

**FARMERSVILLE CITY COUNCIL  
REGULAR SESSION AGENDA  
January 13, 2015, 6:00 P.M.  
Council Chambers, City Hall  
205 S. Main Street**

**I. PRELIMINARY MATTERS**

- Call to Order, Roll Call, Prayer and Pledge of Allegiance
- Welcome guests and visitors: Anyone wanting to speak on any items that are not the subject of a Public Hearing on this agenda is asked to speak at this time, with an individual time limit of 3 minutes. This forum is limited to a total of 30 minutes. Please note that the City Council cannot comment or take any action on this item.
- Announcements relating to items of public interest: Announcements regarding local or regional civic and charitable events, staff recognition, commendation of citizens, traffic issues, upcoming meetings, awards, acknowledgement of meeting attendees, birthdays, and condolences.
  - Proclaim the month of April as Fair Housing Month
  - The next meeting of the City Council will be January 27, 2015

**II. CONSENT AGENDA**

Items in the Consent Agenda consist of non-controversial or "housekeeping" items required by law. Council members may request prior to a motion and vote on the Consent Agenda that one or more Items be withdrawn from the Consent Agenda and considered individually. Following approval of the Consent Agenda, excepting the items requested to be removed, the City Council will consider and act on each item so withdrawn individually.

- A. City Council Minutes
- B. Police Department Report
- C. Code Enforcement/Animal Control Report
- D. Fire Department Report
- E. Municipal Court Report
- F. Warrant Officer Report
- G. Public Works Report
- H. Library Report
- I. City Manager's Report

**III. INFORMATIONAL ITEMS**

These Informational Items are intended solely to keep the City Council apprised of the actions and efforts of the various boards and commissions serving the City of Farmersville. Council members may deliberate and/or request further information or clarification regarding any one or more of the items contained in this provision. City Council approval of, or action on, these items is not required or requested.

- A. FEDC (4A) Meeting Minutes

- B. FEDC (4A) Financial Report
- C. FCDC (4B) Meeting Minutes
- D. FCDC (4B) Financial Report
- E. Planning & Zoning Minutes
- F. Capital Improvements Advisory Commission Minutes
- G. Citizens Advisory Committee
- H. Sign Board of Appeals Minutes
- I. Parks Board Minutes
- J. Main Street Board Minutes
- K. Main Street Report
- L. Building & Property Standards Minutes
- M. TIRZ Minutes
- N. Library/Civic Center Board Minutes
- O. Farmersville Public Housing Authority
- P. North Texas Municipal Water District Board Agenda

#### **IV. READING OF ORDINANCES**

- A. Second Reading – Consider, discuss and act upon removing stop signs at the intersection of Orange and Beech Streets
- B. First Reading – Consider, discuss and act upon an ordinance regarding driveway approaches, driveways and parking hazards
- C. First Reading – Consider, discuss and act upon an ordinance regarding registration for contractors within the City of Farmersville
- D. Only Reading – Consider, discuss and act upon an ordinance regarding a franchise agreement with Sharyland Utilities
- E. Only Reading – Consider, discuss and act upon a budget amendment regarding Service Center funding

#### **V. REGULAR AGENDA**

- A. Consider, discuss and act upon a notice to award, contract with Vessels Construction and authorize the Mayor to sign the notice to proceed regarding the asphalt overlay project Phase II through the General Obligation Bond street projects
- B. Consider, discuss and act upon a contract with Daniel & Brown, Inc. to supply engineering services for the CDBG Sewer Grant project
- C. Consider, discuss and act upon a contract with Grantworks, Inc. to supply administration services for the CDBG Sewer Grant project
- D. Consider, discuss and act upon non-conforming signs
- E. Consider directing Planning & Zoning Commission to draft an ordinance regarding parking restrictions in residential neighborhoods

## **VI. REQUEST FOR CONSIDERATION OF PLACING ITEMS ON FUTURE AGENDAS**

## **VII. ADJOURNMENT**

Dated this the 9<sup>th</sup> day of January, 2015.



Joseph E. Helmberger, P.E., Mayor

*The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any matters listed on the agenda, as authorized by the Texas Government Code, including, but not limited to, Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), 418.175-183 (Deliberations about Homeland Security Issues) and as authorized by the Texas Tax Code, including, but not limited to, Section 321.3022 (Sales Tax Information).*

*Persons with disabilities who plan to attend this meeting and who may need assistance should contact the City Secretary at 972-782-6151 or Fax 972-782-6604 at least two (2) working days prior to the meeting so that appropriate arrangements can be made. Handicap Parking is available in the front and rear parking lot of the building.*

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted in the regular posting place of the City Hall building for Farmersville, Texas, in a place and manner convenient and readily accessible to the general public at all times, and said Notice was posted January 9, 2015 by 5:00 P.M. and remained so posted continuously at least 72 hours proceeding the scheduled time of said meeting.



Edie Sims, City Secretary



**CITY OF FARMERSVILLE  
PROCLAMATION OF APRIL AS FAIR HOUSING MONTH**

**WHEREAS**, Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination in housing and declares it a national policy to provide, within constitutional limits, for fair housing in the United States; and

**WHEREAS**, the principle of Fair Housing is not only national law and national policy, but a fundamental human concept and entitlement for all Americans; and

**WHEREAS**, the National Fair Housing Law, during the month of April, provides an opportunity for all Americans to recognize that complete success in the goal of equal housing opportunity can only be accomplished with the help and cooperation of all Americans.

**NOW, THEREFORE**, we, the City Council of the City of Farmersville, do proclaim April as Fair Housing Month in City of Farmersville and do hereby urge all the citizens of this locality to become aware of and support the Fair Housing law.

Passed and adopted by the City Council of the City of Farmersville, Collin County, State of Texas, on the 13<sup>th</sup> day of January, 2015.

**APPROVED:**

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Mayor

**ATTEST:**

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City Secretary





TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: CONSENT AGENDA - City Council Minutes

Electronic minutes are found at the following link:

[http://www.farmersvilletx.com/government/agendas\\_and\\_minutes/city\\_council\\_meetings.jsp](http://www.farmersvilletx.com/government/agendas_and_minutes/city_council_meetings.jsp)

FARMERSVILLE CITY COUNCIL  
MEETING MINUTES  
December 2, 2014

The Farmersville City Council met in special session on December 2, 2014 at 6:00pm, in the Council Chambers at City Hall with the following members present: Mayor Helmberger, John Klostermann, John Politz, Michael Hesse and Jim Foy. Council member absent was Russell Chandler. Staff members present were City Manager Ben White, Police Chief Mike Sullivan, Fire Chief Kim Morris, Finance Director Daphne Hamlin, Assistant to the City Manager Paula Jackson, Main Street Manager Adah Leah Wolf and City Secretary Edie Sims.

**Item I) CALL MEETING TO ORDER, ROLL CALL**

Mayor Helmberger called the meeting to order. Edie Sims called the roll and announced a quorum was present. Mayor Helmberger welcomed all guests and visitors. John Foster of First Baptist Church Farmersville offered the invocation with Mayor Helmberger leading the audience in the Pledge of Allegiance to the American Flag and the Texas Flag.

Mayor Helmberger announced City offices will be closed December 24<sup>th</sup> – 26<sup>th</sup> for the Christmas holiday. Due to the upcoming holidays, a special Council meeting will be held December 16<sup>th</sup> and the first meeting in January will be January 13<sup>th</sup>. The Council meetings will return to the regular schedule of 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays beginning January 13<sup>th</sup>.

Mayor Helmberger also announced Farmers and Fleas Market will be December 6<sup>th</sup> along with the Frosty 5K Fun Run.

**Item II – A) FIRST READING – CONSIDER, DISCUSS AND ACT UPON AN ORDINANCE REGARDING DUMPSTER USE REGULATIONS**

Mayor Helmberger opened discussion for the dumpster use regulations by stating if the 6' tall enclosure remains a requirement, the Zoning Ordinance will need to be reflective of same. All issues with the ordinance have been addressed and Mayor Helmberger was pleased with the results. John Klostermann motioned to approve the ordinance as presented with Jim Foy seconding the motion. A poll of the Council was taken as follows: John Klostermann yes, John Politz yes, Michael Hesse yes and Jim Foy yes. Motion carried with full Council approval.

