimate and schedule for the requested change to Client. All technology or service related change orders shall be agreed to by Provider and the County Clerk. If a change order effects the cost of the Contract, or any term not described above, such change order must be submitted to the County Commissioners Court for approval. Such change order shall be considered at the next regularly scheduled Commissioners Court hearing after such change order is submitted and for which adequate notice is possible under the Texas Open Meetings Act.

ASSIGNMENT

The Provider shall not sell, assign, transfer or convey to any third-party this Contract in whole or in part, without the prior written consent of the Brazos County Commissioners Court.

INDEMNIFICATION

Provider shall defend, indemnify and hold harmless Brazos County and all of its officers, agents and employees from all suites, actions, or other claims of any character, name and description brought for or on account of an injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the Provider, or of any agent, employee, subcontractor or supplier in the execution of, or performance of this Contract. Provider shall pay any judgment with costs which may be obtained against Brazos County growing out of such injury or damages.

SALES TAX

Brazos County is by statute exempt for the State Sales Tax and Federal Excise Tax; therefore, the price shall not include taxes.

DESIGN, STANDARDS, AND PRACTICES

Services to be furnished by Provider must conform to the highest standards of practices in the industry. The digitized microfilm to be processed pursuant to this Contract shall meet the highest standards of the industry and shall conform to the standards adopted subsequent to the date of this Contract, if any, by the American National Standard's Institute and/or the Texas State Library and Archive Commission.

COMPLIANCE WITH GOVERNING LAWS

All services provided for herein must comply with all federal, state, county and local laws governing or covering the type of services included in this Contract.

PATENTS/COPYRIGHTS

If any claim is asserted or action or proceeding brought against the Client which alleges that all or any part of the software provided hereunder in the form supplied by Provider, or the Client's authorized use thereof, infringes or misappropriates any United States copyright or patent, or any trade secret, license, grant, or other proprietary right, the Client shall give Provider prompt written notice thereof. Provider shall defend any such claim or action with counsel of Provider's choice and at Provider's expense and shall indemnify the Client for any costs, including reasonable attorney's fees, incurred by the Client in connection therewith. The Client shall cooperate fully with and may monitor Provider in the defense of any claim, action or proceeding and will make employees available as Provider may reasonably request with regard to such defense, subject to the reimbursement by Provider of all reasonable costs and expenses occasioned by Client's cooperation in such defense.

If the software provided by Provider is, in either Client's or Provider's opinion likely to become or does become the subject of a claim of infringement or misappropriation of a copyright, patent, trade secret or other contractual or proprietary right, or if a temporary restraining order or other injunctive relief is entered against the use of part of or all of the software, Provider shall at its sole cost and expense select one of the following remedies, which selection shall be in Provider's sole discretion:

1. Promptly replace the software with a compatible functionally equivalent, noninfringing and/or nonrestrained software; or
2. Promptly modify the software to make it noninfringing; or
3. Promptly procure the right of the Client to use the software as intended.

Notwithstanding any provision in this Contract to the contrary, Provider will not be responsible for indemnifying Client in the event that the Provider's software has been modified by Client or a third party without the prior written consent of Provider.

INSURANCE

Provider shall, at all times, maintain sufficient insurance coverage to protect Client from all reasonable loss by liability claims arising out of Provider's performance or lack of performance of this Contract. If Provider materially changes or cancels any insurance policy required by this Contract, Provider shall give Client prompt written notice of same.

Upon request, Provider will provide evidence of coverage on a standard ACORD form certificate of insurance.

INVOICES

Invoices shall be mailed directly to:

Honorable Karen McQueen
Brazos County Clerk
Brazos County Courthouse
300 E. 26th Street, #120
Bryan, Texas 77803

The invoices shall show:

1. Name and address of Provider.
2. Detailed breakdown of all charges for the services or products delivered stating any applicable period of time.

Invoices shall be based upon actual services rendered and actual hours of performance and/or products delivered.

PAYMENT

Agreed payments will be made by Client to Provider upon receipt and acceptance by Client of all completed services and/or products ordered and receipt of a valid invoice in accordance with V.T.C.A., Government Code Section 2251.021. Client agrees to pay late charges of one and one half percent (1.5 %) of any balance due to Provider that is outstanding for more than thirty (30) calendar days.

DELIVERY OF HARDWARE EQUIPMENT

Provider shall replace the computer hardware and other equipment currently in use by Client with the hardware and equipment set forth on Exhibit "B" and thereafter as may be needed due to hardware or equipment failure, on Client's premises for use of Client during the term of this Contract. Subject to the terms hereof, the title and possession of the hardware and other equipment furnished by Provider shall at all times, after delivery to Client, be and remain the sole and exclusive property of Provider.

Provider shall permit the use and operation of the equipment currently being leased by Client from Provider simultaneously with the new equipment for as long as 3 weeks as a back-up

system until the Client is assured the new equipment is working properly. Such old equipment will continue in use during that time at no additional cost to the Client.

The hardware and equipment furnished Client according to this Contract shall not be used by Client during the time period of this Contract except in the furtherance and performance of the specific terms of this Contract.

Any operating software that Provider has received from the manufacturer of the hardware or vendor of the hardware shall be delivered to Client for its use, subject to the rights retained in such operating software and restrictions set forth by such manufacturer or vendor and shall at all times remain the property of Provider. Provider, or its vendor(s), retains all proprietary right to such operating software.

Upon the availability of the new equipment to Provider, Provider shall schedule Client for System Installation. Provider will give Client an estimate time and schedule for installation. Provider shall use its best effort to perform in a timely manner.

SITE PREPARATION

Client will provide at its own expense a site adequate in space and design for the installation and operation of the hardware. Client shall be responsible to provide (i) a site that is temperature-controlled (ii) has the necessary electrical outlet, circuits, and wiring for the hardware, and electric current of sufficient quality and quantity to operate the hardware, and (iii) cooperate with Provider in making arrangements with the local phone carrier for installation of a DSL, ISDN or phone line to the County Courthouse. Any charges due to the phone carrier for installation and monthly service charges shall be at Provider's expense. Client shall be responsible, at its cost, for the proper cabling and wiring of the County Clerk's Office with cabling sufficient to operate the system described herein. Provider shall notify the Client of the type and quality of cabling required to service the equipment. Provider has no duty to prepare the site for installation of the hardware, except as provided above, but does have a duty to give notice to Client of any inadequate conditions which it finds regarding the site.

INSTALLATION AND TRAINING

Provider shall have the duty to install or reinstall, if necessary, the hardware at the site designated by Client. Provider shall also have the duty to provide the adequate and necessary training, as determined in Client's sole judgment, of Client's employees for the operation of the above described hardware and for the understanding of the use of the software. If requested by Client, Provider will furnish additional training at Client's site to compensate for any employee turnover or software upgrade, and to ensure Client's ability to fully utilize all hardware provided. All installation and training is included in the prices set forth in Exhibit "A".

LICENSE

Provider grants to Client the non-exclusive, nontransferable, revocable right to use the software provided under this Contract during the term of this Contract; such right specifically excludes the right of Client to sublicense, assign, or sublease any of its right hereunder without express written consent of Provider. Client agrees that the software products licensed herein are proprietary, and that Provider or the owner of the licensed software products retains ownership of all rights, title and interest of its licensed software products. Provider agrees to provide all updates of the Software described herein at no additional charge. All enhancements made on behalf of Client by Provider will be proprietary to Provider.

TERMINATION FOR BREACH OR DEFAULT BY ACS

If ACS materially breaches any of the terms and conditions set forth in this Agreement or fails to perform the obligations set forth in this Agreement and fails to cure the breach or failure within forty-five (45) calendar days (or other reasonable period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, Client may terminate this Agreement. Termination by Client shall be effective upon delivery of final payment to ACS of all sums due under this Agreement to the effective date of the termination. Client agrees to discontinue use of all hardware, software, and other ACS-owned materials no later than the effective date of termination and return the hardware, software, and other ACS-owned materials to ACS within thirty (30) calendar days after termination.

TERMINATION FOR BREACH OR DEFAULT BY CLIENT

If Client materially breaches any of the terms or conditions set forth in this Contract or fails to perform the obligations set forth in this Contract and fails to cure the breach or failure within forty-five (45) calendar days (or other reasonable period stated in a notice sent by Provider) after receipt of written notice specifying the basis for the breach or failure to perform, Provider may terminate this Contract for breach. Termination by Provider shall be effective upon receipt by Client of a written notice to terminate. Client agrees to discontinue use of all hardware, software, and other Provider-owned materials no later than the effective date of termination and return the hardware, software, and other Provider-owned materials to Provider within thirty (30) calendar days after termination.

TERMINATION WITH NOTICE

Either party may terminate this Contract at the end of the initial term or any renewal term by providing ninety (90) calendar days written prior notice to the other party of the non-renewal of the Contract.

TERMINATION FOR LOSS OF FUNDING

This Contract is subject to termination for convenience upon not less than thirty (30) days written notice to Provider if Client has failed to receive funds for the continued procurement of the products or services set forth in this Contract after every reasonable effort has been made by Client to secure the necessary funding and if no substitute arrangement is made by Client to obtain the same or similar products or services from another source.

INTERNET SERVICES

Provider will, as part of the pricing set forth on Exhibit A, place all Brazos County Clerk's Real Property Records (indices and records) on-line commencing with the date of this Contract and going back to January 1, 2000. Such records will be accessed at www.Texaslandrecords.com. The revenue derived from the searching of the records on the internet will be rebated to the Client by deducting the amount of money Provider received from the internet searches from the County Clerk's monthly invoice. Provider will charge a 50% administration fee to collect and disburse the internet searcher charges. Provider agrees to provide a monthly accounting to Client to verify internet revenue and administration fees. Client reserves the right to have such records audited annually at Client's expense. The per image retrieval and per copy price and subscription fee will be set by Client.

INDEPENDENT CONTRACTORS

It is agreed and understood that Provider, and its employees, agents, representatives, and anyone acting on behalf of Provider are independent contractors for the purpose of this Contract.

PROPRIETARY RIGHTS

Provider shall have the sole and exclusive right to patent or copyright any work resulting from its services. In order to protect Provider's interest in these materials, Provider will retain all proprietary rights including but not limited to source programs, object programs, control language procedures, systems design, modular program structure, system logic flow, technical documentation, report and video formats, subroutines, processing techniques and procedures, and report generation which were prepared on behalf of Client, subject, however, to the section of this Contract entitled "Title to Recorded Media". As part of this Contract, Client is granted a non-exclusive license to use these materials.

WARRANTY AND DISCLAIMER

Services to be performed by Provider will be done by qualified personnel, properly supervised, and will meet such other specifications as are mutually agreed upon by the parties. Provider further warrants and represents that the hardware and software together will perform in

accordance with the terms of this Contract. Provider warrants that each delivered and installed product will be in good operating condition on the day it is accepted. If any delivered material or product is not in good operating condition on the date of installation, Provider will make adjustments, repairs, and replacements necessary to place the product or material in good operating condition as promptly as possible after installation. If Provider can not make the system operable after adjustment or repairs within 5 days of installation, Provider will install new hardware and/or software.

THE LIMITED WARRANTIES SET FORTH IN THIS SECTION, AND THIS CONTRACT, ARE MADE TO CLIENT EXCLUSIVELY AND ARE IN LIEU OF ALL OTHER WARRANTIES. PROVIDER MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO ANY HARDWARE, SOFTWARE OR THE SERVICES PROVIDED UNDER THIS CONTRACT, IN WHOLE OR IN PART. PROVIDER EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PROVIDER EXPRESSLY DOES NOT WARRANT THAT ANY SOFTWARE OR ANY HARDWARE WILL BE ERROR-FREE, OR WILL OPERATE WITHOUT INTERRUPTION. CLIENT WAIVES ANY CLAIM THAT ANY OF THESE WARRANTIES OR THE REMEDIES PROVIDED UNDER THIS CONTRACT FAIL OF THE ESSENTIAL PURPOSE FOR WHICH THE WARRANTIES OR REMEDIES ARE PROVIDED.

CARE AND USE.

Client shall protect the hardware and software furnished by Provider from deterioration other than normal wear and tear. During the period of this Contract, Client shall not use the systems furnished by Provider according to the Contract for any other purpose other than that for which they were designed and only for the purposes intended for the performance of this Contract. Parties agreed that the cost of hardware maintenance service is included in the charges as stated in Exhibit "A". Provider assumes the obligation to repair and maintain such systems in good operating condition and repair at all times during the term of this Contract, subject to the risk of loss provision below.

The Client shall not, without prior written consent of Provider, affix or install any accessory equipment or device on the hardware that will either impair the originally intended function or use of such hardware.

Client will not move the hardware or permit the removal of any hardware from the original installation site without Provider's prior knowledge.

Notwithstanding any provision in this Contract to the contrary, the parties agree that Provider will bear the risk of loss or damage to any hardware while in transit to Client installation site(s). Client will bear all risk of loss or damage to hardware after delivery to the installation site(s), unless the loss or damage is due to the negligence or willful acts of Provider, its employees, agents, representatives, or subcontractors.

SUPPORT

Provider has its only customer support and development center in Dallas, Texas. This center only supports Provider's products and services. It handles hardware and software calls. Provider serves as the single point of contact for all support and maintenance issues for its customers.

Provider's philosophy is to insure that if a customer has a problem they can access the customer support center by 800-phone number and receive attention via an operator. All problems identified by phone shall be resolved within a reasonable amount of time. Provider will dial-in to the records management and imaging system and perform proactive support as well as normal maintenance and software problem resolution. Provider will guarantee a response or resolution within a reasonable amount of time.

Provider will maintain in conjunction with the system design specification a problem log that details all customer requests; regardless as to whether they are scope issues, software problem reports or enhancement requests. This log shall be available to all customer and project personnel at all times. Each issue identified in the log will contain a date of submission and the name of the person submitting the request. As a function of Provider status reports, Provider will provide a summary of the number of issues opened, the number of issues closed, issues requiring management attention (such as contractual issues), and copies of all resolved issues (resolution forms) from the pervious month. It is the intention of Provider to have all issues resolved as soon as possible.

TITLE TO RECORDED MEDIA

It is expressly agreed by Client and Provider that title to all media recorded pursuant to this Contract, in any form, (including, but not limited to: silver halide microfilm, hard disks, internet images, and any other magnetic recording) shall belong to the County Clerk of Brazos County.

DEFAULT

The occurrence of any one or more of the following events shall constitute a default under this Contract:

- Failure by Provider to perform any term, covenant or condition of this Contract, which default shall continue for a period of fifteen (15) days after Client furnishes Provider written notice of such failure to perform;
- Failure of Provider to repair or replace faulty or malfunctioning equipment, products, or materials within 48 hours of receipt of notice from the County Clerk, or failure of Provider to furnish adequate and proper training or retraining of Client's employees as deemed reasonably necessary by the County Clerk for Client to properly use the hardware and software of Provider;

- Failure of Provider to furnish the necessary hardware or software to site of Client as agreed upon herein;
- Except as provided herein, failure of Provider to protect from dissemination, without Client's prior written consent, the data which is indexed and stored by Provider;
- Failure by Client to pay payments or other amounts payable by Client under this Contract pursuant to the Texas Government Code §2251.021;
- Failure by Client to perform any term, covenant or condition of this Contract, which default shall continue without the commencement of a cure, for a period of fifteen (15) days after Provider furnishes Client written notice of such failure to perform.

REMEDIES UPON DEFAULT

Client reserves the right to enforce the performance of this Contract, in the event of a breach, in any manner prescribed by law.

Provider shall reimburse Client for all reasonable costs and reasonable expenses incurred in connection with the enforcement of any right or remedy under this Contract, including reasonable attorney's fees.

Client shall reimburse Provider for all reasonable costs and reasonable expenses incurred in connection with the enforcement of any right or remedy under this Contract, including reasonable attorney's fees.

Breach of Contract or default by Provider authorizes Client to terminate this Contract, purchase the services provided herein elsewhere and charge the full increase in costs, if any, to the Provider.

LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE, UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT EVEN IF THOSE DAMAGES ARE ATTRIBUTED TO BREACH OF THIS AGREEMENT, TORT, NEGLIGENCE, OR OTHER CAUSE OF ACTION. THE PARTIES AGREE THAT THIS LIMITATION SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF NON-DIRECT DAMAGES OR IF, UNDER APPLICABLE LAW, NON-DIRECT DAMAGES ARE CONSIDERED TO BE DIRECT DAMAGES. PROVIDER

SHALL NOT BE LIABLE FOR ANY FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS FROM THE HARDWARE, SOFTWARE OR SERVICES PROVIDED UNDER THIS AGREEMENT.

CLIENT ACKNOWLEDGES THAT PROVIDER HAS SET ITS PRICING AND ENTERED INTO THIS CONTRACT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTY AND DAMAGES SET FORTH IN THIS CONTRACT, AND THAT THESE LIMITATIONS AND DISCLAIMERS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. EXCEPT FOR SERVICE FEES AND AMOUNTS EXPRESSLY DUE AND PAYABLE TO PROVIDER UNDER THIS CONTRACT, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING FIFTY PERCENT (50%) OF THE FULL PRICE OF THIS CONTRACT.

NOTICES

Any notice required or permitted under this Contract shall be in writing and sent by certified mail, personal delivery or overnight courier to the following:

Client:

Honorable Karen McQueen
Brazos County Clerk
Brazos County Courthouse
300 E. 26th Street, #120
Bryan, Texas 77803

Provider:

Hubert P. Auburn
Vice President
Government Records Services, Inc.
2800 W. Mockingbird Lane
Dallas, Texas 75235

RETURN SOFTWARE TO PROVIDER

Upon the termination, regardless of cause, or expiration of this Contract, Client shall within 10 days of such termination or expiration, return all software furnished herein to Provider. Within 15 days immediately following such termination or expiration of this Contract, a representative of Provider shall have the right to go onto Client's premises, access all hardware furnished by Provider and remove from such hardware, hard-drives and software furnished by Provider that has been downloaded onto such hardware.

MISCELLANEOUS

If any provision of this Contract is held to be illegal, invalid, or unenforceable, that provision shall be severed or reformed to be enforceable and the remaining provisions hereof shall remain in full force and effect.

This Contract embodies the entire contract of the parties with respect to the subject matter hereof. This Contract cannot be modified except by written amendment or change order signed by both parties hereto.

This Contract shall be construed and enforced in accordance with the laws of the State of Texas, and performable in Brazos County, Texas.

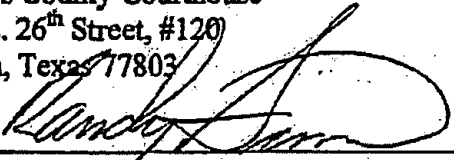
The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto and each party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

For the purpose of this original Contract, time is of the essence.

EXECUTED in two (2) originals in Brazos County, Texas on this the 26th day of January, 2010.


CLIENT:

Brazos County, Texas
Brazos County Courthouse
300 E. 26th Street, #120
Bryan, Texas 77803

By: 
Randy Sims, County Judge
Acting on behalf of, and by the authority of
The Commissioners Court of
Brazos County, Texas

PROVIDER:

Government Records Services, Inc.
2800 W. Mockingbird Lane
Dallas, Texas 75235

By: 
Hubert P. Auburn
Vice President

ATTEST:


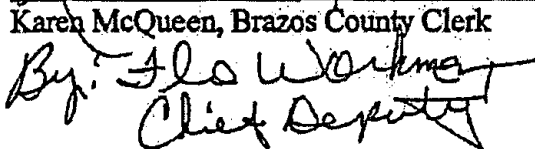

Karen McQueen, Brazos County Clerk
By: 
Chief Deputy

EXHIBIT "A"

PRICING

I. Full Service Computerized Indexing: Real Property Records

Price Per Instrument Per Month:

1 -	100 Instruments	-	\$3.98 each
101 -	200 Instruments	-	\$3.94 each
201 -	1,700 Instruments	-	\$3.68 each
1,701 -	Up	-	\$1.63 each

In the year 2008, Brazos County Clerk averaged paying \$7,400.00 per month for Full Service Computerized Indexing for Real Property Records. Monthly prices fluctuate depending on the number of instruments filed in the County Clerk's office each month.

Average Monthly Cost - \$7,400.00

II. Optical Imaging System: Real Property Records and Vital Statistic Records

Monthly Cost - \$4,340.00

Includes the following:

1. Computer hardware, software, hardware upgrades, software upgrades, training, and maintenance.
2. All supplies: Paper, toner cartridges, binders, shelving, cleaning and back-up tapes
3. Digital conversion of imaged Real Property and any other documents recorded on the ACS system to 16mm security microfilm.
4. Installation of DSL, ISDN, or phone line into Brazos County Courthouse and hook-up to hardware. Cost of monthly phone charges for service.
5. Storage of all Brazos County Clerk's records security microfilm in a temperature/humidity controlled vaults for safekeeping and backup.
6. Storage of Grantee/Grantor indices on magnetic tape for security backup and safekeeping.
7. Quarterly and yearly printed Grantee/Grantor indices in alphabetic format.

8. All Real Property images from January 1, 2000 forward will be loaded onto your new system.
9. All available Real Property images will be maintained on-line at www.texaslandrecords.com.

III. Total Average Monthly Billing - \$11,300.00

Full Service Computerized Indexing of
Real Property Records, and Optical
Imaging System for Real Property
Records and Vital Statistic Records

IV. Microfilm Conversion of Real Property Records includes importing to ACS 20/20 Perfect Vision computer system, matching to the existing grantor/grantee index and any hardware upgrades to maintain systems performance (project specifications see Exhibit "E"). This service will be invoiced at \$0.55 per each instrument converted and billed separately each month as the work is produced and loaded to the computer. There are approximately 674,600 instruments to be converted from 1967 to 1999. This project will take approximately 39 months to complete utilizing records management/archive fee established in September 2009 by Brazos County Commissioner's Court and is consistent with Brazos County Clerk's 2009 Records Management Plan. ACS will convert approximately 17,300 previously filed instruments per month for 39 months. The conversion will begin with filing year 1999 and work backwards through 1967. This project will begin on signing date be invoiced at \$9,515 per month until completion.

SPECIAL NOTE:

Subject to the "Care and Use" provision in the Contract, Provider is responsible for all hardware maintenance, including but not limited to the backing up of the hard-drive on all equipment leased hereunder. In the event that a hardware component is damaged or not working properly, it is Provider's full responsibility to replace the damaged component/equipment for the County in the most efficient and timely manner.

In the unlikely event that the hard drive of the server is damaged, Provider has the capability to load down all index information and images onto another server and replace the damaged one in the most efficient and timely manner.

EXHIBIT "B"

Hardware

Component	Quantity	Description
Dell PowerEdge T300 Tower	1	Image and Data Base Server
APC SmartUPS 1500 LCD	1	UPS for Server
Dell OptiPlex 960 Minitower w/ 22" LCD	2	Scanning Workstation
Fujitsu fi-6240	2	Duplex Scanner
Dell OptiPlex 960 Small Form Factor w/ 22" LCD	9	Public Workstation
Dell OptiPlex 960 Small Form Factor w/ 22" LCD	6	Cashiering Workstation
Axiom 760	6	Receipt Printer/Validator
TPG	6	Cash Drawer
Hewlett Packard LaserJet 4015x	3	Networked Duplex Laser Printer
APC Back-UPS 550	8	UPS for Scanning and Cashiering Workstations
APC SurgeArrest Performance	11	Power Strips for Public Workstations, Firewall, and Network Switch
Dell PowerConnect 2824 Switch	1	Network Switch
Cisco ASA 5505	1	Firewall
Seagate GO Station	2	Docking Station for Backup Drives
Seagate GO Drives -- 500 GB	6	Backup USB Drives

Software

Microsoft Windows 2008 Server Standard -- 64 bit
Microsoft SQL Server 2008
Microsoft Windows XP SP3
McAfee Anti-Virus
Symantec Ghost
Kofax Adrenaline Image Processing Engine (Scanning)
PDF Factory Pro Server (Server)

EXHIBIT "C"

BRAZOS COUNTY PROCESSING

The following is a step-by-step process for the operation of the Brazos County Clerk's office for Real Property Records with the new equipment.

1. After a document has been filed through cashiering, (as such process is described in a separate Contract) it is ready to be scanned. The document number and the number of pages are passed through the system to the scanning station. The Client has the option to scan the image immediately or wait until it receives a range of instruments to scan. The programs can run reports on which documents were scanned for the date and let you know if any numbers were skipped. The Client also has the ability to rescan if an image didn't scan properly onto the system. Once the Client saves that image to the system, it is ready to be viewed by the instrument number.
2. When the Client is done scanning for the day, they will send the daily images (documents) to Dallas. The images will be transferred to Dallas by DSL, ISDN, or modem line, whichever is available and most feasible, to be indexed. Once Provider receives these images, it will return the index back to Client the next day. Provider will blind verify the indexing, and create a roll of security microfilm to be stored in our temperature/humidity-controlled vault.
3. The index information will attach to the proper images that coincide with that instrument. At that moment the instrument is ready to be searched by the public.
4. Provider will continue to send printed indices and merges back to Client. (Currently doing this.) The Provider shall print and provide all hard bound printed indices required by this Contract.
5. Provider will send the digitized Grantor/Grantee indices to Client, the next day, after Provider receives the scanned images via DSL, ISDN, or modem line from Client.

Electronic Recording System (eRX)

ACS has implemented the Electronic Recording Program into the existing recording and indexing process.

ACS shall fulfill the following duties and obligations in support of the electronic recording system.

- a. ACS will be responsible for providing, supporting, and maintaining the eRX System software and the interface to the County Land Record Management System.
- b. ACS will ensure that eRX System is secure and that once documents are received, they remain immutable until such time as they are recorded.
- c. ACS will work with the Submitting Company and County to resolve issues encountered in the Electronic Recording Process that are within the scope of the system and software used to support the Electronic Recording Program.
- d. ACS will maintain an audit trail of documents received, the source received from, dates and times received, receipts received, receipts transmitted, and any errors encountered.

The aforementioned duties and obligations will be fulfilled in a timely fashion at ACS' expense.

County shall fulfill the following duties and obligations.

- a. County shall protect the integrity of the recordation process through ongoing monitoring of documents received and recorded through the Electronic Recording Program.
- b. County (and, if applicable, any third-party providers retained by County) will work with ACS to install, configure, and administer the necessary infrastructure components to facilitate the Electronic Recording Program.
- c. County (and, if applicable, any third-party providers retained by County) shall test and maintain the software and hardware required to operate the Electronic Recording program.
- d. County shall apply the same level of diligence in handling documents submitted electronically as those submitted through the normal paper process.

The aforementioned duties and obligations will be fulfilled in a timely fashion at County's expense.

EXHIBIT "D"

FULL SERVICE COMPUTERIZED INDEXING OF LAND RECORDS

Provider is capable of performing data input from a variety of microfilm formats including 16mm and/or 35mm rolls that contain the Client's various records images.

Provider utilizes a virtually error-free procedure for the entering of land records index data involving a combination of 100 percent key verification, machine editing procedures that will catch alphabetic data in numeric field and vice versa as well as machine checks for missing instrument numbers, missing parties to the document, et cetera, intensive operator training on documented reference materials for key entry personnel.

The computerized indexing services includes an alphabetic listing of the Grantors, an alphabetic listing of the Grantees, a "Missing Numbers Report" to account for all the Clerk's instrument numbers showing all the documents indexed in each group of documents submitted by Brazos County Clerk.

The Grantor/Grantee index output reports have the following specifications:

1. The names fields are 40 characters to minimize the need for operator judgments on abbreviations and to assure a truer alphabetic sort procedure.
2. The type of document field has 20 characters to provide adequate room to spell out most document types and certain combination document types.
3. Case numbers and money amounts are shown on all index entries for abstracts of judgements and tax liens.
4. Money amounts are shown on deeds of trust index entries.
5. Prior document references on assignments and releases are shown on the index report. If both volume and page prior document reference and a money amount are shown on the same document, the volume and page prior document reference will take priority over the money amount with respect to the information printed on the index report.
6. The page format of the data prominently displays the inclusive certification dates for the index series at the top of each page.
7. If requested by the Brazos County Clerk, all properties described on a document are shown on the index, regardless on number.
8. The output pages are approximately 8-1/2 by 14 inches in size, printed in a landscape mode and is a laser print-type quality.

9. Provider furnishes the necessary sectional post binders of a plastic or poly material comparable in quality and style to those currently in use by the Client. Alphabetic and "current" divider tabs and customized printing or labeling of the binders are also included.
10. Each index is merged with the prior month's index.
11. All months' indices are merged to create a year's index.
12. At the end of each year, that year's index is merged with the previous years' indices. The indices are merged in five (5) year periods, then the two (2) 5-year merges are merged into a 10-year merge. The Provider's System prints the merges on both sides of the paper, not just on the front side.

EXHIBIT "E"

CONVERSION OF REAL PROPERTY MICROFILM, LOADING, LINKING TO REAL PROPERTY COMPUTER SYSTEM

For film scanning ACS will retrieve the microfilm from ACS storage vault as needed. Technicians will inspect each shipped microfilm for quality, to detect any film that may have deteriorated or may contain poorly exposed document images which could be problematic for image conversion. Notices of any problems will be forwarded to Brazos County assigned staff members.

The microfilm will be scanned in dual stream mode (Grayscale and TIFF) using our existing latest generation state-of-the-art NextScan Eclipse hi-speed, high-quality microfilm scanning devices providing an initial image output of 300DPI.

As each volume is scanned, the scanner operator will add a control system entry indicating, total pages scanned, date of scanning, and scan station number. Page numbers are compared to system generated number as the pages are scanned and the operator notes any discrepancy in the control system. This identifies any missing or alpha suffixed page numbers. Missing pages will be reported to Brazos County as specified by a detailed image/audit report which will also be provided.

During scanning the operator will monitor image quality and rescan any documents of less than desirable quality. If necessary the technician will use ACS image-correction software to sharpen Grayscale images and convert to 200 DPI Tiff images. The result will be digital images of the highest and most consistent quality.

After scanning, images will be reviewed again to ensure the overall quality of the scanned images and that all corresponding microfilm images have been scanned and post-processed, quality reviewed with 100% image inspection, and numbered according to required format. Images will be organized as batches by Record Book Name, Volume and Page within a directory with the directory name being the book name.

Electronic images will be processed for file naming and final QC. Any files failing QC will be rescanned and reprocessed. These reprocessed images will be reviewed by management to verify that best effort has been applied to each questionable image with the resulting image being of the highest image quality possible from the original image scanned.

After film conversion and tagging, the newly created images will be imported to the ACS 20/20 System. Images will be matched and linked to the existing grantor/grantee index. New images will be downloaded via remote communications on your system providing a seamless transition. New images will also be added to the Brazos County real property web based on-line service.



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Purchasing

NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Approval of contract and award of RFP # 17-243 for the Renovation of Building for Employee Medical Clinic and Voter Administration to JaCody Construction, LP.