**ITEM II – B) FIRST READING – CONSIDER, DISCUSS AND ACT UPON AN ORDINANCE RENAMING THE EAST/WEST PORTION OF JACKSON STREET TO SYCAMORE STREET**

Mayor Helmberger requested a line drawing rather than a color photo to be clearly read in the future. Jim Foy requested clarification of East Sycamore to specify which side of Main Street is being identified. With those changes, Jim Foy motioned to approve the first reading of the ordinance with John Politz seconding the motion. A poll of the Council was taken as follows: John Klostermann yes, John Politz yes, Michael Hesse yes and Jim Foy yes. Motion carried with full Council approval.

**ITEM III – A) CONSIDER, DISCUSS AND ACT UPON FUTURE WATER/SEWER TAP AGREEMENTS**

City Manager Ben White presented a generic water/sewer tap agreement to be used in the future with Council approval. The agreement is a general form to meet most circumstances. Mr. White indicated item 2 had a provision regarding irrigation needs. John Klostermann motioned to approve the agreement template as presented with John Politz seconding the motion. A poll of the Council was taken as follows: John Klostermann yes, John Politz yes, Michael Hesse yes and Jim Foy yes. Motion carried with full Council approval.

**ITEM III – B) CONSIDER, DISCUSS AND ACT UPON ISSUES WITH STOP SIGNS AND OFFSET INTERSECTIONS**

At the last Council meeting, a question was raised regarding the Hinton Home property donating property at the intersection of Summit and Rike Streets to straighten the offset intersection. With the reply being no, the question was raised if the stop sign needed to be removed. Michael Hesse stated he would like to leave the stop sign to slow down traffic, even if the intersection stop signs are not enforceable. Jim Foy stated he spoke with the area residents who strongly request to keep the stop signs in place. The offset intersection is very dangerous if the stop signs were not there to help slow down traffic. Jim Foy recommended leaving the stop sign in its current location. John Klostermann motioned to leave the stop sign as is in its current location with Michael Hesse seconding the motion. John Politz expressed concern if the stop sign can remain since it is not enforceable. Police Chief Mike Sullivan stated an ordinance could be passed lowering the speed limit to 25 mph. Michael Hesse stated the intent is for public safety with Jim Foy stating the stop sign is justified. Chief Sullivan stated the Police Department could enforce the area if stop lines were installed. Council concurred to leave the stop signs in their current position and paint stop lines to indicate a stopping point. No further action was taken by Council.

**ITEM III – C) CONSIDER, DISCUSS AND ACT UPON AN AGREEMENT WITH JD RUSSELL REGARDING ELECTRIC RATES AND DEMAND CHARGES**

Jim Foy stated he has reviewed the documentation and found several 90 day agreements with a low multiplier, but those agreements have long since expired. In March 2007, a new agreement was signed that did not have a demand charge under 100 kWh. In 2009, the agreement expired and upon its expiration the charges were to revert to regular billing charges which included demand charges and the current multiplier. During Cap Rock's tenure, a specified ratchet was not used. From 2009 to April 2014, billing has been accomplished using the 2007 agreement and did not revert to the current ordinance requiring a demand charge and using the current multiplier. City Manager Ben White stated his calculations indicated \$5,000 - \$5,500 difference from using the current ordinance rates comparing to the rates charged per the 2007 agreement rates.

Phasing the current ordinance rates back into the billing will cost the City approximately \$2,500 over the next 12 months. Much more has been spent on this issue trying to resolve agreements.

An agreement has been created to facilitate billing to JD Russell Company to include a peak demand percentage to be implemented over a period of one year. Mayor Helmberger requested a change to Section 4 under Terms to terminate at the end of calendar year 2015. City Manager Ben White requested the agreement clarify the agreement will be enforced with the then current rates after the first billing cycle in 2016. Mayor Helmberger also made a request to have this agreement signed by the end of calendar year 2014. If JD Russell Company refuses to sign the agreement by then, the normal peak demand charges in the current ordinance will be implemented. Jim Foy motioned to approve the agreement for the billing demand rate with JD Russell Company with the changes noted. If the agreement is not signed by the end of this year, the rate will revert to the ordinance as adopted. John Klostermann seconded the motion.

Jim Foy questioned if the date to read JD Russell's meter had been resolved since this was another item of concern. David Eaves stated he requested a specific date to have the meter read so he could monitor when the peak demand would increase during production months allowing him to stay abreast of the demand and not reach the peak demand limit. Michael Hesse stated the meter reading should not be affected. Mr. White indicated 1 out of 5 low demand uses would not have impacted the rate as the highest rate within the last 12 months. When the meter is read and the demand is low, the rate will not be affected; however if the meter reading is higher, the rate could be implemented on either side of the billing date. City Manager Ben White stated when electronic meters are implemented, this will no longer be an issue. Regarding the agreement, Mr. White stated he is flexible for one year. Jim Foy stated he is not suggesting reading the meter at JD Russell at their request. Mr. Foy requested we be consistent.

A poll of the Council was taken as follows: John Klostermann yes, John Politz yes, Michael Hesse yes and Jim Foy yes. Motion carried with full Council approval.

**ITEM III – D) CONSIDER, DISCUSS AND ACT UPON AN AMENDMENT TO THE QUALIFIED SCHEDULING ENTITY SERVICES AGREEMENT BETWEEN THE CITY OF GARLAND AND THE CITY OF FARMERSVILLE**

City Manager Ben White stated the City signed an agreement with the City of Garland in April 2014; however Sharyland was our Qualified Scheduling Entity (QSE) until the end of 2014 to fulfill the contract with Sharyland. It is now time to change our QSE to Garland Power and Light as they provide those services to Farmersville Electric now. Mr. White also indicated the QSE interfaces with ERCOT. The QSE provides how the power is applied and charged. Jim Foy motioned to approve the agreement as presented with Michael Hesse seconding the motion. A poll of the Council was taken as follows: John Klostermann yes, John Politz yes, Michael Hesse yes and Jim Foy yes. Motion carried with full Council approval.

**ITEM III – E) CONSIDER, DISCUSS AND ACT UPON A REQUEST FOR QUALIFICATIONS FOR AN AUDITOR**

A Request for Qualifications (RFQ) was presented to the Council for their review. The RFQ is the same format used during the last auditor search. Included with the audit, Jim Foy noted most firms offer financial advice throughout the year at no additional charge. This particular item may need to be included in the RFQ when time opens for the auditor search. From time to time, general accounting questions fall under the description of work and such questions may impact the audit. Mayor Helmberger, who asked for this item, stated he was satisfied with the term of three years with two years extension with Council approval. Michael Hesse motioned to approve the RFQ format as presented with Jim Foy seconding the motion. A poll of the Council was taken as follows: John Klostermann yes, John Politz yes, Michael Hesse yes and Jim Foy yes. Motion carried with full Council approval.

**ITEM III – F) CONSIDER, DISCUSS AND ACT UPON A RESOLUTION AWARDED THE PROFESSIONAL SERVICE PROVIDERS FOR THE CDBG SEWER GRANT #7214160**

City Manager Ben White indicated the resolution presented fulfills the requirement for the CDBG sewer grant. John Klostermann motioned to approve the resolution as presented with Michael Hesse seconding the motion. A poll of the Council was taken as follows: John Klostermann yes, John Politz yes, Michael Hesse yes and Jim Foy yes. Motion carried with full Council approval.

**ITEM III – G) CONSIDER, DISCUSS AND ACT UPON A RESOLUTION DESIGNATING SIGNATORIES FOR THE CDBG SEWER GRANT #7214160**

City Manager Ben White indicated the resolution presented fulfills the requirement for the CDBG sewer grant. Michael Hesse motioned to approve the resolution as presented with John Politz seconding the motion. A poll of the Council was taken as follows: John Klostermann yes, John Politz yes, Michael Hesse yes and Jim Foy yes. Motion carried with full Council approval.

**ITEM III – H) CONSIDER, DISCUSS AND ACT UPON A RESOLUTION ADOPTING A COMPLAINT GRIEVANCE PROCEDURE REGARDING THE CDBG SEWER GRANT #7214160**

City Manager Ben White indicated the resolution presented fulfills the requirement for the CDBG sewer grant. Michael Hesse motioned to approve the resolution as presented with John Politz seconding the motion. A poll of the Council was taken as follows: John Klostermann yes, John Politz yes, Michael Hesse yes and Jim Foy yes. Motion carried with full Council approval.

**ITEM IV) REQUEST FOR CONSIDERATION OF PLACING ITEMS ON FUTURE AGENDAS**

No one requested placing items on future agendas.

**ITEM V) ADJOURNMENT**

Council adjourned at 6:37pm.

APPROVED

ATTEST

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Joseph E. Helmberger, P.E., Mayor

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Edie Sims, City Secretary

DRAFT

FARMERSVILLE CITY COUNCIL  
MEETING MINUTES  
December 16, 2014

The Farmersville City Council met in special session on December 16, 2014 at 6:00pm in the Council Chambers at City Hall with the following members present: John Klostermann, Michael Hesse, Russell Chandler and Jim Foy. Council members not present were Mayor Helmberger and John Politz. Staff members present were City Manager Ben White, Police Chief Mike Sullivan, Fire Chief Kim Morris, City Attorney Alan Lathrom, Finance Director Daphne Hamlin, Warrant Officer Rick Ranspot, Librarian Trisha Dowell and City Secretary Edie Sims.

**Item I) CALL MEETING TO ORDER, ROLL CALL**

Mayor Pro Tem Jim Foy called the meeting to order. Edie Sims called the roll and announced a quorum was present. Mayor Pro Tem Foy welcomed all guests and visitors, offered the invocation and lead the audience in the Pledge of Allegiance to the American Flag and the Texas Flag.

Mayor Pro Tem Jim Foy announced the City offices would be closed December 24<sup>th</sup> – 26<sup>th</sup> for the Christmas holiday and closed January 1<sup>st</sup> for the New Year's Day holiday. The next City Council meeting will be January 13, 2015 and Council will meet regularly on the 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays.

**Item II) CONSENT AGENDA**

With no items being withdrawn for discussion, Russell Chandler motioned to approve the Consent Agenda as presented with Michael Hesse seconding the motion. Motion passed with full Council approval.

**Item III) INFORMATIONAL ITEMS**

Council did not request any information or clarification regarding Informational Items.

**ITEM IV – A) SECOND READING – CONSIDER, DISCUSS AND ACT UPON AN ORDINANCE REGARDING DUMPSTER USE REGULATIONS**

City Manager Ben White informed the Council of their approval at the first reading of this ordinance on December 2<sup>nd</sup>. Mr. White commended the Planning & Zoning Commission for their efforts setting up the rules for dumpsters. John Klostermann motioned to approve the ordinance as presented with Michael Hesse seconding the motion. Motion passed with full Council approval.

**ITEM IV – B) SECOND READING – CONSIDER, DISCUSS AND ACT UPON AN ORDINANCE RENAMING THE EAST/WEST PORTION OF JACKSON STREET TO EAST SYCAMORE STREET**

With Council approving the first reading of this ordinance at the last meeting, Michael Hesse motioned to approve the second reading as presented with John Klostermann seconding the motion. Motion passed with full Council approval.

**ITEM IV – C) FIRST READING – CONSIDER, DISCUSS AND ACT UPON REMOVING STOP SIGNS AT THE INTERSECTION OF ORANGE AND BEECH STREETS**

City Manager Ben White indicated after the last Council discussion regarding the stop sign removal, an ordinance was compiled. John Klostermann motioned to approve the first reading of the ordinance as presented with Russell Chandler seconding the motion. Motion passed with full Council approval.

**ITEM IV – D) FIRST READING – CONSIDER, DISCUSS AND ACT UPON AN ORDINANCE REGARDING DRIVEWAY APPROACHES, DRIVEWAYS AND PARKING HAZARDS**

City Manager Ben White stated the Planning and Zoning Commission carefully deliberated on several versions surrounding driveway approaches and parking hazards including circular drives, widths of drives and single entries. The ordinance allows for the main driveway to be 24' wide to accommodate double garages.

As the Council may recall, the need for this ordinance was recognized while involved with the street enhancement projects. Several residential lots were found to have the entire front yard as driveways or mini parking lots. There are other instances of parking issues where people are driving over the curb or using the sidewalks as parking areas. The City has some parking restrictions, but not detailed enough. The rules presented by Planning & Zoning Commission were deemed reasonable. Although the driveway does not affect the inside of the property, the ordinance does affect the entrances and the curbing. City Attorney Alan Lathrom indicated there are limitations of the percentage of yard to be covered by an impervious surface beyond the property line. Parking issues are being addressed regarding parking on unimproved surfaces that should not be allowed.

Large trucks were also addressed by not allowing stopping, standing or parking any vehicle with more than 6 wheels on any street during the hours of sundown to sunup. The decision from the Planning & Zoning Commission resolved people who drive dually trucks as their main vehicle, yet does not allow larger vehicles to park on City streets.

Jim Foy questioned the addressing of garages but not car ports. Also the parking does not confine people from parking on the streets, only within the property and on improved surfaces. Mr. White addressed the need to restrict the entrances and need for curb cuts. The curbs are designed for drainage. Loop driveways were addressed to accommodate corner lots. A couple of revisions were requested from the discussion to include multiple car garages and car ports. Council did not make a motion but instead asked for revisions to be made and have the ordinance return to the Council at the next meeting as the first reading.

**ITEM IV – E) ONLY READING – CONSIDER, DISCUSS AND ACT UPON AN ORDINANCE REGARDING A FRANCHISE AGREEMENT WITH SHARYLAND UTILITIES**

City Manager Ben White informed the Council the agreement only refers to Sharyland's service area. The agreement will renew the franchise. The amount



generated by the franchise is not clear, but Mr. White stated he can attain this information. Council took no action and requested more information and return this item at the next meeting.

**ITEM V – A) CONSIDER, DISCUSS AND ACT UPON A PLAT IN THE GRAYWOODS ADDITION ON SOUTH MAIN**

Jim Foy noted the plat is unusual from other plats that have been presented. City Manager Ben White explained the situation with the plat. The original owners, Cody Gray and Paul Woods, have mutually agreed to replat the property for Mr. Gray to utilize two addition front lots and have the remainder of land be part of Mr. Wood's property. The property was not originally platted and therefore the property has gone through the platting process. The lots meet all the requirements and right-of-way dedications have been accomplished. As long as fire codes are met, a home could be positioned in the back "L" shape of the newly platted property. Russell Chandler motioned to approve the plat as presented with John Klostermann seconding the motion. Motion passed with full Council approval.

**ITEM V – B) CONSIDER, DISCUSS AND ACT UPON A CHANGE ORDER FOR THE 12" WATER LINE PROJECT ON SYCAMORE STREET**

City Manager Ben White stated the Change Order handles changes requested including valves to shut off the system. A rust problem had to be solved on South Washington caused by a cast iron pipe which will be replaced. The remainder of cast iron pipe issues will be replaced as another project. John Klostermann motioned to approve the Change Order as presented with Michael Hesse seconding the motion. Motion passed with full Council approval.

**ITEM V – C) CONSIDER, DISCUSS AND ACT UPON AWARDED THE BID FOR THE STREET PROJECTS PAID THROUGH THE GENERAL OBLIGATION BOND**

City Engineer Eddy Daniel came before the Council stating the bids were opened late Friday with 4 bidders for the project. Vessels Construction was the low bidder at \$764,790.78. Vessels Construction has flexbase in-house and has a lower overhead which allowed them to give a lower bid. The references were favorable. The bid meets the budgeted amount and the total could change depending upon the lime testing. Mr. Daniel recommended Vessels Construction as the award winner. Streets to be included with this portion of the project are: Santa Fe between Johnson and Main Streets, Sid Nelson all the way to Hamilton Street, Locust Street from Highway 380 and Walnut Street up to Abbey Road.

City Manager Ben White indicated he is trying to include Walnut Street to be considered. Once other streets have been complete and allowing for bond fund availability, Walnut Street needs to be an option to have overlaid without curbs. With that being clarified, Michael Hesse motioned to approve the bid award to Vessels Construction with Russell Chandler seconding the motion. Motion passed with full Council approval.