TO: Commissioners Court

FROM: Leslie Contreras

DATE: 12/19/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

Description

Type

RFP # 17-243 Renovation of Building for Medical Clinic & Voter Administration

	Max. Available	Gaeke Construction	**JaCody Construction	Madison Construction	Collier Construction *	Larry Young Paving
Base Bid		\$ 1,927,282.00	\$ 1,784,000.00	\$ 2,099,800.00	\$ 1,994,000.00	\$ 2,175,265.00
Alternate #1		\$ 18,000.00	\$ 7,778.00	\$ 9,950.00	\$ 12,000.00	\$ 30,000.00
Total		\$ 1,945,282.00	\$ 1,791,778.00	\$ 2,109,750.00	\$ 2,006,000.00	\$ 2,205,265.00
Price Points	40	37	40	34	36	32.5
Construction Time to Subst. Comp.		300	180	240	180	268
Time Points	10	6	10	7.5	10	6.7
Quality of previous, similar contracts with Brazos County	10	7	10	10	10	10
Proposer's reputation with similar projects	20	19	20	20	20	15
Ability to perform contract	20	20	20	20	20	20
Total	100	89	100	91.5	96	84.2

** With JaCody's Best and Final Offer

Recommended Award: JaCody Construction, LP

Approved by Commissioner's Court on this 27th day of December, 2016
 by [Signature] holding the position of Brazos County Judge

**AGREEMENT
FOR RENOVATION OF BUILDING FOR
EMPLOYEE MEDICAL CLINIC AND VOTER ADMIN.**

RFP # 17-243

BRAZOS COUNTY, TEXAS

TABLE OF ARTICLES

1. General Provisions
2. Owner
3. Contractor
4. Administration of the Contract
5. Subcontractors
6. Construction by Owner or by Separate Contractors
7. Changes in the Work
8. Time
9. Payments and Completion
10. Protection of Persons and Property
11. Insurance and Bonds
12. Uncovering and Correction of Work
13. Miscellaneous Provisions
14. Termination or Suspension of the Contract
15. Access to the Work
16. Standards
17. Prohibition against personal interest in the Contract
18. Prevailing Wage Rates
19. Authority to Contract

**AGREEMENT FOR RENOVATION OF BRAZOS COUNTY
COURTHOUSE – PHASE IV**

This Agreement for the **RENOVATION OF BUILDING FOR EMPLOYEE MEDICAL CLINIC AND VOTER ADMIN.**, Brazos County, Texas, in the amount of **ONE MILLION SEVEN HUNDRED NINETY ONE THOUSAND, SEVEN HUNDRED SEVENTY EIGHT DOLLARS (\$1,791,778.00)**, is entered into this 27th day of December, 2016 by and between **BRAZOS COUNTY, TEXAS** (hereafter referred to as "Owner"), 200 South Texas Ave., Ste. 352, Bryan, Texas 77803, and **JACODY CONSTRUCTION, LP** (hereinafter referred to as "Contractor"). The **RENOVATION OF BUILDING FOR EMPLOYEE MEDICAL CLINIC AND VOTER ADMIN** is hereinafter referred to as the "Project." The Architect/Engineer for the Project is the firm of **R.L. Payne** and is hereinafter referred to as "Architect."

**ARTICLE 1
GENERAL PROVISIONS**

1.1. BASIC DEFINITIONS

1.1.1 THE COMPLETE CONTRACT DOCUMENTS: The complete Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the "Agreement"), Conditions of the Contract (General, Supplementary and other Conditions), all documents included in **RFP # 17-243** and the Drawings, Project Manual and Bid Specifications, as well as 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 or Change Proposal Request; (3) a Construction Change Directive, or (4) a clarification, interpretation or 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 other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms or portions of addenda relating to bidding requirements). The Contract Documents executed in accordance with Sub-paragraph 1.5.1. shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.

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 Architect or Architect's consultants; (2) between the Owner and a Subcontractor or Sub-subcontractor, or (3) between any persons or entities other than the Owner and Contractor. The Architect shall, however, with the consent of Owner, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.2.1 SUMMARY OF THE CONTRACT PRICE: Contractor's price schedule, Exhibit E, indicated a best and final offer of **ONE MILLION, SEVEN HUNDRED NINETY-ONE THOUSANDS, SEVEN HUNDRED SEVENTY-EIGHT DOLLARS (\$1,791,778.00) inclusive of POST-BID ADDENDUM NUMBERS 1-3.**

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. Although not indicated, "Work" includes providing supplementary or miscellaneous items, appurtenances and devices incidental to or necessary for a sound, secure, complete and functional installation.

1.1.4 THE PROJECT: The Project is the **RENOVATION OF BUILDING FOR EMPLOYEE MEDICAL CLINIC AND VOTER ADMIN** in Brazos County, Texas as specified in the Contract Documents. The Project may include construction by the Owner or by separate contractors.

1.1.4.1 SUMMARY OF THE WORK: GENERALLY, the Project consists of the renovation of a building for the employee medical clinic and voter administration. Owner and Contractor have further agreed acceptance of the following: all items contained in POST BID ADDENDUM 1.

1.1.5 THE DRAWINGS: The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, 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, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL: The Project Manual is the volume usually assembled for the Work that may include the bidding requirements, sample forms, this Agreement, Supplementary Conditions of the Contract and Specifications.

1.1.8 GENERAL DEFINITIONS: Construction industry technical terms not defined in the Contract Documents shall have the meanings given as listed in the latest edition of the AIA "Glossary of Construction Industry Terms." Those not specifically defined either place shall have the meanings commonly attributed to them by the particular trade involved.

- .1 Provide:** shall be understood to mean: "Furnishing of all labor, materials, equipment, transportation and services referred to and installation of the materials, equipment and other items referred to, all in compliance with the requirement of the Contract Documents and applicable Federal, State and local laws and ordinances as well as requirements of Federal, State

and local authorities having jurisdiction at the site of the Work."

- .2 **Required:** shall be understood to refer to the requirements of the contract Documents unless its use in a sentence clearly implies a different interpretation.
- .3 Where "**as shown**," "**as indicated**," "**as noted**," and similar terms are used, it shall be understood that reference to the Contract Drawings is made, unless their use in a sentence clearly implies a different interpretation.
- .4 Where the terms "**Plans**" or "**Drawings**" are used, they shall be understood to include drawings, details and schedules as applicable.
- .5 **Construction Time:** the number of calendar days required to perform the work calculated from the date of signing of this Agreement until Substantial Completion as defined under Article 9.8.
- .6 **Day:** A calendar day beginning and ending at 12:00 midnight.
- .7 **Equal; approved equal; Architect approved; acceptable; approved; satisfactory; required; directed; instructed:** Such terms and related phrases shall relate to the opinions and interpretations of the Contract Documents by the Architect, unless otherwise stated, and shall be limited in authority and responsibility as defined under this Agreement and the contract between the Architect and Owner.
- .8 **Date of Final Completion:** The date when Architect and Owner find all the work of the Contract documents acceptable and the Contract fully performed.
- .9 **Occurrence:** Is defined as follows for purpose of insurance – An event which occurs during the policy period, or a continuous or repeated exposure to conditions which result, during the policy period in bodily injury, sickness or disease, or injury to or destruction of property, excluding injuries or deaths of one or more persons or organizations, including the loss of use thereof, resulting from a common cause or from exposure to substantially the same general condition existing at or emanating from each location shall be deemed to result from one occurrence.
- .10 **Not-In-Contract (N.I.C.):** Work not included in this Contract.
- .11 **And/or:** Shall mean both "**and**" and "**or**" and shall be enforceable by Owner when read in either manner.
- .12 **General Contractor:** Same as Contractor.
- .13 **Material Man; Material Supplier:** Anyone that supplies material only and does not perform any labor at the site of the work.

- .14 **Timely Change:** A change in the work that can be arranged before the particular item of work has required the expenditure of any non-recoverable costs by the Contractor and/or subcontractors.
- .15 **Late Change:** A change in the work that cannot be performed before the particular item of work that requires the expenditure of some non-recoverable cost after shop drawings, samples and/or schedules related to the change have been reviewed and found acceptable.
- .16 **Prompt:** Promptly and similar terms shall be held to refer to a time period of not less one week or more than two weeks.
- .17 **Addendum:** A change to the Construction Documents (General Documents, Specifications and Drawings) issued prior to the execution of the Agreement.
- .18 **Agreement/Contract:** Agreement/Contract means the same and are used interchangeably throughout this document. This Agreement/Contract is the signed agreement between Owner and Contractor for the performance of the Work.
- .19 **Critical Path:** The project's tasks that will cause the project end date to be delayed if they are delayed. The word "critical" does not imply how important a task is; a task is critical solely because it must occur as scheduled for the project to finish on time.
- .20 **Furnish:** Unless specifically limited in context, the word "furnish" and any derivatives thereof mean: deliver indicated items, materials, equipment, apparatus, appurtenances and all items necessary for a complete and proper installation to Project site and stored in secure locations.
- .21 **Install:** "Install" and any derivatives thereof mean; incorporated indicated items, materials, equipment, apparatus, appurtenances and all items necessary for the Work including all necessary labor, materials and connections to perform a properly and complete installation ready for operation of use, including but not limited to unpacking and assembly, if necessary.
- .22 **The Contractor Shall:** In the interest of conciseness; sentences, statements and clauses may be verb phrases with expressed verbs such as "furnish," "install," "provide," "construct," "erect," "comply," "apply," "submit," etc. Any such sentences, statements and clauses are to be interpreted to include the applicable form of the phrase "the Contract shall" preceding the expressed verb, with the requirements described interpreted as mandatory elements of the Contract.
- .23 **Evaluation:** "Evaluation" and any derivative thereof, as used in reference to Architect mean; to become generally familiar with the progress and quality of the portion of Work completed to determine in general if it is being performed in a manner indicating that the Work when

completed may be occupied or utilized by the Owner for its intended use. Such evaluations shall be based on what is plainly visible at the construction site during periodic visits to the Project, and without the removal of material or other Work that is in place.

- .24 Inspect:** "Inspect" and any derivative thereof, as used in reference to the Architect shall mean; Type of evaluation that a reasonably prudent architect, in the exercise of ordinary care, would make to determine if the Work is in general accordance with the Contract Documents; they are not "inspections" as would necessarily disclose a defect.
- .25 See:** In the interest of conciseness, references to specification sections and details are preceded by the word "see." Any such references are to be interpreted to include applicable form of phrase "...and comply with."

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.

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, nor limit the scope of work performed by any trade or by any Sub-contractor or supplier.

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

1.2.4. General Conditions and Supplementary Condition and General Requirements apply to all of the Contract Documents.

1.2.5 Precedence of the Contract Documents: The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "A."

- A. Modifications, Change Orders or a Change Proposal Request
- B. This Agreement, including the General Conditions stated herein.
- C. Addenda
- D. RFP # 17-243
- E. Special Conditions
- F. Specifications and Drawings. In the case of an inconsistency between Drawing and specifications or within either document, the better quality and the greater quantity of work shall be provided unless otherwise directed by Architect.
- G. Wage Rate

1.2.6 Current Editions: When any work is governed by reference to standard, codes, manufacturer's instructions or other reference documents, the latest issue in effect on

the original issue date of the Construction Documents shall apply whether or not the proper edition is noted.

1.2.7 Enumeration of Items: Lists of "work included," "work excluded" and "description of the work" and similar groupings are not intended to enumerate each and every item of work or appurtenance required therein, but shall be used in conjunction with all other portions of the Contract Documents to establish the requirements for completion of the Work or any portions thereof.

1.2.8 Reference Guarantees: When reference standards are made a part of the requirements, the warranties and guarantees they contain shall apply, except for the portions that are less stringent than those required by the Contract Documents or imply or state exclusions, limitations or waivers that are inconsistent with the requirements of the Contract Documents.

1.3 CAPITALIZATION

1.3.1 Terms capitalized in these General Conditions include those which are: (1) specifically defined; (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document, or (3) the titles of other documents published by the American Institute of Architects.

1.4 INTERPRETATION

1.4.1 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 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Contract Documents shall be enumerated on attachment(s) to the Agreement and attachments(s) shall be signed by the Owner and Contractor as provided in the Agreement.

1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor shall verify the location of all easements before beginning the project.

1.6 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS:

1.6.1. The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and/or Architect's consultants are Instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor, nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect or the Architect's consultants shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright, unless indicated differently in the Owner – Architect Agreement. The Drawings,

Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier 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/or Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and/or Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and/or the Architect's consultants. 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 copyright or other reserved rights.

1.6.2 CONTRACTOR'S USE OF INSTRUMENTS OF SERVICE IN ELECTRONIC FORM

1.6.2.1 Architect may furnish or sell, at an agreed upon cost, to Contractor, Subcontractor, Sub-subcontractor, and material and equipment supplier, or others versions of Instruments of Service in electronic form for use solely with respect to this Project. The Contract Documents executed or identified in accordance with Subparagraph 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic means involving computers.

1.6.2.2 If required to be furnished, or if furnished, Architect or Architect's Consultants will furnish electronic data in software format in use by Architect at the time Architect's services are performed. Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers, or others shall be responsible for proper storage, maintenance and conversions necessary to prevent degradation or obsolescence of data. Any change or modification in electronic data by Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers, or others shall be at their sole risk and without liability or legal exposure to Architect, Architect's consultants or Owner, and to fullest extent permitted by law, the Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers agrees to hold harmless and indemnify Architect, Architect's consultants and Owner from and against all claims, liabilities, losses, damages and costs, including but not limited to reasonable attorney's fees, arising there from or in connection therewith.

1.6.2.3 The Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers, and others understand that the conversion of electronic information and data supplied by the Architect or Architect's consultants from the system and format used by the Architect or Architect's consultants to an alternative or upgraded system or format, whether performed by Architect, Architect's consultants or others, cannot be accomplished without the introduction of inexactitudes, anomalies, omissions and errors. In the event the electronic data furnished to the Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers, is converted, they agree to assume all risks associated with such conversion. If Architect and/or Architect's consultants furnish electronic data, the Contractor, any Subcontractors or Sub-subcontractors, material or equipment suppliers, and others agrees to hold

Architect, Architect's consultants and Owner harmless and to waive any and all claims, liabilities, losses, damages and costs arising out of, or in any way connected with, the conversion of electronic data supplied by the Architect or Architect's consultants.

1.6.2.4 If documents, including those in electronic form, are modified, revised or changed in any way by the Contractor, Subcontractor, Sub-subcontractor, and material and equipment supplier, or others, any reference to the Architect and Architect's consultant and any professional seals and signatures shall be removed from the documents.

1.6.2.5 In consideration for the use of the Drawings, Specifications and other documents, including those in electronic form, Contractor, Subcontractor, Sub-subcontractor, material and equipment supplier and others agree to indemnify, defend and hold harmless the Architect, Architect's consultants and Owner from and against, any claim or liabilities arising out of such use.

ARTICLE 2

OWNER

2.1 DEFINITION

2.1.1 The Owner is Brazos County, Texas. The term "Owner" means the Owner or the Owner's authorized representative. The Owner's representative is **Gary Arnold, Director of Planning and Traffic**, or such other person as may from time to time be so designated by the Brazos County Commissioners Court to act on behalf of Owner.

2.1.2 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is 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 at the time of execution of the Agreement and within five (5) days after any change, information of such change in title, recorded or unrecorded.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 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.

2.2.2 Except for permits and fees, including those required under Paragraph 3.7, which are the responsibility of the Contractor under the Contract Documents, 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 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness and complete and accurate to the best of the Owner's information and belief. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for

such information or services.

2.2.4 Contractor will be furnished, free of charge, one set of Contract Documents in Adobe "PDF" file format suitable for plotting or printing. Contractor may use for limited purpose of making prints thereof required for use in performance of Work, in accordance with Paragraph 1.6.

2.2.5 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK: If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails, more than once, to carry out Work in accordance with the Contract Documents, the Owner by written order may order 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 Subparagraph 6.1.3. Owner does not waive the right to stop the work in any future situation if Owner waives this right in any one situation.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work, or any portion thereof, in accordance with the Contract Documents or fails to complete, within the time period stipulated, any items of work scheduled (punch listed) to be done subsequent to the Date of Substantial Completion or fails to complete or correct any items of work disclosed subsequent to the Date of Substantial Completion and fails within a seven day period after receipt of written notice from 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 cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor shall be done after consultation with 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.