**ITEM V – D) CONSIDER, DISCUSS AND ACT UPON AWARDING THE BID FOR THE CHAPARRAL TRAIL PHASE III PROJECT**

City Engineer Eddy Daniel informed the Council of a bid opening for this project this past Thursday. The City has a grant through Collin County Open Space for \$300,000. The base bid from Cole Construction was \$333,000 which was the lowest bidder. With using the bid alternates and changing the quantities of items, the project cost has been lowered to \$298,560. Reconstructing the bridges was left in the project but the irrigation has been removed. Signs were added but the restrooms were too expensive so that has been removed from the project.

Eddy Daniel recommended awarding the project to Cole Construction at a base bid of \$333,000 with an understanding a Change Order will be presented to bring the project cost below the grant fund amount.

Other changes in the project include the standardized bollards so that one person can lift out of the sleeve. City Manager Ben White stated this phase will be the last portion of the Chaparral Trail for some time. The next focus for the Open Space Grant will be J.W. Spain Athletic Complex and then Southlake Park. Michael Hesse expressed concerns of parking needs. John Klostermann motioned to award the Chaparral Trail Phase III project to Cole Construction with Russell Chandler seconding the motion. Motion passed with full Council approval.

**ITEM V – E) CONSIDER, DISCUSS AND ACT UPON THE PROCESS USED TO SELECT THE FIRM ASSOCIATED WITH THE RECENT WASTEWATER TREATMENT PLANT FACILITY AND INTERCEPTOR PROJECT REQUEST FOR QUALIFICATIONS**

City Engineer Eddy Daniel stated 5 proposals have been received today and will be processed to help facilitate the search for an engineering firm for the wastewater treatment plant facility and interceptor project. With the Farmersville Economic Development Corporation taking the lead by funding the engineer, two members of the FEDC Board will be acting as an Evaluation Team along with the City Engineer, City Manager and one City Councilperson. This Evaluation Team will serve as the selection committee of the engineer for this project. Eddy Daniel stated the solicitation was in accordance with Texas Water Development rules. If the City decides to use the engineer for design engineering and construction engineering, the criteria will have already been met. The Evaluation Team will rank and make recommendations to the Council for final decision. Russell Chandler motioned to appoint John Politz as the Council person to serve on the Evaluation Team with Michael Hesse seconding the motion. Motion passed with full Council approval.

**ITEM V – F) CONSIDER, DISCUSS AND ACT UPON THE PROCESS USED TO SELECT THE FIRM ASSOCIATED WITH THE TOWNE CENTRE REQUEST FOR QUALIFICATIONS AND THE J.W. SPAIN ATHLETIC COMPLEX PROJECT REQUEST FOR QUALIFICATIONS**

City Manager Ben White stated the selection for the Towne Centre planner is similar to the wastewater treatment facility engineering process. The planner is being funded by the Farmersville Economic Development Corporation. Advertisements have

been submitted for a Towne Centre planner with a closing date of January 9, 2015. City Manager Ben White recommended the following to serve as an Evaluation Team to select the engineer/planner for this project: the City Engineer, the City Manager, two members of the FEDC and one Councilman.

The planner for the J.W. Spain Athletic Complex project is another planning process that will include the City Engineer, the City Manager, one member of the Parks and Recreation Board, one Council member and one member of the Farmersville Community Development Corporation. The FCDC is funding projects and grant matches for the J.W. Spain Athletic Complex. Michael Hesse motioned to appoint John Klostermann as the Council member for the Towne Centre Evaluation Team and Russell Chandler for the Athletic Complex Evaluation Team with John Klostermann seconding the motion. Motion passed with full Council approval.

**ITEM V – G) CONSIDER, DISCUSS AND ACT UPON AN INTERLOCAL AGREEMENT WITH COLLIN COUNTY FOR CHILD ABUSE, INVESTIGATION SERVICES AND LAW ENFORCEMENT SERVICES**

City Manager Ben White stated the Interlocal agreement presented is for a 5 year term. Police Chief Mike Sullivan stated the interlocal agreement is a standard agreement with Collin County to offer investigative services regarding child abuse and other law enforcement services. All cities participate with Collin County to receive these services. Russell Chandler motioned to approve the agreement as presented with John Klostermann seconding the motion. Motion passed with full Council approval.

**ITEM V – H) CONSIDER, DISCUSS AND ACT UPON CITY FINANCIAL REPORTS**

Finance Director Daphne Hamlin presented a memo to the Council summarizing the City's financials. Presently we are on the right track in all departments with our budget. The water and wastewater departments are finally making ends meet.

City Manager Ben White stated the purchase of new police cars and an additional fireman have been postponed. Ms. Hamlin stating she is setting funds back to pay off significant loans for the fire department including \$52,000 for the Quint. We are presently one year away from paying off this loan. We will then be in a position to pay for additional personnel and other items. Mr. White also indicated the Public Works Department is putting in a new metering system which will operate our system more efficiently.

Transfers are 1/3 of the City budget and have been for many years. Mr. White stated this was one of the reasons for taking back our electric utility so the funds can remain within the City. Michael Hesse motioned to approve the City Financial Report as presented with John Klostermann seconding the motion. Motion passed with full Council approval.

**ITEM V – I) CONSIDER, DISCUSS AND ACT UPON CONTRACTOR REGISTRATION AND FEES**

City Manager Ben White indicated the need for guidance from the Council regarding contractor registrations. Other cities register contractors and collect a registration fee. City Attorney Alan Lathrom informed the Council of recent legislation

that made it unlawful to collect registration fees from plumbers. Other trades were not included in the legislation. Other cities register contractors but are now not charging an annual registration fee for plumbers and some are not charging any fees for any type of trade. City Manager Ben White stated we are maturing as a City and felt this action would be good for our City. This is a service for our residents. Police Chief Mike Sullivan stated situations have presented themselves and registering could have helped. Council concurred to bring an ordinance to the next meeting for consideration.

**ITEM V – J) UPDATE ON CHAPARRAL TRAIL PROJECTS**

City Manager Ben White stated the Chaparral Trail project was covered during an earlier agenda item. No further information was presented.

**ITEM V – K) UPDATE ON STREET, WATER AND WASTEWATER GENERAL OBLIGATION BOND PROJECTS**

City Manager Ben White stated Windom and Beech Streets have been completed. There is not a right-of-way on Windom to Maple Street, but the intersection and drainage problems have been repaired along with a water leak. Hamilton Street is still in the engineering stage and will be a huge project.

Pressure improvements have been seen since the connection of the 12" water line to the water tower. This project is coming to a close by the end of the year. The next water line project will be at Bob Tedford Drive.

Houston/Austin Streets are ready for bidding. Rike/Houston/Austin Streets are in exceptionally bad condition, but rains will make the streets worse when construction begins. Concerns were raised regarding streets involved during water line projects that must be repaired but funding was not specific for said repairs. Due to bond funds being used for these projects, Mr. White asked if future water projects could be placed on hold and deal with street problems that were created by the other water projects. Jim Foy stated this was a reasonable request. City Attorney Alan Lathrom indicated the changes depend upon the scope of the repair project. Jim Foy also questioned if any discussions have been raised regarding the straightening of Hamilton Street. Mr. White indicated one of the owners along Hamilton Street is willing to discuss this matter. No further discussion was held by Council.

**ITEM V – L) UPDATE ON HIGHWAY 380 PROJECT**

City Manager Ben White stated the recent detour through town while the old railroad bridge was removed went fairly smoothly. The last ramp is expected to be completed in February. The main railroad track and overall project is expected to be completed in May/June. Jim Foy questioned if the State paid for manpower to used to facilitate the detour with Mr. White replying yes. Police Chief Mike Sullivan added since the median barriers have been removed on Highway 380, the accidents have subsided.

**ITEM V – M) UPDATE ON WASTEWATER TREATMENT FACILITY**

City Manager Ben White indicated this item is being kept in front of the Council. We are in a good position with the intended use plan. The City Council has opted to delay the application for funds until next year. We have received 5 responses for

Request for Qualifications for engineering on the wastewater treatment plant facility and the interceptor project. The Evaluation Team was proposed earlier in this meeting.

**ITEM VI) REQUEST FOR CONSIDERATION OF PLACING ITEMS ON FUTURE AGENDAS**

Jim Foy requested the Council to discuss non-conforming signs, especially those in Highway Commercial District and discuss the long range plans for signs. No one else requested placing items on future agendas.

**ITEM VII) ADJOURNMENT**

Council adjourned at 7:38pm.

APPROVED

ATTEST

---

Joseph E. Helmberger, P.E., Mayor

---

Edie Sims, City Secretary



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: CONSENT AGENDA - Police Department Report



Farmersville Police Department  
134 North Washington Street  
Farmersville, TX 75442  
972-782-6141

## Farmersville Police Department Monthly Report December-14

Total Calls For Service: **399**

### Tier 1 Crimes

Robbery: **0**  
Assault: **2**  
Theft: **3**  
Burglary: **4**  
Motor Vehicle Theft: **0**

### Tier 2 Crimes

Forgery: **1**  
Fraud: **0**  
Criminal Mischief: **0**  
Weapons: **3**  
DWI: **1**  
Public Intoxication: **1**  
Disorderly Conduct: **0**  
Drugs: **7**

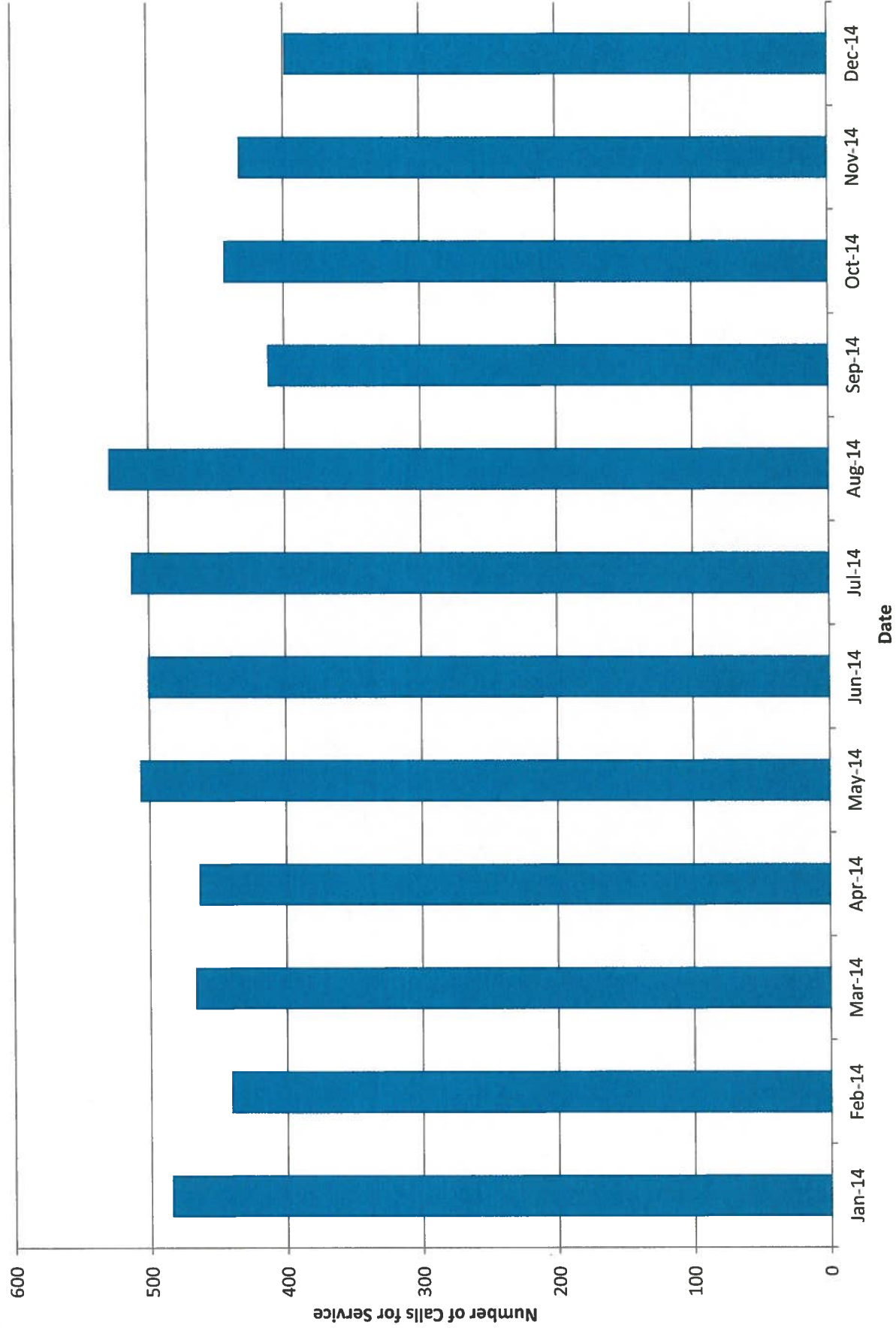
### Miscellaneous

Traffic Stops: **181**  
Citations: **90 (113 violations)**  
Alarms: **4**  
Major Accidents: **1**  
Minor Accidents: **8**  
Agency Assist: **19**