2.4.2 Neither Owner nor its officers, agents, or employees are in any way liable or accountable to Contractor or its Surety, if any, for method by which completion of said Work, or any portion thereof, is accomplished or for price paid therefore, unless Surety is required to pay cost to complete the Project, in excess of the amount contained in the Owner-Contractor Agreement, as a direct result of the Architect's negligent issuance of Certificate(s) for Payment. Contractor and Surety are responsible for all costs for completing the Work including cost in excess of original Contract Sum. Owner does not forfeit right to recover damages from Contractor or Surety for failure to complete Contract by taking over the Work or by declaring Contract in default. Maintenance of the Work remains Contractor's and Surety's responsibility as provided

for in Performance Bond and guarantee of Contractor.

2.4.3 The Owner reserves the right to:

- .1 observe the work, at any time, whenever it is in preparation or progress;
- .2 make emergency repairs to the work during the guarantee period, to prevent further damages and the Contractor shall pay for such repairs when necessitated by defects in the Contractor's work;
- .3 make changes to the work.

2.4.4 The Owner shall not be required to accept from the Contractor (unless specifically agreed upon):

- .1 Partial Substantial Completion;
- .2 Substantial Completion when it occurs prior to the expiration of the Construction Time.

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 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

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.1, 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 construction by the Contractor and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a properly prepared, timely Request For Information (RFI) in such form as the Architect may require.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but 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. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes and rules and regulations, unless they bear upon construction means, methods, techniques or safety and health precautions, but the Contractor shall promptly report to Architect any nonconformity

discovered by or made known to the Contractor as a Request For Information (RFI) in such form as the Architect may require.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications, interpretations or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

3.2.3 The Contractor shall verify the location of all easements before beginning the Project.

3.2.4 The Contractor shall perform the Work in accordance with the Contract Documents and submittals reviewed pursuant to Paragraph 3.12.

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 review, substantiate, and comply with current industry execution standards and manufacturer's current execution instructions and 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 resulting loss or damage.

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 performing portions of the Work under a contract with the Contractor.

3.3.3 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 other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3.5 Contractor is solely responsible for coordination of scope of Work for its own forces, and of Subcontractors and suppliers, and to complete all Work, whether performed by the Contractor or a Subcontractor.

3.3.6 The Contractor shall provide a full-time Project Superintendent with a minimum of five years of similar construction experience. Superintendent shall be approved by Architect and permanently assigned to project until full completion of project.

3.3.7 The Contractor shall employ Licensed Surveyor to locate and stake out the Work and establish necessary reference and bench marks. Work from established bench marks and reference points, layout and correctly establish all lines, levels, grades and locations of all parts of their own Work and be responsible for their accuracy and proper correlation with Work and established data.

3.4 LABOR AND MATERIALS

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

3.4.2 The Contractor may make substitutions only if allowed by Contract Documents and with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order, or by Owner's approval of a Substitution Request.

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

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that all materials and equipment furnished under this Contract will be of good quality and new unless otherwise specified and that all Work will be provided in accordance with the requirements of the Contract Documents and will be of good quality, free of faults and defects. All Work not conforming to the requirements of the Contract Documents, including substitutions or changes made by the Contractor or any subcontractor, material supplier or equipment supplier that have not been specifically identified (PRIOR to Contract award) by means of a Letter of Notice to Architect and properly accepted and authorized by Architect, shall be considered defective and not in agreement with the requirements of the Contract Documents, and shall be promptly corrected in accordance with the requirements of Article 12 of this Agreement and amendments thereto as set forth in Supplementary Conditions or Modifications. Notation or listing of such substitutions or changes on shop drawings or other types of submittal will not be considered acceptable to Architect whether or not such submittal

has been reviewed or stamped by Architect. Notice must be specific and transmitted in letter form. If required by Owner or Architect, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment actually provided. This warranty is not limited by the provisions of Paragraph 12.2.

3.5.2 Immediately prior to Date of Substantial Completion, Contractor shall execute and deliver to Architect, a written warranty in approved form, stating that all materials and equipment provided and all work performed are in accordance with the requirements of the Contract Documents and authorized modifications and additions thereto; and further stating that Contractor guarantees, should any condition arise or be disclosed during the time of Contract warranty, which conditions are due to incomplete, or improper or defective materials, or due to incomplete or improper or defective workmanship or arrangement, such condition, together with all work affected in correcting such condition, shall be (upon written notice from Owner) promptly and satisfactorily corrected by Contractor at no additional cost to Owner. Contractor shall be fully responsible for the prompt, satisfactory completion of all warranty work whether performed by his own or subcontract personnel.

3.5.3 Work Covered by Warranty: Contractor's warranty shall cover all work under the Contract, whether or not any portion or trade has been assigned or sub-let. In the event any portion of the Work is performed by an assignee or subcontractor, Contractor shall obtain from such assignee and/or subcontractor a written warranty to Contractor and Owner covering their respective portion of the Work for the period required. Contractor shall deliver them, together with his own warranty, to Owner prior to final payment. Assigns' and subcontractors' warranties shall expressly provide that the same shall be enforceable directly by Owner, if he so elects, and shall run concurrently with Contractor's warranty. Warranty shall be secured by Contractor's Performance Bond as directed by Owner.

3.5.4 Time of Warranty: Contractor's warranty shall be for a period of one year from Date of Substantial Completion of the Work. Should a warranty required under any Section of the Specifications or of this Contract be for a period of more than one year, Contractor's and subcontractor's warranty, with respect to such work, shall be for such longer period. Warranty for work done subsequent to Date of Substantial Completion shall be for a period of one year from date of Final Completion or such longer period, if so specified.

3.5.5 Partial Occupancy: Should Owner occupy a portion of the Work before the date of Substantial Completion, the warranty period for that portion so occupied shall begin on the date of such occupancy as agreed in writing with Owner.

3.5.6 Objectionable Process: Where any material, process, or method or operation or application procedure is required, which in the opinion of the Contractor, would render the finished work unsuitable for the required warranty, then, before a bid is submitted, such unsuitable material, process, or application method shall be objected to in writing to Architect, stating reasons therefore and recommending other alternate materials or methods so that the Work, when completed, will be suitable for the required warranty. In the event the Contractor's recommendations are approved, the work shall be installed in accordance therewith, and all changes in cost resulting there from shall be included in the Contract bid amount.

3.5.7 Under the requirements of this Paragraph 3.5, Contractor shall be responsible for:

- .1** Damages to the building contents and/or building utilities or services when damages result from use of faulty materials or negligent workmanship.
- .2** Warranting modifications accepted under subparagraph 3.5.6 above will give satisfactory results.
- .3** Warranting substitutions will be equal or superior to the specified item or method unless he specifically lists shortcomings in his request for making substitution.
- .4** Obtaining and enforcing all subcontract warranties with particular attention being directed to enforcement of warranty work by mechanical, electrical and plumbing subcontractors.

3.6 TAXES

3.6.1 Although Owner is a tax-exempt unit of local government, the Contractor shall pay all sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which may not be within Owner's exemption that are legally enacted when Contractor's bids were received or negotiations between Owner and Contractor were concluded, whether or not yet effective or merely scheduled to go into effect.

3.6.2 Contractor shall furnish Owner with sales and use tax exemption reports to enable Owner to meet state reporting requirements.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.1.1 Owner shall secure and pay for health and environmental impact fees, water and sewer connections and impact fees, and zoning regulation fees and permits. The Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution of and completion of Work which are customarily secured after execution of Contract and which are legally required when bids are received or Contract is executed.

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

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, unless they bear upon construction means, methods, techniques or safety and health precautions. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work, knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear all the costs attributable for any and all repairs required for conformance, including but not limited to, any penalties, fines or other damages realized..

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 against which the Contractor makes 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 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 Clause 3.8.2.2, and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.8.3 Contingency Allowance is established as \$100,000 and shall be processed pursuant to the Specifications.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent with a minimum of five years of similar construction experience 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 and Architect the name and qualifications of a proposed superintendent. The Owner or Architect may reply within fourteen (14) days to the Contractor in writing stating: (1) whether the Owner or Architect has reasonable objection to the proposed superintendent, or (2) that the Owner or Architect requires additional time to review. Failure of the Owner or Architect to reply within the fourteen (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 (within thirty 30 days) after notification of contract award, 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 monthly or at appropriate intervals as required by the conditions of the Work and Project whichever is less, 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.

3.10.1.1 Owner may authorize construction activities to commence prior to completion of Drawings and Specifications. If Drawings and Specifications require further development at the time the initial construction schedule is prepared, Contractor shall: 1) allow time in the schedule for further development of Drawings and Specifications by Architect, including time for review by Owner and Contractor and for Contractor's coordination of Subcontractors' Work, and 2) furnish to Owner, in a timely manner, information regarding anticipated market conditions and construction cost, availability of labor, materials and equipment, and proposed methods, sequences and time schedules for construction of Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time, as defined by the Architect to review submittals. If the Contractor fails to submit a 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.

3.10.4 Owner shall not be bound by any early completion deadline submitted in any schedule.

3.10.5 Owner does not approve or accept any schedule, but reserves the right to review, comment and reject.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 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 which 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 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor and Sub-contractor represent to the Owner and Architect that the Contractor and Sub-contractor have (1) reviewed and approved them, (2) have reviewed for compliance with the Contract Documents, (3) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (4) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents, and have approved the submittal.

3.12.7 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the Architect. Such Work shall be in accordance with approved submittals.

- .1** The Contractor shall make all revisions as noted by Architect and shall re-submit the required number of corrected copies of Shop Drawings, product data or samples until no exceptions are taken. The Contractor shall direct specific attention, by cover letter accompanying resubmitted Shop Drawings, to all revisions made in addition to those requested by Architect on previous submissions, if any.

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 review 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 the Architect has given written approval to the specific 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 review 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 absence of such written notice the Architect's review of a re-submission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which 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 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 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 or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor appropriate performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect will review 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 or design criteria required by the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, policies, 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.

3.13.2 Contractor shall assume full responsibility for protection and safekeeping of materials stored on premises.

3.13.3 Contractor shall provide all necessary precautions to protect public, visitors and tenants from activities of Contractor or his agents on project.

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.

3.14.2 The Contractor shall not damage or endanger a portion of the Work, or fully or partially completed construction, by 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 from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the contractor fails to clean up as provided in the Contract Documents after reasonable notice from Owner of such failure, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide governmental authorities who lawfully request access to the work, the Owner and Architect proper facilities and equipment for access to the Work in preparation and progress wherever located.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss (including but not limited to attorney's fees, court cost, and other cost of defense), 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. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright, trademark, trade name, or similar property right or interest, 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, DEFEND AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, APPOINTED OFFICIALS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES, ARCHITECT, ARCHITECT'S CONSULTANTS (COLLECTIVELY REFERRED TO AS THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, ARISING OUT OF, RESULTING FROM, OR OCCURRING IN CONNECTION WITH THE PERFORMANCE OF THE WORK PROVIDED THAT SUCH CLAIM,*

LIABILITY, DAMAGES, LOSS, COSTS 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), INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH: (A) A BREACH OF THE WARRANTIES PROVIDED BY THE CONTRACTOR; (B) THE WORK PERFORMED OR TO BE PERFORMED BY THE CONTRACTOR, ITS CONTRACTORS, SUB-CONTRACTORS, SUB-SUB-CONTRACTORS, AND SUPPLIERS, AND THEIR EMPLOYEES AND AGENTS; (C) ANY NEGLIGENT ACTION AND/OR OMISSION OF THE INDEMNITEES RELATED IN ANY WAY TO THE PROJECT WHETHER THE INDEMNITEES ARE NEGLIGENT IN WHOLE OR IN PART, AND EVEN WHEN THE LOSS IS CAUSED BY THE SOLE FAULT OR NEGLIGENCE (INCLUDING ACTS OR OMISSIONS THAT ARE CHARACTERIZED AS NEGLIGENCE PER SE, NEGLIGENCE PREMISED ON STRICT LIABILITY, OR ANY OTHER TYPE OF NEGLIGENCE) OF THE INDEMNITEES; OR (D) ANY FINES, PENALTIES, DAMAGES (INCLUDING PUNITIVE), LIABILITIES, COSTS AND EXPENSES IN CONNECTION WITH: (1) A VIOLATION OF ANY LAW, STATUTE, RULE, ORDINANCE, CODE OR OTHER REQUIREMENT OF PUBLIC AUTHORITIES; (2) MEANS, METHODS, PROCEDURES OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK; AND (3) FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES AND INSPECTIONS FOR WHICH THE CONTRACTOR IS RESPONSIBLE UNDER THE CONTRACT DOCUMENTS. THE CONTRACTOR'S INDEMNITY OBLIGATION HEREIN 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. THE SCOPE AND EXTENT OF THIS INDEMNITY SHALL NOT BE LIMITED BY THE AVAILABILITY OF COVERAGE UNDER THE CONTRACTOR'S INSURANCE AND SHALL NOT LIMIT INDEMNITEES' OTHER LEGAL REMEDIES AGAINST CONTRACTOR OR ANY OTHER PERSON OR ENTITY. THIS INDEMNIFICATION PROVISION SHALL SURVIVE TERMINATION OF THE CONTRACT.

3.18.2 In claims against any person or entity indemnified under Paragraph 3.18 by an employee of the Contractor, a Subcontractor, Sub-Sub-contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Paragraph 3.18 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' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The obligations of the Contractor under Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants and agents and employees of any of them arising out of: (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications; or (2) the giving of, or the failure to give, directions or instructions by the Architect, the Architect's consultants and agents and employees of any of them, provided such giving, or failure to give, is the primary cause of the injury or damage. The indemnity for the Architect, the Architect's Consultants, agents and employees does not extend to any indemnity prohibited by Section 130.003 of the Texas Civil Practice and Remedies Code.

3.19 ADDITIONAL REQUIREMENTS

3.19.1 Contractor shall submit to Architect, in writing, all substitutions proposed PRIOR TO the bid opening date. Contractor shall furnish sufficient data for evaluation. To be acceptable for project use, substitutions must be reviewed in writing by Architect or by appropriate addendum.

3.19.2 Contractor shall follow manufacturer instructions. Where such instructions are in conflict with the Contract Documents, Contractor shall notify Architect for clarification before proceeding. A copy of the manufacturer's instructions shall be kept at job site and made available to Architect.

3.19.3 Contractor shall stop the Work affected when notified of a proposed change and when unsatisfactory results are anticipated. Contractor shall proceed only after receiving additional instructions from Architect.

3.19.4 Contractor shall establish and maintain bench marks, and all other grades, lines, and levels necessary for the Work, report errors and inconsistencies to Architect, in writing, before commencing work affected. Contractor shall be responsible for placement of Project Work and shall make all corrections necessary to achieve an accurate layout of Project Work.

3.19.5 Contractor shall provide acceptable access facilities to the Work for the Owner, Architect, and all local, State and Federal authorities having jurisdiction. All access facilities shall be made safe and reasonably convenient.

3.19.6 Contractor shall prepare quotations, for proposed changes in the Work. Quotations shall be in a "break-down" form giving the number of units, unit cost of materials, tool costs, taxes, overhead, profit, etc. Quotations shall reflect credits as well as extras.

3.19.7 Contractor shall furnish written warranties using the form directed by Owner or Architect.

3.19.8 Contractor shall secure required inspection certificates and transmit them to Architect and Owner.

ARTICLE 4 **ADMINISTRATION OF THE CONTRACT**

4.0 SCHEDULE OF WORK (At a maximum, in calendar days)

Prior to Day 0: Award of contract by Commissioners' Court

Day 0: Notice to Proceed is delivered to Contractor after Architect provides response to Schedule of Values, Insurance, Payment and Performance Bonds, List of subcontractors and Construction schedule to Contractor

No later than Day 180: Contractor attains Substantial Completion

No later than Day 210: Contractor attains Final Completion.

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture, or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative or such representative as the architect may designate, who may be employed by the Architect as a consultant.

4.1.1.1 Each of these terms; "Architect," "Engineer," "Architect/Engineer," "A/E," or "Engineer/Architect" shall mean Architect, or an affiliate as otherwise provided in the Contract Documents, or duly authorized representatives, such representatives acting severally within scope of particular duties entrusted to them, unless otherwise provided in Contract Documents.