### Cases filed with the District Attorney's Office:

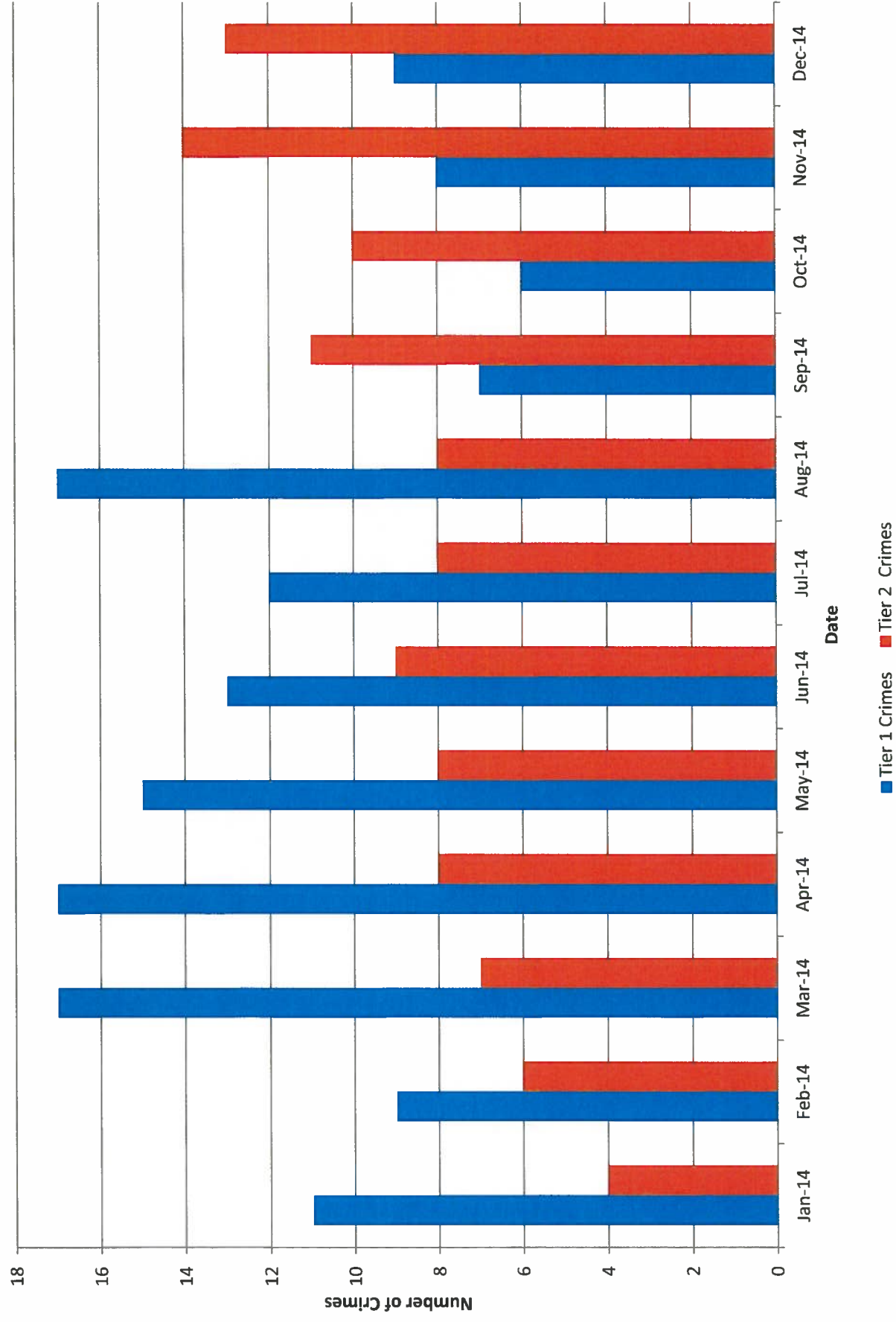
Felony: **0**  
Misdemeanor: **0**

## Police Department Calls for Service

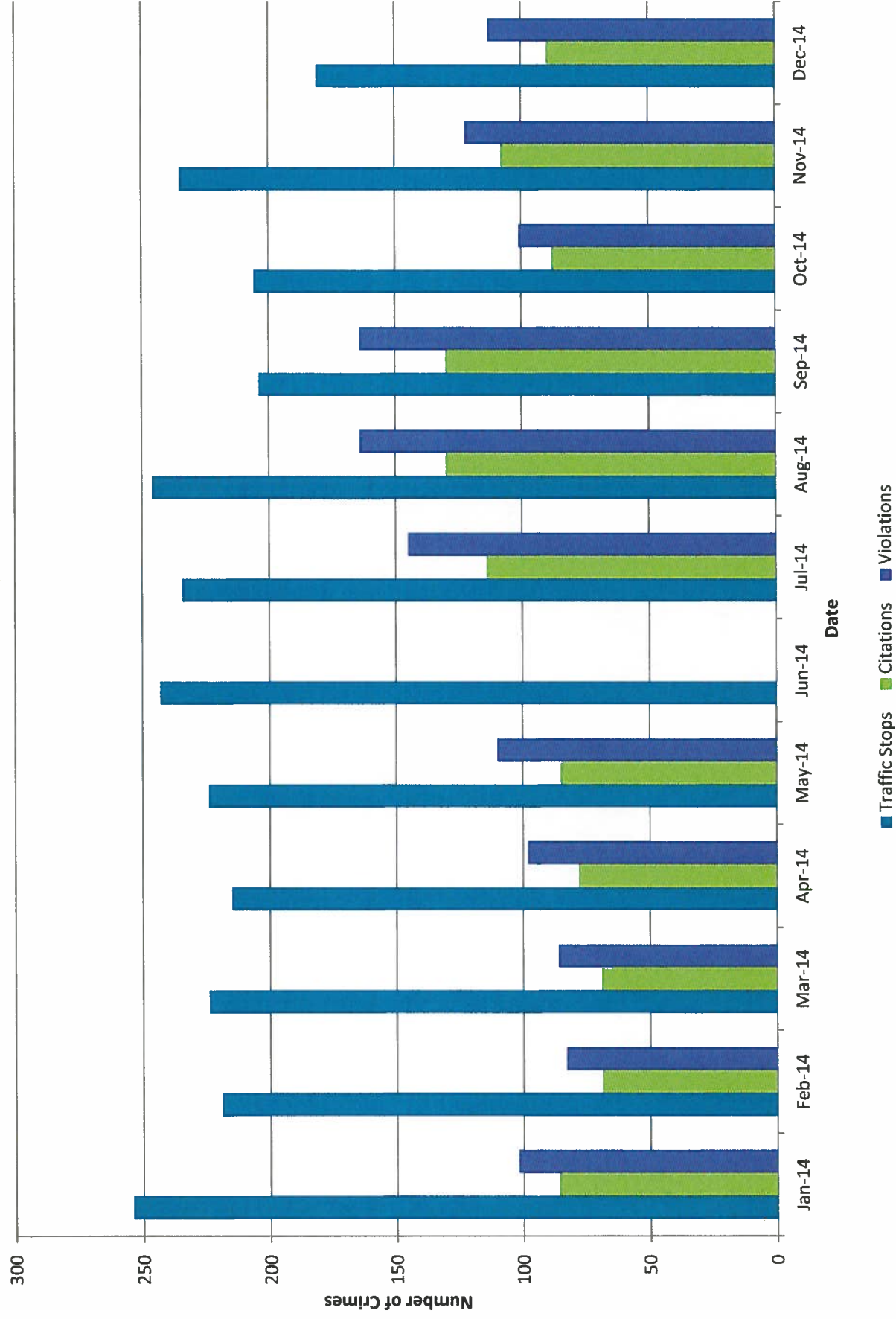




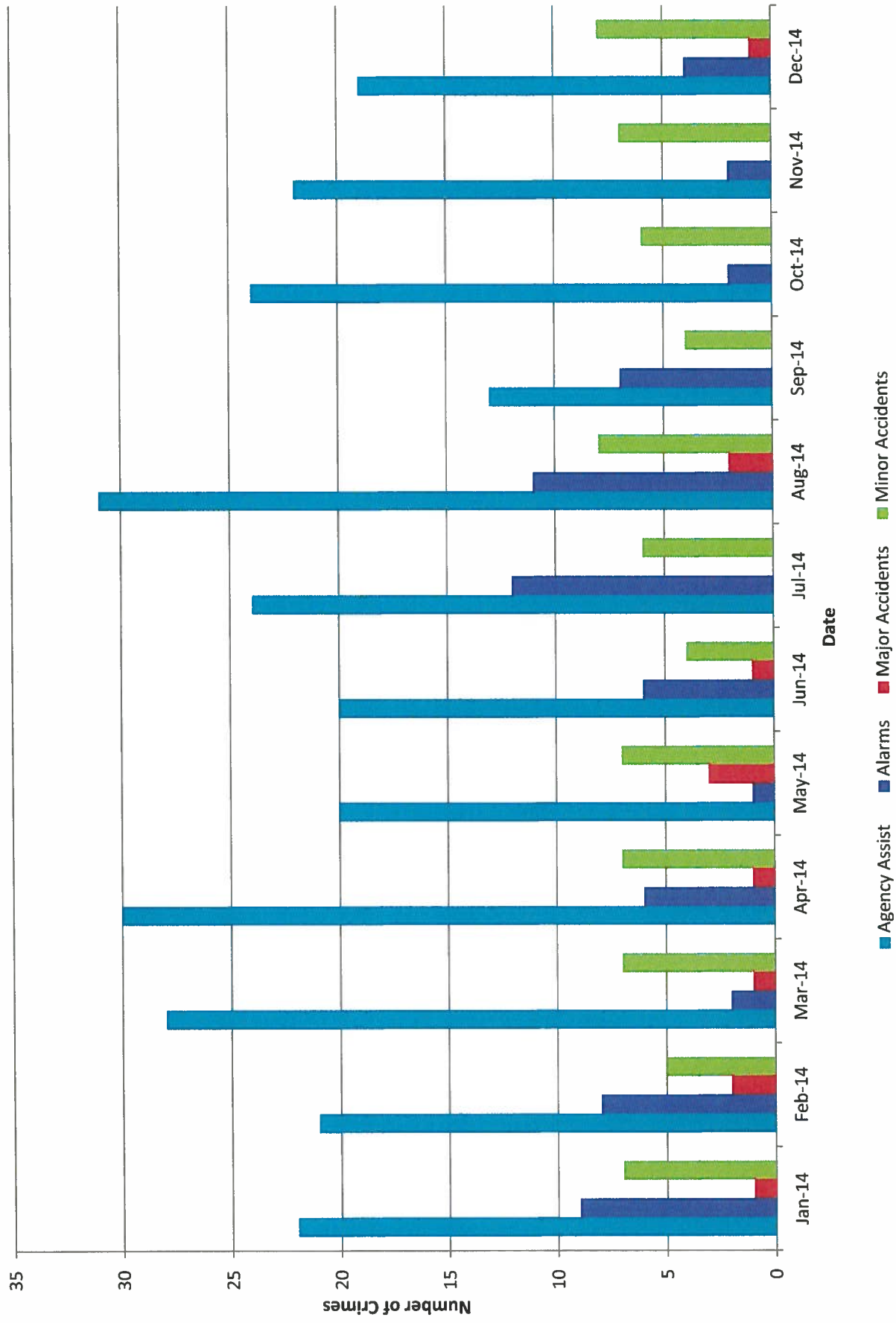
## Uniform Crime Reporting



## Traffic Enforcement



## Police Activity





## **FARMERSVILLE POLICE DEPARTMENT**

134 North Washington Street

Farmersville, Texas 75442

972-782-6141

Fax 972-782-7693

01/01/2015

### **Annual Analysis of Accidents and Injuries 2014**

There was one (1) reportable accident for 2014.