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 In case of termination of employment of the Architect, the Owner shall appoint a new Architect whose status under the Contract Documents shall be that of the former architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect, acting in consultation with Owner's representative, will provide administration of the Contract as described in the Contract Documents: (1) during construction; (2) until final payment is due, and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract; however, such authority shall not be considered or construed as creating a fiduciary relationship between the Architect and Owner.

4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by Owner and Architect, and as Architect deems necessary: (1) to become generally familiar with and to keep the Owner informed about the progress and aesthetic quality of the portion of the Work completed; (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work observed is being performed in a manner indicating that the Work, when completed, will be in general accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site evaluations or inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety or health 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 Subparagraph 3.3.1.

4.2.2.1 Contractor shall reimburse Owner for compensation paid to Architect for additional site visits made necessary by fault, neglect or request of Contractor.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents or failure to complete Work on schedule. 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 of any other persons performing portions of the Work.

4.2.4 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the consultants shall be through the Architect, unless otherwise approved by 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. The Architect's presence at the Project Site shall not imply concurrence or approval of the work. Contractor shall call specific items to the Architect's attention in writing if he wishes to obtain Architect's opinion.

4.2.5 Based on the Architect's observations and 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 which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 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, materials and equipment suppliers, their agents or employees, or other persons performing portions of the Work. All costs made necessary by such failure, including those of repeated procedures shall be at Contractor's sole expense, including compensation for Architect's services and expenses.

4.2.7 The Architect will review 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. Such review and action on the part of the Architect is limited to only those submittals required by the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review by the Architect, Architect's consultants and Owner, if needed. 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 Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety or health precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's review 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, or other change documents for changes in the Work for the Owner's approval and execution, and the Architect may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect and Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect may receive and forward to the Owner for the Owner's review and records written warranties and related documents as required by the Contract Documents and assembled by the Contractor, and will issue a final Certificate for Payment based upon final inspection indicating the Work complies with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, 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. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fourteen (14) days after written request is received.

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.

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

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money and extension of time 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. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.1.1 Claims must contain following:

- .1 Date of the event giving rise to such Claim and, if applicable, date when the event ceased;
- .2 Nature of occurrence or condition giving rise to the Claim;
- .3 Identification of contractual provisions affected and a detailed explanation of how the Claim is contrary to those provisions;
- .4 An estimate of effect upon the Contract Sum, including an itemized breakdown of additional cost, if any;
- .5 An estimate of the effect upon the Project Schedule, including a comparison of Project Construction Schedule and schedules prepared in connection with the Claim. If required by Owner or Architect, this shall include showing in CPM format, both critical and non-critical path activities affected and showing Project Construction Schedule and Claim sequences, durations and float substantiating delay claimed.

4.3.2 Decision of Architect. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect and Owner, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of: (1) whether such matters relate to execution and progress of the Work, or (2) the extent to which the Work has been completed.

4.3.3 Time Limits on Claims initiated prior to Final Payment. Claims by either party must be initiated and submitted within **twenty-one (21)** days after occurrence of the event giving rise to such Claim or within **twenty-one (21)** days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated and submitted by written notice to the Architect and the other party. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

4.3.4 Continuing Contract Performance. Pending final resolution of a Claim, unless otherwise agreed in writing or as provided in Sub-paragraph 9.7.1 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.

4.3.5 Waiver of Claims: Final Payment. 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.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which 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, then notice by the observing party

shall be given to the other party promptly before conditions are disturbed. The Architect will promptly investigate and evaluate such conditions and, if 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 so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made and submitted within **twenty-one (21)** days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make 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 Paragraph 10.6. If the Contractor believes additional cost is involved for reasons including but not limited to: (1) a written interpretation from the Architect; (2) an order by the Owner to stop the Work where the Contractor was not at fault; (3) a written order for a minor change in the Work issued by the Architect; (4) failure of payment by the Owner; (5) termination of the Contract by the Owner; (6) Owner's suspension, or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.8 Claims for Additional Time

4.3.8.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall demonstrate that the task is on the critical path and identify the new completion date. In the case of a continuing delay, only one Claim is necessary.

4.3.8.1.1 The Contractor's request for an increase in the time shall be submitted with monthly pay applications. The delay impacting the critical path shall be addressed no later than the pay application for the month following the month in which the time was lost.

4.3.8.1.2 Only delay impacting the critical path of the Work shall be considered when determining if Contractor is entitled to additional time.

4.3.8.2 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, that weather conditions had an adverse effect on the scheduled construction and that the activities delayed by weather were on the critical path.

4.3.8.2.1 Acceptable data for substantiating a claim for additional time due to abnormal weather conditions will be the records of the National Oceanographic and Atmospheric Administration (NOAA) for the prior ten (10) years. In the absence of NOAA records for a specific Project site, upon mutual agreement, local official records will be the basis. Furthermore, the effect of such abnormal weather must be demonstrated.

4.3.8.3 Claims for increase in Contract Time shall set forth in detail the circumstances that form the basis of the Claim, date upon which each cause of delay began to affect progress of Work, date upon which each cause of delay ceased to affect progress of Work and the number of days' increase in Contract Time claimed as a consequence of each such cause of delay. Contractor shall provide such supporting documentation as Owner or Architect may require including, where appropriate, a revised construction schedule indicating all activities affected by circumstances forming the basis of the Claim.

4.3.8.4 Contractor shall not be entitled to a separate increase in Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on progress of Work or for concurrent delays due to fault of Contractor.

4.3.9 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding **twenty-one (21)** days after first observance. The notice shall provide sufficient detail to enable the other party to investigate and evaluate the matter.

4.3.10 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. For purposes of this provision, "Materially" shall mean a change in quantity of at least twenty-five percent (25%) and a change in price of at least ten thousand dollars (\$10,000.00)

4.3.11 Owner reserves the right to audit the Contractor's costs and bid documents if Contractor files a claim against Owner.

4.3.12 Contractor, not owner, shall handle any disputes which may arise between subcontractor and owner.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 Decision of Architect:

Claims, including those alleging an error or omission by the Architect but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration (if allowed) or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

4.4.2 The Architect will review Claims and within **twenty-one (21)** days of the receipt of the Claim take one or more of the following preliminary actions within ten (10) days

of receipt of a Claim: (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) recommend approval of the Claim by the other party; (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim, if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

4.4.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of such request and shall either, provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished, or advise the Architect that no supporting data will be furnished. Within **twenty-one (21)** days of receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

4.4.5 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim. If any change in the Contract Sum or Contract Time or both is included as part of the Architect's decision, Architect will be required to submit his decision to the Brazos County Commissioners Court for final approval. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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.

5.1.3 Architect and Architect's consultants may, but are not required to, communicate

directly with any Subcontractor, Sub-subcontractor, or materials supplier when it is necessary to obtain information necessary for the Architect or Architect's consultants to complete its services on the Project. The Architect shall endeavor to keep Contractor informed of conversations. Requests for information, interpretation or clarification, and correspondence must all be in writing and must be routed through Contractor.

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, within fourteen (14) days 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 will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to which 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. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum 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 change a Subcontractor, person or entity previously selected, if the Owner or Architect makes reasonable objection to such change. Acceptance of the substitute Subcontractor after previous acceptance of a Subcontractor for any portion of the work shall not constitute reason for an increase in the Contract amount.

5.3 SUBCONTRACTUAL RELATIONS.

By appropriate written agreement, 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 which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontractor 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 which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.3.2 Contractor is fully responsible for acts and omissions of Subcontractors, and persons either, directly or indirectly, employed by them or under their control, as Contractor is for their own employees.

5.3.3 Nothing in Contract Documents creates any contractual relationship between any Subcontractor or Sub-subcontractor, or other tiers, and Owner or Architect, except for provisions in paragraph 5.4.

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 Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing, and
- .2** Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such Assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation shall be equitably adjusted.

5.4.3 Contractor will provide copies of its subcontracts, agreements and current information on status of its accounts, upon demand by Owner.

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 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 of 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 Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction of 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 when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum 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 which 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.

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 to report shall constitute an acknowledgment that the Owner's or separate contractors' 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 Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 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 Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 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 after reasonable written notice and the cost will be paid by those responsible.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

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 and 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.

7.1.4 If unit prices are stated in the Contract Documents, or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive 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.

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

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph

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 and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect, in writing, 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.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. In such case, and also under Clause 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 Subparagraph 7.3.6 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' or workmen's 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;
- .5 additional costs of supervision and field office personnel directly attributable to the change; and
- .6 the maximum allowance for overhead and profit combined included in the total cost to Owner shall be based on the following schedule:
 - A. for Contractor, for any work performed by his own forces, 15% of the cost;
 - B. for each subcontractor involved, work performed by his own forces, 10% of the cost;
 - C. for Contractor, for work performed by his subcontractor, 5% of the amount due the subcontractor.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which 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. If the net value of a change results in a credit from Contractor or subcontractor, the credit given shall be the net cost, overhead and profit.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

7.3.9 When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 To the extent allowed by law, 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 shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 **TIME**

8.1 DEFINITIONS

8.1.1 The Contractor shall achieve substantial completion of the Work not later than One hundred eighty (180) days from the date of commencement, subject to adjustments of the time for completion as provided in this Agreement.

8.1.2 The date of commencement of the Work shall be effective upon permit acquisition following the final approval of the Agreement and receipt by the Contractor of the written notice to proceed from either the Owner or the Architect."

8.1.3 The date of Substantial completion is the date certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the contract documents shall mean calendar day.

8.1.5 The term "critical path" as used in the Contract Documents shall mean the project's tasks that will cause the project end date to be delayed if they are delayed. The word "critical" does not imply how important a task is; a task is critical solely

because it must occur as scheduled for the project to finish on time.

8.1.6 The term "free slack time" as used in the Contract Documents shall mean the amount of time a task can be delayed without delaying another task.

8.1.7 The term "total slack time" as used in the Contract Documents shall mean the amount of time a task can be delayed without delaying the finish date of the project.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in this Agreement 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, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere or store materials or equipment on site 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. Unless the date of commencement is established by the Contract Documents and a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

8.2.4 Contractor and their Subcontractors shall complete and coordinate Work in accordance with established schedule.

8.2.5 Contractor is responsible for expediting Work, identifying potential conflicts and coordination problems, and proposing measures to avoid such problems

8.2.6 Whenever it becomes apparent that any activity completion date may not be met, unless delay is related to a approved extension of time, Contractor shall take some or all of following actions and submit supplementary schedule indicating effect of action on progress and completion of Work, all without additional costs to Owner;

- .1** increase number of working hours per shift, shifts per working days, working days per week, or amount of construction equipment, or any combination of foregoing which will substantially eliminate backlog of Work, and put Project back on schedule, and/or,
- .2** increase construction manpower in such quantity as will substantially eliminate backlog of Work, and put Project back on schedule, and/or,
- .3** reschedule activities to achieve maximum practical concurrency of accomplishment of activities, and put Project back on schedule.

8.2.7 If Contractor fails to take any of actions indicated in subparagraph 8.2.6 within three (3) days after receiving written notice, Owner may take action to attempt to put Project back on schedule, and deduct cost of such actions from money due or to become due Contractor, or shall be grounds for determination by Owner that Contractor

is not prosecuting Work with such diligence as will insure completion within Contract Time. Upon such determination, Owner may terminate Contractor's right to proceed with Work, or any separable part thereof, in accordance with provisions of Article 14.

8.2.8 Contractor shall bear cost of any services of Architect made necessary by delays in completion of Work due to actions or inactions of Contractor or any Subcontractors. Contractor shall promptly pay any such cost upon demand by Owner. At Owner's option, these costs may be deducted from any amounts otherwise due Contractor.

8.3 DELAYS AND EXTENSION OF TIME

8.3.1 Except as otherwise provided in the Contract Documents, 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, adverse conditions as provided for in 4.3.8.2, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner may determine.

- .1 If at least seven (7) hours of work time are available out of the working day, no extensions of time will be allowed;
- .2 No extension of time will be allowed for Saturdays, Sundays, or holidays unless the Contract requires and stipulates overtime work and it has been approved in writing by Owner; and
- .3 Time extensions will not be allowed for drying of materials when it is possible for the Contractor to enclose area and materials or use an acceptable drying process.

8.3.2 There will be no delay claims by Contractor if the Contractor finishes the Project early, even if owner delays the work.

8.3.3 Claims relating to time shall be made in accordance with applicable provision of Paragraph 4.3.

8.3.4 If Contract Time is extended pursuant to paragraph 8.3, such extension shall be the exclusive remedy of Contractor and said Contractor shall not be entitled to recover damages from Owner or Architect.

8.3.4 Owner's exercise of any of its rights under "**ARTICLE 7 - CHANGES IN THE WORK**," regardless of the extent of number of such changes, or requirement of correction or re-execution of defective work, or extent of number of Architect's interpretations or clarifications of the Contract Documents, shall not, under any circumstances, be construed as neglect or intentional interference with Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is **ONE MILLION, SEVEN HUNDRED NINETY-ONE THOUSANDS, SEVEN HUNDRED SEVENTY-EIGHT DOLLARS (\$1,791,778.00)** and, subject to authorized adjustments as provided in this Agreement, is the total amount payable by the Owner to the Contractor for performance of the Work.

9.2 SCHEDULE OF VALUES

9.2.1 Unless otherwise provided in the Contract documents, before the first application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work 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.

9.2.2 The Architect will provide to the Contractor a list of the portions or sections of work for which he wishes to have separate values included and those items for which he will require material quantities to be shown.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Unless otherwise provided in the Contract Documents; applications for payment shall be submitted monthly by Contractor. The Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating the contractor's right to payment including the most current Contractors Construction Schedule and/or copies of requisitions from Subcontractors and material providers as the Owner or Architect may require, and reflecting retainage if provided for elsewhere in the Contract documents.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

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 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.

9.3.4 The Contractor shall submit his Application for Payment, amounting to 95% of the cost of the work performed and 95% of the materials on hand in accordance with paragraph 9.3.2 above, as of the last day of each month.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within five (5) days after receipt of the Contractor's Application for Payment and the Architect's site visit, either, issue to the Owner a Certificate for Payment 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 Subparagraph 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 observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the observed aesthetic quality of the Work is in accordance with the Contract Documents. The Architect's Certificate for Payment shall be based, in part, on the recommendation of the Contractor. 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 minor deviations from the Contract Documents correctable 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 evaluations and/or 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 decide not to certify payment and 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 Subparagraph 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 Subparagraph 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 decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, 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 because of:

- .1** defective Work not remedied;
- .2** third party claims filed or reasonable evidence indicating probable filing of

- such claims;
- .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 another 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;
- .7 persistent failure to carry out the Work in accordance with the Contract Documents;
- .8 failure to comply with the approved Project Construction Schedule;
- .9 erroneous estimates by the Contractor or a Sub-contractor of values of Work performed, or
- .10 the existence of any event of default under the Contract Documents.

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

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.

9.6.1.1 Owner will make monthly partial payments to Contractor within thirty (30) days after receipt of Certificate for Payment from Architect.

9.6.1.2 Owner may withhold payment to Contractor notwithstanding Architect's certification, if it is necessary, in Owner's opinion, to do so to protect Owner from loss due to any of the reasons set forth in Subparagraphs 9.5.1.1 through 9.5.1.10, inclusive.

9.6.2 The Contractor shall pay each Sub-contractor no later than seven (7) days after receipt of payment from the Owner, the amount to which the Sub-contractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Sub-contractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

9.6.3 The Architect will, upon written request, furnish to a Sub-contractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect on account of portions of the Work done by such Sub-contractor.

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 (7) 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's payment to material suppliers and equipment suppliers shall be treated in a manner similar to that provided in Subparagraphs 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.

9.7 FAILURE OF PAYMENT

9.7.1. If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within five (5) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the contractor within seven (7) days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven (7) additional days' written notice to the Owner or 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, 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 is complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

9.8.2 Unless otherwise provided in the Contract Documents, when the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall thoroughly inspect the Work and prepare and submit to the Architect a comprehensive list of items to be completed or corrected, Contractor's Notice of Substantial Completion, and a written request for Architect's review of the Work. The Contractor shall proceed promptly to complete and correct items on the list. 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. Upon approval of Substantial Completion by Brazos County, Contractor has thirty (30) days to reach Final Completion of the Work. If the Contractor does not achieve Final Completion within thirty (30) days after Substantial Completion, Contractor shall be subject to additional Liquidated Damages as set forth under paragraph 9.11.2 herein.

9.8.3 Unless otherwise provided in the Contract Documents, after receipt of the Contractor's Notice of Substantial Completion and the Contractor's list, the Architect and Owner will make inspections to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and Owner's inspections disclose any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, 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 another Contractor's Notice of Substantial Completion and a request for another inspection by the Architect and Owner to determine Substantial Completion.

9.8.4 When the Work is substantially complete, the Architect will prepare a Certificate

of Substantial Completion which 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. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance or responsibilities assigned to them in such Certificate.

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.

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 Subparagraph 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy, or use, may commence whether or not the portion is substantially complete provided that the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, 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, or the Owner notifies the Contractor of intent to occupy or use a portion of the Work prior to substantial completion, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 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 Unless otherwise provided in the Contract Documents; the Contractor shall inspect the Work to determine that it is sufficiently complete in accordance with the Contract Documents and the Contract is fully performed. Upon receipt of Contractor's Notice of Final Completion written notice certifying that the Work is sufficiently complete in accordance with the Contract Documents, that the Contract is fully performed, that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will in a reasonable time, make such inspection and when the Architect and Owner finds the Work acceptable

under the Contract Documents and the Contract sufficiently 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 and Owner's on-site visits and inspections, the Work has been sufficiently completed in accordance with terms and conditions of the Contract Documents. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. However, 95% of the contract amount will be due and payable to Contractor as noted in said final Certificate, with the remaining 5% retainage due and payable to the Contractor within thirty (30) days after acceptance of the Work by the Owner.

9.10.2 Unless otherwise provided in the Contract Documents, neither final payment nor any remaining retained percentage shall become due until the Contractors 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 Document to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (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, for Owner's review and approval. 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.

9.10.3.1 Final payment constituting entire unpaid balance of Contract Amount will be paid by Owner to Contractor within thirty (30) days after final Certificate for Payment has been issued by Architect.

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;
- .3 terms of special warranties required by the Contract Documents, or
- .4 non-conforming, faulty or defective Work appearing at or after final payment.

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.

9.11 LIQUIDATED DAMAGES

9.11.1 Owner will suffer financial loss if the Project is not Substantially Complete on the date set forth in the Contract. Contractor and Contractor's Surety shall be liable for and shall pay Owner stipulated and fixed sums, hereinafter agreed to as liquidated damages, for each calendar day of delay after the date established for Substantially Completion until the Work is Substantially Complete: Two Hundred Fifty Dollars (\$250.00). It is understood that said sum shall be considered as liquidated damages and shall not be considered as a penalty against the Contractor

9.11.2 If thirty (30) days after Substantial Completion of the Work the Contractor is unable to achieve Final Completion of the Project as determined by Brazos County, Brazos County will suffer further loss. Contractor and Contractor's Surety shall be liable for and shall pay Owner stipulated and fixed sums, hereinafter agreed to as liquidated damages, for each additional calendar day of delay past thirty (30) days after Substantial Completion until Final Completion is achieved: Five Hundred Dollars (\$500.00). It is understood that said sum shall be considered as liquidated damages and shall not be considered as a penalty against the Contractor.

ARTICLE 10 **PROTECTION OF PERSONS AND PROPERTY**

10.1 SAFETY AND HEALTH PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety and health precautions and programs in connection with the performance of the Contract. This requirement applies continuously and is not limited to normal Working hours.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall at all times conduct all operations under this Agreement in a manner to avoid the risk of bodily injury or risk of damage to the following:

- .1 employees on the Work and other persons who may be affected thereby, to include but not limited to the Owner and Architect and their consultants and employees;

- .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, standards, rules, regulations, policies and lawful orders of public authorities (including reference standards issued under the Occupation Safety Act and the Occupancy Safety and Health Administration) bearing on safety and health 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 hazardous materials or equipment or unusual methods are necessary for execution of the Work, such as driving or removal of piles, wrecking, demolition, excavation or other similar potentially dangerous work is necessary, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall give Owner reasonable advance notice. Contractor is fully responsible for any and all damages, claims, and for the defense of all actions against Owner and Architect, and their consultants and employees resulting from the prosecution of such work.

10.2.4.1 Use or storage of explosives is prohibited.

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 Paragraphs 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 Paragraphs 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 Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible, properly trained and qualified member or members of the Contractor's organization at the site whose duties shall be the prevention of accidents, damage to property and to supervise and train personnel in the use of dangerous and hazardous equipment, materials and substances necessary for the execution of the Work. 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, including new construction or existing facilities to be loaded with weights that will exceed design loads or so as to endanger safety of persons or property or cause damage or create an unsafe condition.

10.2.8 Contractor shall give notice in writing at least forty-eight (48) hours or longer if required by affected parties before breaking ground, to all persons having interests on or near site, Public Utility Companies, owners of property having structures or improvements in proximity to site of the Work, agencies, authorities, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representative on site to see that their property is properly protected. Such notice does not relieve Contractor of responsibility for any damages, claims, and defense of all actions against Owner and Architect resulting from performance of such Work in connection with or arising out of Contract.

10.2.9 All parts of Work shall be braced to resist wind or other loads. Contractor shall perform Work with the explicit understanding that the design of the Project is based on all parts of Work having been completed and as such, the methods of performance of each part of Work shall be done accordingly.

10.2.10 Temporary items such as, but not limited to: scaffolding, staging, lifting and hoisting devices, shoring, excavation, barricades, and safety and construction procedures necessary in completion of Project shall be the responsibility of the Contractor and its Subcontractors and shall comply with all applicable codes and regulations. It shall not be responsibility of Owner, Architect or their representatives to determine if Contractor, Subcontractors or their representatives are in compliance with the aforementioned regulations.

10.2.11 The Contractor shall comply with all Federal Occupational Safety and Health Administration Hazard Communications Act (HAZCOM) requirements, including properly maintaining Materials Safety Data Sheets (MSDS) at the Project site. The Contractor shall ensure that all MSDS are compiled in a single location at the Project site, and are available to the regulating agencies. The Contractor shall indemnify and hold harmless the Owner and Architect for their respective failure to comply with this provision.

10.2.12 The Contractor shall be responsible for any fines, penalties or charges by any regulatory body by reason of any violation of safety or health regulations. Contractor shall also be responsible for reimbursement of any OSHA fines incurred by the Architect for Project site safety conditions created or controlled by the Contractor that result in the Architect receiving a citation under the OSHA multi-employer citation provision.

10.2.13 The Contractor shall notify Owner's and Architect's personnel upon arrival to the Project site of any known safety or health hazards at the Project and the precautions they should take.

10.2.14 The Contractor shall provide safety and health equipment (excluding

boots) for the Owner and Architect to protect them from safety and health risks during the performance of their services during the construction of the Project.

10.2.15 The Architect's review of Contractor's performance does not include review of adequacy of Contractor's safety or health measures.

10.3 HAZARDOUS MATERIALS OR SUBSTANCES

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 hazardous 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, in writing, with a copy to the Architect.

10.3.1.1 The term "hazardous materials or substance" also includes, but is not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB), radon gas, industrial waste, acids, lead, alkaline, irritants, contaminants or other pollutants, excluding mild chemicals used in the cleaning of finished building materials.

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 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 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 the Contractor has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor has 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 Subparagraph 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 to the fault or negligence of the party seeking indemnity.

10.3.4 The Architect and Architect's consultants and employees shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons, to hazardous materials or toxic substances in any form at the Project site.

10.3.5 The Owner and Architect shall not be responsible under Paragraph 10.3 for hazardous materials and substances brought to the Project site by the Contractor unless such materials or substances were required by the Contract Documents and the Contractor so notified the Owner and Architect. The Contractor shall notify the Owner and Architect prior to bringing any hazardous material or substance onto the Project site.

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

10.4.1 In an emergency affecting safety or health 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 Paragraph 4.3. and Article 7.

10.4.2 The Contractor shall promptly report in writing to Owner and Architect all accidents arising out of, or in connection with, the performance of the Work, whether on or off the site, which caused death, personal injury or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to Owner and Architect.

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 State of Texas such insurance as will protect the Contractor from claims set forth below which may arise out of, or result from, the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by 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' or workmen's compensation, disability benefit and other similar employee benefit acts which 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, disease or death of any person other than the Contractor's employees or persons or entities excluded by statute from requirements of Subparagraph 11.1.1.1, but required by Contract Documents to provide insurance required by that

- Subparagraph;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained by: (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor; or (2) by another person;
 - .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
 - .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;
 - .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.
 - .9 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:
 - (1) Premises Operations (including X, C and U coverages as applicable).
 - (2) Independent Contractors' Protective.
 - (3) Products and Completed Operations.
 - (4) Personal Injury Liability with Employment Exclusion deleted.
 - (5) Contractual, including specified provision for Contractor's obligations under Paragraph 3.18.
 - (6) Owned, non-owned and hired motor vehicles.
 - (7) Broad Form Property Damage including Completed Operations.
 - .10 If General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than the limits of liability specified in the Bid documents or as required by law, whichever coverage is greater. Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.2.1 The insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by law:

- 1. Workers' Compensation:
 - (a) State: **Texas** Statutory
 - (b) Applicable Federal (e.g., Longshoremen harbor work, Work at or outside U.S. Boundaries):
Statutory: **Not Applicable**
 - (c) Maritime: **Not Applicable**
 - (d) Employer's Liability: **\$ 1,000,000** each accident
\$ 1,000,000 disease, policy limit
\$ 1,000,000 disease, each employee

- (e) Benefits required by union labor contracts: **As Applicable**
2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective: Products and Completed Operations; Broad Form Property Damage):
- (a) Bodily Injury: **\$ 1,000,000** each occurrence
\$ 1,000,000 aggregate
 - (b) Property Damage: **\$ 1,000,000** each occurrence
\$ 1,000,000 aggregate
 - (c) Products and Completed Operations Insurance to be maintained for a minimum period of **five (5)** year(s) after final payment:
 - (d) Property Damage Liability Insurance shall include coverage for the following hazards:
 - 1) X (Explosion).
 - 2) C (Collapse).
 - 3) U (Underground).
 - (e) Broad Form Property Coverage shall include Completed Operations.
3. Contractual Liability:
- (a) Bodily Injury: **\$ 2,000,000** each occurrence
 - (b) Property Damage: **\$ 2,000,000** each occurrence
\$ 4,000,000 aggregate
4. Personal Injury with Employment Exclusion deleted: **\$ 1,000,000** aggregate
5. If the General Liability coverages are provided by a Commercial Liability policy, the:
- (a) General Aggregate shall be not less than **\$ 2,000,000** and it shall apply, in total, to this Project only.
 - (b) Fire Damage Limit shall be not less than **\$ 100,000** on any one Fire.
 - (c) Medical Expense Limit shall be not less than **\$ 10,000** on any one person.
6. Umbrella Excess Liability: **\$ 2,000,000** over primary insurance
\$ 10,000 retention for self-insured hazards each occurrence
7. Business Auto Liability (including owned, non-owned and hired vehicles):
- (a) Bodily Injury: **\$ 500,000** each person
\$ 1,000,000 each accident
 - (b) Property Damage: **\$ 500,000** each occurrence

Note: The State of **Texas** has a no fault automobile insurance requirement. Contractor shall be certain coverage is provided which conforms to any specific stipulation in the law.

11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies

required by this Paragraph 11.1 shall contain a provision that coverage afforded under the policies will not be canceled, or allowed to expire, until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverage are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. Not later than ten (10) days from award of bid, Contractor shall deliver to the Owner, copies of the insurance certificate in accordance with the above requirements naming Owner as additional insured.

11.2 OWNER'S LIABILITY INSURANCE:

11.2.1 The Owner reserves the right to be self insured for any and all insurance of any kind, type, or nature required by the Contract Documents.

11.3 PROPERTY INSURANCE

11.3.1 The Contractor 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 architect fees, 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 Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 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. The form of policy for this coverage shall be (Completed Value) (Reporting), in the names of the Owner, Contractor, Subcontractors and Sub-subcontractors as their interests may appear in amount equal to contract sum for the Work.

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.

11.3.2 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.

11.3.3 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards 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.

11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1 Not later than ten (10) days from and after the date on which the award of the bid is made by the Owner, Contractor shall execute, as Principal, bonds joined in by a Surety Company of the Contractor's choice, generally referred to as a "Performance Bond" and a " Payment Bond," each in a penal sum equal to 100% of the Contract Sum. The Bonds shall be on the form provided by Owner and shall be compatible with provisions of governing authorities. Contractor shall file bonds with the Owner.

11.4.2 Surety Company executing bonds shall be acceptable to Owner and shall be authorized to do business in the State of Texas.

11.4.3 Surety Company shall list the address and phone number of the home office of its' principal place of business. Surety shall also provide the name, address and phone number of the local Agent issuing the bonds.

11.4.4 Contractor shall require attorney-in-fact who executes required bonds on behalf of surety to affix thereto a certified and current copy of power of attorney.

11.4.5 Contractor shall deliver required bonds to Owner not later than three (3) days following the date the Agreement is entered into, or if Work is to be commenced prior thereto in response to a letter of intent, Contractor shall, prior to commencement of Work, submit evidence satisfactory to Owner that such bonds will be furnished.

11.4.6 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 permit a copy to be made.

11.4.7 Contractor shall keep surety informed of progress of Work and where necessary, obtain surety's consent to, or waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other information required by surety.

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, Owner's or governing authority'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, Owner's or governing authority'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 which the Architect, Owner or governing authority has not specifically requested to examine prior to its being covered, the Architect, Owner or governing authority 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 cost 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

12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect, Owner or governing authority or failing to conform to the requirements of the Contract Documents, whether observed before, or after, Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligation under Paragraph 3.5, if, within one (1) year after the date of Substantial Completion of the Work, or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Document, 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. This period of one (1) year 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 performance of the Work. This obligation under this paragraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.2.2 The one (1) 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 (1) year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

12.2.2.4 Upon request of Owner and prior to expiration of one (1) year from date of Substantial Completion, Architect may conduct, and Contractor shall attend, a meeting with Owner to review facility operations and performance.

12.2.3 The Contractor shall remove from the site portions of the Work which 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 which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 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 (1) year period for correction of Work as described in Subparagraph 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

12.3.1 If the Owner prefers to accept Work which 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. Contractor shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept such defective or nonconforming Work (such costs to include but not limited to fees and charges of architects, engineers, testing agencies, consultants, attorneys and other professionals). Such adjustment shall be effected whether or not final payment has been made. If any such acceptance occurs prior to final payment, Owner shall be entitled to an appropriate decrease in the Contract Sum. If the acceptance occurs after final payment, an appropriate amount will be paid by the Contractor to the Owner.

ARTICLE 13 **MISCELLANEOUS PROVISIONS**

13.1 GOVERNING LAW: The Contract shall be governed by the laws of the State of Texas.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. 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 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.

13.2.3 Contractor shall not assign any monies due or to become due hereunder without written consent of Owner and of Contractor's Surety. The Contractor shall file a copy of such consent of Surety, together with copy of assignment with Owner and Architect. In case Contractor assigns all or any part of any monies due or to become due under this Contract, instrument of assignment must contain a clause substantially to effect that it is agreed that right of assignees in and to any monies due or to become due to

Contractor shall be subject to prior liens and claims of all persons, firms and corporations for services rendered; for payment of all laborers and mechanics for labor performed; for payment for all materials and equipment furnished and payment for all materials and equipment used or rented in performance of the Work called for in Contract; and for payment of any liens, claims, or amounts due to governments or any of their funds.