**02/04/2014-IA14-001** Officer backed into water pipe at the City Service center and broke the vehicle (passenger-rear) taillight lens. Subsequently, the taillight lens was replaced. The officer was instructed to watch a safety video through the TML loss prevention site "Defensive Driving". There were no reported injuries as a result of this accident.

No Further reportable accidents or injuries for 2014. I found no incidents or issues in regards to accidents and/or injuries that cause me concern.

Respectfully,

A handwritten signature in black ink, appearing to read "M.P. Sullivan". The signature is fluid and cursive, with a long horizontal stroke at the end.

M.P. Sullivan  
Chief of Police



## **FARMERSVILLE POLICE DEPARTMENT**

134 North Washington Street

Farmersville, Texas 75442

972-782-6141

Fax 972-782-7693

01/01/2015

### **Annual Analysis of Pursuits 2014**

There were no reportable Vehicle Pursuits for 2014.

Respectfully,

A handwritten signature in black ink, appearing to read "M.P. Sullivan", followed by a long horizontal line.

M.P. Sullivan  
Chief of Police



## **FARMERSVILLE POLICE DEPARTMENT**

134 North Washington Street

Farmersville, Texas 75442

972-782-6141

Fax 972-782-7693

01/01/2015

### **Annual Analysis Use of Force 2014**

There were 3 (three) reportable use of force incidents for 2014.

**05/27/2014 IA14-002:** Officer was dispatched as a cover for Collin County Sheriff Office (CCSO) in regards to suspicious circumstances. Prior to officer's arrival, CCSO Deputy had already deployed his Taser to a very combative subject who was resisting arrest. Upon arrival, the Farmersville Officer began to assist the CCSO Deputy with placing handcuffs on the subject and walking him to the ambulance. While in the back of the ambulance, the subject became combative again as Paramedics were trying to conduct a medical evaluation. The subject again became violently combative, kicking and pushing at medical staff and police, at which point our officer had to deploy his Taser and "drive stun" (without cartridge) into the subjects back. The subject continued to be combative through two Taser deployment cycles. At this point, CCSO Deputy deployed OC pepper spray at the subject. The subject finally quit resisting medical treatment and officers. Subject was then treated for OC spray and cleared by AMR staff for transport. The subject was transported to CCSO jail by CCSO Deputy.

Upon Supervisory review of facts and circumstances regarding this incident, it was determined that the force used by the officer was justified and reasonable to secure the subject and prevent injury to medical and law enforcement staff.

**07/24/2014 IA14-003:** I, Chief Sullivan received a phone complaint from a resident who complained that an officer hurt her shoulder while she was being arrested. I advised the complainant that I needed for her to come to the station to make a formal written complaint but that I would immediately look into the matter. After repeated attempts to re-contact the complainant by phone and in person with no return phone calls and/or contact by the complainant, I ordered an Administrative Review of the incident.



The Administrative review consisted of review of Viewue (body camera), in-car video, and video from within the Collin County Sheriff Office Jail Sally-port area. The review of the video revealed exactly what the Officer reported originally. The jail video shows the complainant walking on her own into the jail which is in direct conflict with previous claims made by the complainant. Again, we (Farmersville PD) reached out to the complainant with negative results. As of 08/29/2014, which is 35 days since the incident, the complainant has not shown up, returned repeated calls or called us.

After reviewing the facts of the incident and due to the lack of cooperation by the complainant, this complaint/administrative review, was ruled to be "unfounded".

**08/02/2014 IA14-004:** Officer observed a suspicious vehicle at the Spain Sports Complex at approximately 3:40 a.m. Upon contact with the vehicle, the officer could see a subject asleep in the driver's seat. Upon contact with the subject the officer attempted to awake the subject at which point, the officer observed a pistol on the passenger seat. The revolver was within easy reach of the subject, fearing for officer safety, the officer immediately pulled his service weapon. The officer immediately gave commands to the subject to exit the vehicle which the subject complied. The subject was arrested for unlawfully carrying a weapon and was found to be in possession of drug paraphernalia.

Upon Supervisory review of facts and circumstances regarding this incident, it was determined that the force used (Drawn Service Weapon) by the officer was justified and reasonable to secure the subject and prevent injury to officer.

**11/18/2014 IA14-005:** Officer responded to an agency assist with Lavon PD. Subsequently, it was determined that a victim who was physically beaten by her husband was holding her against her will inside a home. After several attempts by Lavon PD and Collin County Sheriff Office to make contact with the victim and/or suspect, believing that harm was occurring to the victim, forcible entry was attempted at the front of the house without success. Our Officer, who covering the back of the residence was able to make entry into the back door of the residence and upon entry had his service weapon drawn. Subsequently, the suspect was taken into custody without further incident.

Upon Supervisory review of facts and circumstances regarding this incident, it was determined that the force used (Drawn Service Weapon) by the officer was justified and reasonable to secure the subject and prevent injury to officer(s).

Conclusion: After review of all use of force incidents for 2014, I found no patterns and/or issues of concern to address in our use of force continuum. The department will continue to train and utilize all available resources to limit our use of force interactions.

Respectfully,

A handwritten signature in black ink, appearing to read 'M.P. Sullivan', followed by a horizontal line.

M.P. Sullivan  
Chief of Police





TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: CONSENT AGENDA – Code Enforcement/Animal Control Report