13.3 WRITTEN NOTICE: Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered 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 there under 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 required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Owner shall make arrangements for such tests, inspections and approvals with an independent testing laboratory, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the testing agency, Project inspector (if any), public authorities and (if requested), Architect timely notice of when and where tests and inspections are to be made so that they may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner, Project inspector (if any), or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Project inspector (if any), or 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 testing agency, project inspector (if any), governing agency, and (if requested), Architect of when and where tests and inspections are to be made so they may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, laws, statutes, ordinances, codes, rules or

regulations, 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 and Project inspector (if any).

13.5.5 If the Architect, Owner or Project inspector (if any), is to observe tests, inspections or approvals required by the Contract Documents, they will do so promptly and where practicable, at the normal place of testing.

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

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the legal rate prevailing for public entities under the laws of the State of Texas.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

- .1 Before Substantial Completion.** Before Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to acts occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.8 EQUAL OPPORTUNITY

13.8.1 Contractor shall maintain policies of employment as follows:

- .1** Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated

during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth policies of nondiscrimination.

- .2 Contractor and Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

13.9 NON-DISCRIMINATION

13.9.1 In performance of Work, Contractor and Subcontractors agree not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation or national origin. This provision shall include, but not be limited to the following; employment, upgrading, demotion, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

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 thirty (30) days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under the Contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of national emergency, making material unavailable;
- .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 Subparagraph 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 if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

14.1.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.3 If the Work is stopped for a period of sixty (60) days through no act or fault of the Contractor or a Subcontractor or their agents, employees or any other persons performing portions of the Work under the Contract with the Contractor because the Owner has persistently 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 (7) additional days written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreement between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; 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 and the Owner believes that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety seven (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 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, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY 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 Subparagraph 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 **ACCESS TO THE WORK**

15.1 Architect, the Owner, and their authorized representatives, shall have access at all times to the work for inspection wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and inspection.

ARTICLE 16 **STANDARDS**

16.1 Any material specified by reference to the number, symbol or title of a specific standard, such as a Commercial Standard, a Federal specification, a trade association standard or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of these Specifications, except as limited to type, class or grade, or modified in such reference.

16.2 The Standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. These Standards are not furnished to bidders for the reason that the manufacturers and trade involved are assumed to be familiar with their requirements. The Architect will furnish, upon request, information as to how copies of the standards referred to may be obtained.

16.3 It is not the intent of the Specifications to limit materials to the product of any particular manufacturer. Where definite materials, equipment and/or fixtures have been specified by name, manufacturer or catalog number, it has been done to set a definite standard and a reference for comparison of quality, application, physical conformity and other characteristics. It is not the intention to discriminate against, or prevent, any dealer, jobber or manufacturer from furnishing materials, equipment and fixtures which, in the judgment of the Architect, expressed in writing, meet or exceed the characteristics of the specified items.

ARTICLE 17

PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS

17.1 No officer or employee of Brazos County, Texas, shall have a financial interest, direct or indirect, in this Agreement or shall be financially interested, directly or indirectly, in the sale of any materials, supplies or services, except on behalf of the County as an officer or employee. Any willful violation of this Article shall constitute malfeasance in office and any officer or employee guilty thereof shall be subject to removal from his office or position. Any violation of this Article with the knowledge, express or implied, of the Contractor or Subcontractors shall render this Agreement voidable by Brazos County.

ARTICLE 18

PREVAILING WAGE RATES

18.1 PREVAILING WAGE RATE DETERMINATION

18.1.1 Chapter 2258, Texas Government Code, Title 10, requires state agencies, cities, counties, independent school districts and all other political subdivisions that engage in construction projects using public funds to include prevailing wage rates in the project bid documents and the construction contract.


ARTICLE 19

AUTHORITY TO CONTRACT

The County Judge is authorized to execute this Agreement upon the Commissioners Court's approval of the Agreement as set forth in the minutes of the Court's December 27, 2016 meeting.

This Agreement is entered into in as of the day and year first written above and is executed in at least three (3) original copies of which one (1) is to be delivered to the Contractor, one (1) to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER: BRAZOS COUNTY, TEXAS



Duane Peters, Brazos County Judge
200 South Texas Ave., Suite. 352
Bryan, Texas 77803
Date:

CONTRACTOR: 

JA Com Construction, LP

Date: 12/16/16

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

JaCody Construction
College Station, TX United States

Certificate Number:
2016-147499

Date Filed:
12/19/2016

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Brazos County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

17-243

Renovation of Building - Brazos County Employee Medical Clinic and Voter Admin.

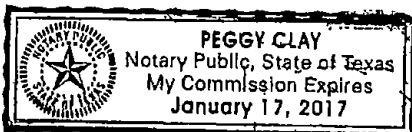
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

Wick McKeon
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said WICK MCKEAN, this the 19th day of DECEMBER 20 16, to certify which, witness my hand and seal of office.

Peggy Clay
Signature of officer administering oath

PEGGY CLAY
Printed name of officer administering oath

OFFICE MANAGER
Title of officer administering oath

BRAZOS COUNTY, TEXAS
BUDGET AMENDMENTS
No. 16/17 - 14.1
1/3/2017

[illegible]

Reallocation of funds to the appropriate account for graphics on the patrol units.

[illegible]

Date: 12/28/2016

Department Approval

Date _____

County Judge Approval

Date _____

1/3/2017

General Capital Improvement - SO

Reallocation of funds to the appropriate account for graphics on the patrol units.

[illegible]

Date: 12/28/2016

Department Approval	Date

County Judge Approval	Date

1/3/2017

Reallocation of funds to the appropriate account for graphics on the patrol unit.

[illegible]

Date: 12/28/2016

Date _____

Date _____

1/3/2017

[illegible]

Date: 12/28/2016

Department Approval	Date

County Judge Approval		Date
-----------------------	--	------



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Purchasing NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM: Renewal of Contract #17-263R for Janitorial Paper Products with Ray Criswell Distributing Company.

TO: Commissioners Court

FROM: Christy Norton

DATE: 12/16/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ACTION REQUESTED OR ALTERNATIVES: Renewal of Contract #17-263R for Janitorial Paper Products from Ray Criswell Distributing Company.

ATTACHMENTS:

File Name

[Janitorial Paper Products BID - Ray Criswell Distributing..pdf](#)

[17-263R Renewal letter-Ray Criswell.pdf](#)

[17-263R Tabulational.pdf](#)

Description

Janitorial Paper Products Original Contract

17-263R Renewal letter

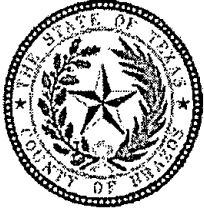
17-263R Tabulational

Type

Backup Material

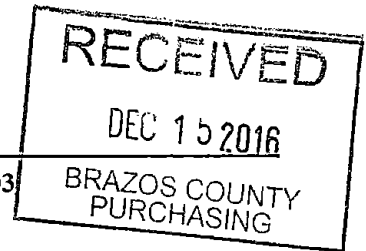
Backup Material

Backup Material



Brazos County Purchasing Department

200 SOUTH TEXAS AVE SUITE 352 BRYAN, TX 77803
PHONE (979) 361-4290 FAX (979) 361-4293



December 13, 2016

Ray Criswell Distributing Company
2201 S College Ave.
Bryan, TX 77801

Phone: 979-822-4431

Re: Renewal of Contract #17-263R for Janitorial Paper Products previously known as #2015-10.

Brazos County appreciates the quality work your company has provided and would like to exercise the renewal option for **Contract #17-263R for Janitorial Paper Products previously known as #2015-10.**

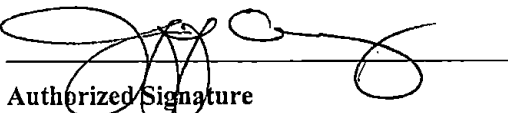
All terms, conditions, and pricing shall remain the same as approved in the original contract #2016-139. This renewal term will be for one year from February 1, 2017 to January 31, 2018

To accept the renewal option, please fill out the information and sign below. Return the signed documents by email to cnorton@brazoscountytexas.gov or fax to (979) 361-4293. Please then submit the original signed documents and an updated Certificate of Insurance by mail to the address listed above. **Please return acceptance as soon as possible.** If you have any questions, I may be reached at (979) 361-4291.

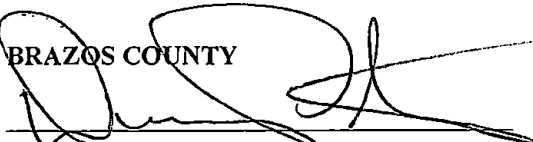
Contact Name: JEFF CLARY Telephone: 979. 822. 4431

E-Mail: cn:swell@suddenlink.net Fax: 979. 822. 4431

RAY CRISWELL DISTRIBUTING COMPANY


Authorized Signature

12/14/2016
Date


BRAZOS COUNTY
Duane Peters, County Judge

12/27/16
Date

17-263R JANITORIAL PAPER PRODUCTS									
Previous known as 2015-10									
February 1, 2017 through January 31, 2018									
			Estimated Quantity	Gulf Coast Paper	ProStar Industries	Interline Brands	Ray Criswell	Olmstead-Kirk Equipoment and Supply	Pollock Paper Distributers
1	Toilet Tissue- 2 ply 4.5 x 4.5 Equiv Dubl - Soft # 350 605 sheets per Roll at least 80 rolls per case	Brand Name:	375	Georgia Pacific	Benmore/Evolution	Georgia Pacific	Georgia Pacific	Georgia Pacific	SCA
		Item/Product Number		1828001	60101	1828001	18280	18280	TM16165
		Packaging Size		80/550	96/Case	80 rolls/case	80	80	500shts/roll; 96 rolls/case
		Package Price		\$34.11	\$33.20	\$35.99	\$34.25	\$43.50	\$35.50
				\$12,791.25	\$12,450.00	\$13,496.25	\$12,843.75	\$16,312.50	\$13,312.50
2	Toilet Tissue- 2 ply 2520 Coromatic Equiv Dubl - 1000 sheets per Roll and at least 36 rolls per case	Brand Name:	34	Georgia Pacific	Benmore/Evolution	Georgia Pacific	Georgia Pacific	Georgia Pacific	Georgia Pacific
		Items/Produce No.		2520	1010922EVO	2520	2520	2520	2520
		Packaging Size		36	12/cs	36	36	36	36 rolls/ case
		Package Price		\$41.67	\$25.72	\$43.99	\$43.95	\$46.85	\$43.50
				\$1,416.78	\$874.48	\$1,495.66	\$1,494.30	\$1,592.90	\$1,479.00
3	Toilet Tissue- 2 ply 4.0 x 4.05 Preference or equiv - 550 sheets per roll and 80 Rolls per case	Brand Name:	515	Georgia Pacific	Benmore/Evolution	Georgia Pacific	Georgia Pacific	Georgia Pacific	SCA
		Items/Produce No.		19880	60101	1828001	18280	18280	TM16165
		Packaging Size		80/550	96 rolls/case	80 rolls/case	80	80	500shts/roll; 96 rolls/case
		Package Price		\$32.33	\$33.20	\$35.99	\$34.25	\$43.50	\$35.50
				\$16,649.95	\$17,098.00	\$18,534.85	\$17,638.75	\$22,402.50	\$18,282.50
4	Paper Towels - 1 ply Multifold Tan 9 1/2" X 9 1/2" Equivalent to Baywest 480	Brand Name:	250	Georgia Pacific	Benmore/Evolution	Georgia Pacific	Georgia Pacific	Georgia Pacific	SCA
		Item/Product Number		23304	60441	23304	23304	23304	MK520A
		Packaging Size		4000	4000/case	16pkg of 250 4000/case	16	16	4000/case
		Package Price		\$14.44	\$16.20	\$14.99	\$14.95	\$18.50	\$15.50
				\$3,610.00	\$4,050.00	\$3,747.50	\$3,737.50	\$4,625.00	\$3,875.00
5	Paper Towels-2910P Coromatic Brown 900' x 8.25" roll 6 per package	Brand Name:	45	Georgia Pacific	Benmore/Evolution	Georgia Pacific	Georgia Pacific	Georgia Pacific	Georgia Pacific
		Item/Product Number		2910P	10360335EVO	2910P	2910P	2910P	2910P
		Packaging Size		6/700'	6/cs	6/700'	6	4/200	6/Case
		Package Price		\$32.00	\$22.79	\$33.79	\$33.95	\$36.00	\$33.50
				\$1,440.00	\$1,025.55	\$1,520.55	\$1,527.75	\$1,620.00	\$1,507.50
6	Paper Towels-Roll 2930P Coromatic White 900' x 8.25" roll, 6 rolls per case	Brand Name:	10	Georgia Pacific	Benmore/Evolution	Georgia Pacific	Georgia Pacific	Georgia Pacific	Georgia Pacific
		Item/Product Number		2930P	103603363EVO	2930P	2930P	2930P	2930P
		Packaging Size		6/700'	6/cs	6/700'	6	4/200	6/Case
		Package Price		\$36.89	\$23.25	\$38.99	\$38.95	\$41.50	\$38.50
				\$368.90	\$232.50	\$389.90	\$389.50	\$415.00	\$385.00
7	Paper Towels-Roll 2 ply White 900' x 8.25" roll Scott or equiv - 90 sheets per roll, 30 rolls per case	Brand Name:	25	Georgia Pacific	Benmore/Elements	Georgia Pacific	Georgia Pacific	Georgia Pacific	SCA
		Item/Product Number		27385	60501	27385	27385	27385	HB1990A
		Packaging Size		30/85	30 rolls/cs	30/85	30	30	30 rolls/case
		Package Price		\$18.33	\$20.48	\$19.29	\$18.30	\$25.00	\$23.10
				\$458.25	\$512.00	\$482.25	\$457.50	\$625.00	\$577.50
8	Paper Towels - Roll 1 ply Brown 6" x 80' roll, 6 rolls per case	Brand Name:	36	SCA	Primesource	No Bid	Georgia Pacific	Georgia Pacific	SCA
		Item/Product Number		RK8002	1038800		26301	2910P	RK800E
		Packaging Size		6/800'	6 rolls/case - 8"x800'		6	4/200	6/case
		Package Price		\$19.72	\$35.56		\$19.80	\$36.00	\$19.75
				\$709.92	\$1,280.16		\$712.80	\$1,296.00	\$711.00
9	Paper Towels - 1 ply Enmotion Wh or Br 10" x 800' Georgia Pacific or equiv. - 6 rolls per case	Brand Name:	32	Georgia Pacific	No Bid	Georgia Pacific	Georgia Pacific	GP	Georgia Pacific
		Item/Product Number		89480 Brown		89480 Brown	8948	89460	89480
		Packaging Size		6/800'		6/800'	6	6 - 800 foot rolls	6/case
		Package Price		\$45.72		\$48.29	\$52.50	\$56.25	\$48.00
				\$1,463.04		\$1,545.28	\$1,680.00	\$1,800.00	\$1,536.00
10	Paper Towels - Roll 2 ply White 12" x 85'85 sheets per roll, 30 rolls per case	Brand Name:	24	Georgia Pacific	Benmore/Elements	Georgia Pacific	Georgia Pacific	Georgia Pacific	SCA
		Item/Product Number		27385	60501	27385	27385	27385	HB1990A
		Packaging Size		30/85	30 rolls/case	30/85	30	30	30 rolls/case

17-263R JANITORIAL PAPER PRODUCTS									
Previous known as 2015-10									
February 1, 2017 through January 31, 2018									
			Estimated Quantity	Gulf Coast Paper	ProStar Industries	Interline Brands	Ray Criswell	Olmstead-Kirk Equipoment and Supply	Pollock Paper Distributers
		Package Price		\$18.33	\$20.48	\$19.29	\$18.30	\$25.00	\$23.10
				\$439.92	\$491.52	\$462.96	\$439.20	\$600.00	\$554.40
11	Shop Towels - Heavy Duty Wipe Away or equiv. - Heavy Duty for industrial Use	Brand Name:	60	Georgia Pacific	Cascades	Georgia Pacific	Georgia Pacific	Georgia Pacific	Kimberly Clark
		Item/Product Number		2007003	36790	29215	20070103	20070103	X70
		Packaging Size			100 Wipes per box - 8 boxes per Case	50/pkg 16pkg/case 800/case	10	10	150/Box
		Package Price		\$43.33	\$39.33	\$42.99	\$43.50	\$53.13	\$19.50
				\$2,599.80	\$2,359.80	\$2,579.40	\$2,610.00	\$3,187.80	\$1,170.00
Total for each vendor				\$41,947.81	\$40,374.01	\$44,254.60	\$43,531.05	\$54,476.70	\$43,390.40
Delivery				Tuesday and Thursday Only	Next Day	up to 5 business days	Same Day	2 Days	1-10 days on Fridays only
Discount from List Price				No Discount	20%	15%	10%	25%	No Discount

Recommened Award: Ray Criswell

Approved by Commissioner's Court on this 27th day of December, 2016 by [Signature] holding the position of Bravos County Judge



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Road and Bridge NUMBER: CC2016-Private Property Access-
Luza Ln-Antonio Pineda

DATE OF COURT MEETING: 12/27/2016

ITEM: Request from Road and Bridge to enter private property owned by Antonio Pineda and Maria Medina located off Luza Lane for the purpose of removing a tree that has fallen onto property from county right of way. This work is being done for the health, safety and welfare of the general public. Site is located in Precinct 4.

TO: Commissioners Court

FROM: Karen Tyler

DATE: 12/20/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

Description

Type

**BRAZOS COUNTY
COMMISSIONERS' COURT
ACTION FORM**

DEPARTMENT Road and Bridge

DEPT. NUMBER 56001000


DATE OF COURT MEETING: December 27, 2016

ITEM: Consider and take action on request from Road and Bridge to enter private property owned by Antonio Pineda and Maria Medina located off Luza Lane for the purpose of removing a tree that has fallen onto property from county right of way. This work is being done for the health, safety and welfare of the general public. Site is located in Precinct 4.


SOURCE OF FUNDS:

NOTES:

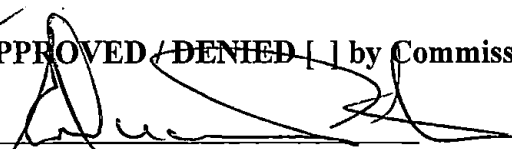
SUBMITTED BY:


R. Alan Munger, P.E.
County Engineer

ACKNOWLEDGED BY:


Commissioner Irma Cauley
Precinct 4

This Request is ☒ **APPROVED** ☐ **DENIED** ☐ by Commissioners' Court


E. Duane Peters, County Judge

12/27/16
Date



BRAZOS COUNTY PRIVATE PROPERTY ACCESS FORM

E. Duane Peters
Brazos County Judge

Lloyd Wassermann
Commissioner Pct. 1

Sammy Catalena
Commissioner Pct. 2

Kenny Mallard
Commissioner Pct. 3

Irma Cauley
Commissioner Pct. 4

R. Alan Munger, P.E.
County Engineer
Brazos County Road & Bridge Dept.
2617 Hwy 21 West
Bryan, Texas 77803
Office: 979-822-2127
Fax: 979-775-0453
ramunger@brazoscountytexas.gov

- I. OWNER(S): Antonio Pineda & Maria Medina (979) 450-3399
- II. ADDRESS: 3093 Luza Lane
Bryan, Texas 77807-7623
- III. LOCATION OF WORK: Same as above.
R16459 – John Williams Survey, A-237, Tract 15, 1.986 acres.
- IV. DESCRIPTION OF WORK: Remove tree that has fallen onto property from county right of way.

Additional Comments: _____

- V. MAINTENANCE: Yes _____ No X

IF YES, ESTIMATE FREQUENCY OF MAINTENANCE: N/A

I (we) the undersigned owner(s) grant permission to Brazos County the ability to access the above mentioned private property for roadway maintenance purposes.

Owner's Signature: Antonio Pineda
Antonio Pineda

Date: 12-15-16

R. Alan Munger, P.E.
R. Alan Munger, P.E.
County Engineer

Darrell Kolwes
Right of Way Agent



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Auditor NUMBER:

DATE OF COURT MEETING: 12/27/2016

ITEM:

- a. Wells Fargo Homemortgage-overpayment-\$791.31
- b. Shelby Savings Bank-payment in error-\$29,287.42

TO: Commissioners Court

FROM: Maggie See

DATE: 12/21/2016

FISCAL IMPACT: False

BUDGETED: False

DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

[DOC008.pdf](#)

Description

Tax Refund Applications 12/27/2016

Type

Cover Memo

26

APPLICATION FOR TAX REFUND

RMS 1899491

Collecting Office Name Brazos County Tax Office 4151 County Park Court Bryan Texas 77802		Phone Number 979-775-9930	Collecting tax for: (taxing units) Brazos County, City of Bryan, City of College Station Bryan ISD, College Station ISD, F1, F2, F3, F4, City of Kurten
--	--	------------------------------	---

To apply for a tax refund, the taxpayer must complete the following:

Step 1:	JAMES & HELEN HURST				
Owner's name and address	3365 VAQUERO DR				
	BRYAN TX 77808-6384				
Step 2:					
Describe the property	Legal	NORTH COUNTRY ESTATES PH 10 BLOCK 1 LOT 3			
	Address	3365 VAQUERO DR			
	Acct.#	302461 or Tax Receipt # 12/10/16			
Step 3:					
Give the tax payment information	Name of Taxing unit	Tax Year	Date of	Amount	Refund amt
		of refund	Payment	Paid	Requested
	Zrefund	2015	6/29/2016	\$4,953.45	\$791.31
Step 4:	Taxpayer's reason for refund: OP-Overpayment				
	Refund to WELLS FARGO HOMEMORTGAGE PO BOX 14506 DES MOINES IA 50306				
Step 4:	"I hereby apply for the refund of the above-described taxes and certify that the information I have given on this form is true and correct."				
	sign here > <i>Kyle Monic</i>		date > <i>12/10/16</i>		
	If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under Texas Penal Code Section 37.10.				
Step 5:	This tax refund is <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Disapproved				
	Authorized officer				
	sign here > <i>[Signature]</i>		date > <i>12/27/16</i>		
	Authorized officer of taxing unit for refund applications over amount required under Section 31.11 Tax Code				
	sign here >		date >		

APPLICATION FOR TAX REFUND

Collecting Office Name Brazos County Tax Office 4151 County Park Court Bryan Texas 77802		Phone Number 979-775-9930		Collecting tax for: (taxing units) Brazos County, City of Bryan, City of College Station Bryan ISD, College Station ISD, F1, F2, F3, F4, City of Kurten	
To apply for a tax refund, the taxpayer must complete the following:					
Step 1:	SUNSET RIDGE LLP				
Owner's name	% DON JONES				
and address	310 UNIVERSITY DR E				
	COLLEGE STATION TX 77840-1730				
Step 2:					
Describe the property	Legal	A005400 R STEVENSON (OCL) TRACT 6 99.474 ACRES			
	Address	SUNSET TRAIL			
	Acct.#	13818			
Step 3:					
Give the tax payment information	<u>Name of Taxing unit</u>	<u>Tax Year of refund</u>	<u>Date of Payment</u>	<u>Amount Paid</u>	<u>Refund amt Requested</u>
	Zrefund	2016	11/21/2016	\$29,287.42	\$29,287.42
	Taxpayer's reason for refund: OP-Overpayment				
	Refund to SHELBY SAVINGS BANK PO BOX 1806 CENTER TX 75935				
Step 4:					
Sign the form	"I hereby apply for the refund of the above-described taxes and certify that the information I have given on this form is true and correct."				
	sign here > <i>See attached</i>			date <i>12/13/2016</i>	
	If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under Texas Penal Code Section 37.10.				
Step 5:					
Tax refund determination	This tax refund is <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Disapproved				
	Authorized officer				
	sign here > <i>[Signature]</i>			date > <i>12/27/16</i>	
	Authorized officer of taxing unit for refund applications over amount required under Section 31.11 Tax Code				
	sign here >			date >	



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Budget Office NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Budget Amendments FY 16/17 13.1 - 13.13
TO: Commissioners Court
FROM: Irene Jett
DATE: 12/21/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00
SOURCE OF FUNDS: Individual budget amendments specifies sources.
ACTION REQUESTED OR ALTERNATIVES: Request approval.

ATTACHMENTS:

<u>File Name</u>	<u>Description</u>	<u>Type</u>
13_Coversheet.pdf	13 Cover Sheet	Cover Memo
13.1.pdf	13.1 Capital	Backup Material
13.2.pdf	13.2 SO Admin	Backup Material
13.3.pdf	13.3 Emergency Mgmt	Backup Material
13.4.pdf	13.4 Emergency Mgmt	Backup Material
13.5.pdf	13.5 IT Services	Backup Material
13.6.pdf	13.6 DA	Backup Material
13.7.pdf	13.7 Capital	Backup Material
13.8.pdf	13.8 Elections	Backup Material
13.9.pdf	13.9 Jail	Backup Material
13.10.pdf	13.10 SO	Backup Material
13.11.pdf	13.11 IT	Backup Material
13.12.pdf	13.12 SO	Backup Material
13.13.pdf	13.13 Elections Building	Backup Material

BRAZOS COUNTY, TEXAS**BUDGET AMENDMENT(S) FOR THE 2016-2017 BUDGET YEAR****NO. 16/17 13.1 – 13.13**

On this the 27th day of December 2016 at a regular meeting of the Commissioners' Court, the following members were present:

- A. Duane Peters, County Judge, Presiding
- B. Lloyd Wassermann, Commissioner, Precinct 1
- C. Sammy Catalena, Commissioner, Precinct 2
- D. Kenny Mallard, Commissioner, Precinct 3
- E. Irma Cauley, Commissioner, Precinct 4
- F. Karen McQueen, County Clerk

The following proceedings were held:

THAT WHEREAS, on 27th day of December 2016 the Court heard and approved a budget amendment for the 2016-2017 budget year for Brazos County, Texas; and

WHEREAS, expenditure is necessary due to the necessity to meet unusual and unforeseen conditions which could not be reasonably included in the original budget adopted 6 September 2016, the following amendment(s) to the original budget are hereby authorized, as described on the attached page(s).

ADOPTED AND APPROVED this the 27th day of December 2016.

THE COMMISSIONERS COURT OF BRAZOS COUNTY, TEXAS.

By: _____

Duane Peters, County Judge

Original: County Clerk's Office and
Attached to the original budget

12/27/2016

General Capital Improvement - R&B

Reallocation of funds to the appropriate account to purchase a 6 Yard Dump truck (\$82,162).

Date _____

12/27/16
Date

12/27/2016

Reallocation of funds to the appropriate account to purchase a Stealth Tracking Device.

Date _____

12/27/14
Date

12/27/2016

[illegible]

nnm
12/20/2016

Date _____

12/27/14

No. 16/17 - 13.4

12/27/2016

Emergency Management

Reallocation of funds to the appropriate account in order to do maintenance and minor repairs to the (4) Restroom Shower Trailers.

Date:

Date _____

Date _____

12/27/16

12/27/2016

Non-Departmental and IT Services

[illegible]

nnm
12/20/2016

Date _____

12/27/2016

D A Crime Fund

Reallocation of funds to the appropriate account to purchase (4) scanners and (1) printer.

nnm
12/20/2016

Date _____

12/27/16

**BRAZOS COUNTY, TEXAS
BUDGET AMENDMENTS
No. 16/17 - 13.7
12/27/2016**

[illegible]

To adjust FY 2017 beginning balance due to additional expenditures were made than projected at the end of FY 2016.

[illegible]

Date: 12/20/2016

Department Approval

Date _____

County Judge Approval _____

Date _____

**BRAZOS COUNTY, TEXAS
BUDGET AMENDMENTS
No. 16/17 - 13.8
12/27/2016**

[illegible]

Reallocation of funds to the appropriate account to purchase the Texas Voting contract for November 2016 election.

Date:

nnm
12/20/2016

Department Approval

Date _____

County Judge Approval

Date _____

12/27/14

12/27/2016

Reallocation of funds to the appropriate account to purchase (11) ballistic vest.

nnm
12/20/2016

Date _____

12/27/2016

Non-Departmental and SO Admin

Reallocation of funds to the appropriate account to purchase (2) arbitrator enclosure boxes for the patrol units.

12/20/2016

Date _____

12/27/16

12/27/2016

Non-Departmental and IT Services

Reallocation of funds to the appropriate account to purchase a replacement printer for County Judges Office.

nnm
12/20/2016

Date _____

-12/27/14

No. 16/17 - 13.12

12/27/2016

Sheriff Administration

Reverse Budget Amendment FY 16/17 9.4. Donation will be made to the SO - Crime Fund.

nnm
12/20/2016

Date _____

Date _____

12/27/2016

Reallocation of funds to the appropriate account for additional cost of the renovation of the Elections Building.

Date _____



**BRAZOS COUNTY
BRYAN, TEXAS**

DEPARTMENT: Human Resources NUMBER:
DATE OF COURT MEETING: 12/27/2016
ITEM: Personnel Action Forms
TO: Commissioners Court
DATE: 12/21/2016
FISCAL IMPACT: False
BUDGETED: False
DOLLAR AMOUNT: \$0.00

ATTACHMENTS:

File Name

[PAF 12-27-16.doc](#)

Description

Cover Sheet

Type

Cover Memo

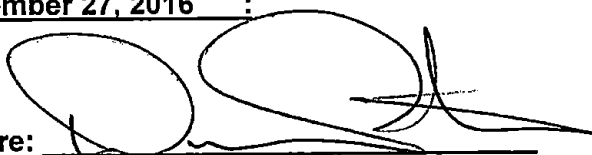
**PERSONNEL
CHANGE OF STATUS REQUESTS**

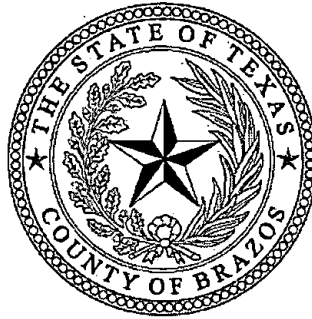
Commissioner Court Date: December 27, 2016
Department Submitting Information: Human Resources
Purpose of Submissions: Consider and Take Action on Change Requests

Department Submitting Request(s)	Employee Request Applies To	Action Requested
District Attorney	Lugo, Christina	Employment
	Wood, Nathaniel	Employment
Sheriff's Office – Detention	Cervantes, Valerie	Separation
	Jackson, Belinda	Change of Status
	Saldanha, Lucieni	Employment
	Vasquez, Albert	Employment
	White, Carey	Separation
Tax Office	Sweed, Yolanda	Change of Status

Approved in Commissioners' Court: December 27, 2016 :

County Judge's or Commissioner's Signature:
(This Copy to be attached to minutes)

A handwritten signature in black ink, consisting of a large, stylized 'C' or 'S' shape followed by a horizontal line and a small flourish.



BRAZOS COUNTY
BRYAN, TEXAS

CLAIMS

COMMISSIONERS COURT MEETING: **December 27, 2016**

CLAIM TO BE PAID BY BRAZOS COUNTY:

CLAIM # **7151309** *Thru* CLAIM # **7151538**

The Court voted unanimously to approve these Claims as submitted.

A handwritten signature in black ink, appearing to read "Duane Peters", is written over a horizontal line.

Duane Peters
County Judge

A handwritten signature in black ink, appearing to read "Karen McQueen", is written over a horizontal line.

Karen McQueen
County Clerk