Farmersville Police Department  
Code Enforcement

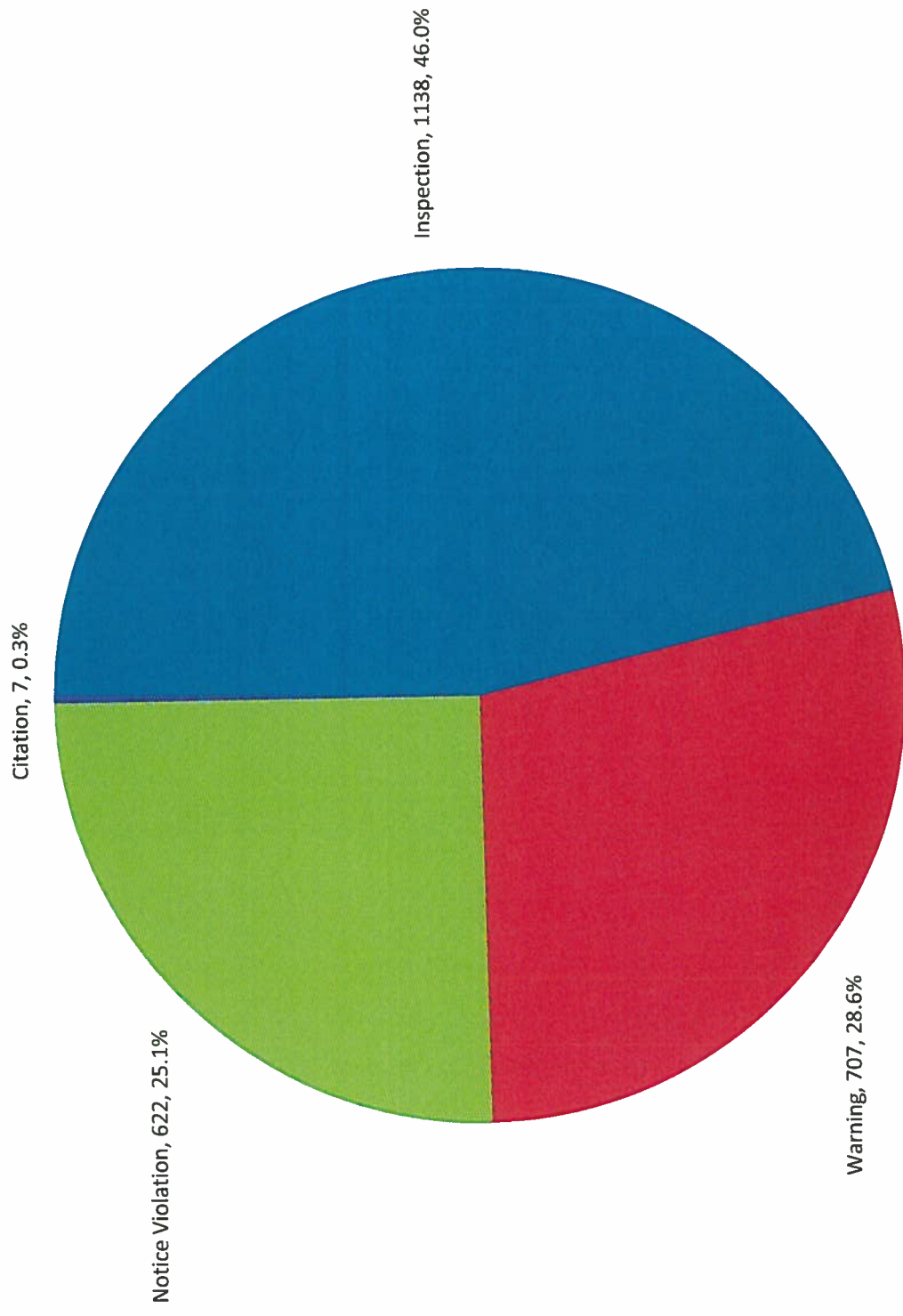
Date	Address	Violation	Inspect	Warn	Notice	Cite	Proactive	Reactive	Closed	Notes/CFs
12/01/2014	309 Murchison	Take Pictures	X				X		12/01/2014	Prop Manage Bd Mtg
12/01/2014	213 N. Main	Car F/Y	X		X		X		12/29/2014	NOV 12/1/2014
12/01/2014	PR 100 #27	Appliance	X	X		X	X			Citation
12/01/2014	PR 100 #42	Stove on Porch	X		X		X		12/30/2014	NOV 12/1/2014
12/01/2014	206 Neathery	Appliance	X	X			X		12/01/2014	Recheck
12/01/2014	408 S. Washington	Grass	X	X			X		12/01/2014	Recheck
12/01/2014	116 Buckskin	Car F/Y	X	X	X		X			NOV 12/30/2014
12/01/2014	317 College	Lg Limb In D/W	X		X		X		12/01/2014	Recheck
12/01/2014	304 Houston	Remodeling-Np Permit	X	X			X		12/10/2014	Obtained Permit
12/01/2014	508 Jouette	Bldg Debris	X	X			X		12/01/2014	Recheck
12/01/2014	602 Jouette	Bldg Debris	X	X			X		12/01/2014	Recheck
12/01/2014	604 Jouette	Bldg Debris	X	X			X		12/01/2014	Recheck
12/01/2014	607 Windom	Grass	X	X			X		12/01/2014	Recheck
12/01/2014	402 Johnson	Grass B/Y	X	X			X		12/01/2014	Recheck
12/01/2014	315 S. Johnson	Grass B/Y	X		X		X		12/01/2014	Recheck
12/04/2014	510 Mimosa	Grass	X		X		X		12/04/2014	Recheck
12/04/2014	421 N. Main	Grass	X	X			X		12/04/2014	Recheck
12/04/2014	307 S. Rike	House	X	X			X		12/04/2014	House Demolished
12/04/2014	305 Austin	Brush	X		X		X		12/30/2014	Final Notice Sent 12/10/2014
12/04/2014	308 Austin	Fridge	X	X			X		12/04/2014	Recheck
12/04/2014	308 Austin	Debris	X	X	X		X		12/04/2014	Recheck
12/04/2014	204 Austin	Bldg Debris	X		X		X		12/04/2014	Recheck
12/04/2014	208 Abbey	Appliance	X		X		X			Extended 12/30/2014
12/04/2014	410 N. Main	Grass	X	X			X		12/04/2014	Recheck
12/04/2014	308 Prospect	Brush	X		X		X		12/04/2014	Recheck
12/04/2014	507 N. Main	Grass	X		X		X		12/04/2014	Recheck
12/04/2014	108 Wilcoxson	Grass	X		X		X		12/04/2014	Recheck
12/04/2014	315 Johnson	Grass	X		X		X		12/04/2014	Recheck
12/04/2014	311 Sid Nelson	Grass	X	X			X		12/04/2014	Recheck
12/04/2014	715 N. Main	Grass	X		X		X		12/04/2014	Recheck
12/04/2014	315 N. Washington	Grass	X		X		X		12/04/2014	Recheck
12/04/2014	121 Windom	Grass	X		X		X		12/04/2014	Recheck
12/04/2014	204 Candy	Grass	X		X		X		12/04/2014	Recheck
12/12/2014	420 E. Audie	Give Copy Codes	X				X		12/12/2014	Living In Trailer
12/12/2014	508 Jouette	Debris	X	X			X		01/02/2015	

**Farmersville Police Department  
Code Enforcement**

Date	Address	Violation	Inspect	Warn	Notice	Cite	Proactive	Reactive	Closed	Notes/CFS
12/12/2014	610 Jouette	Debris	X	X			X		01/02/2015	
12/12/2014	612 Jouette	Debris	X	X			X		01/02/2015	
12/12/2014	608 Jouette	Debris	X	X			X		01/02/2015	
12/12/2014	DR Horton	Sand in Street	X	X			X		01/02/2015	
12/15/2014	210 Neathery	Numerous	X	X			X		Recheck	
12/15/2014	113 Lee	Debris B/Y	X	X			X		12/15/2014	Recheck
12/15/2014	613 Maple	Grass	X		X		X		12/15/2014	Recheck
12/15/2014	212 Summit	Grass	X	X			X		12/15/2014	Recheck
12/15/2014	202 Rolling Hills	Grass	X		X		X		12/15/2014	Recheck
12/15/2014	513 N. Main	Furniture F/Y	X		X		X		12/15/2014	Recheck
12/29/2014	Hayward-Hwy 78	Grass	X	X	X		X		12/29/2014	Recheck
12/30/2014	818 S. Main	Debris	X	X	X		X		Letter Sent 12/31/2014	
12/30/2014	1027 Old Josephine	Debris, Brush	X	X	X		X		12/30/2014	
12/30/2014	909 S. Main	Grass, Debris B/Y	X	X	X		X		Final Notice Sent 12/31/2014	
12/30/2014	300 Gotcher	Grass	X	X			X		12/30/2014	Grass is Dead
12/30/2014	119 N. Main	Brush	X	X	X	X	X			Citation
12/30/2014	126 N. Main	Brush, Stumps	X		X	X	X			Citation
12/30/2014	211 Houston	Brush	X		X		X		12/30/2014	Recheck
12/30/2014	214 Woodard	Pile of Tires B/Y	X		X		X			Letter Sent 12/31/2014
12/30/2014	202 Woodard	Brush, Debris DMW	X		X		X			Letter Sent 12/31/2014
12/30/2014	503 Houston	Grass	X		X		X		12/30/2014	Recheck
12/30/2014	Gray-Buckskin	Grass	X		X		X		12/30/2014	Grass Dead
12/30/2014	515 Jackson	Trees	X	X			X		12/30/2014	Recheck
12/30/2014	709 Pecan Creek	Fence Debris	X	X	X		X			Final Notice Snr 12/31/2014
12/30/2014	309 Murchison	Numerous	X	X	X		X		12/30/2014	Property Management Board
12/30/2014	Given's Chapel	Grass	X	X			X		12/30/2014	Dead
12/30/2014	111 Wilcoxson	Grass	X	X			X		12/30/2014	Grass Dead
12/30/2014	2002 S. Main	Numerous	X	X			X		12/30/2014	House Demolished
12/30/2014	914 S. Main	Numerous	X	X			X		12/30/2014	House Demolished

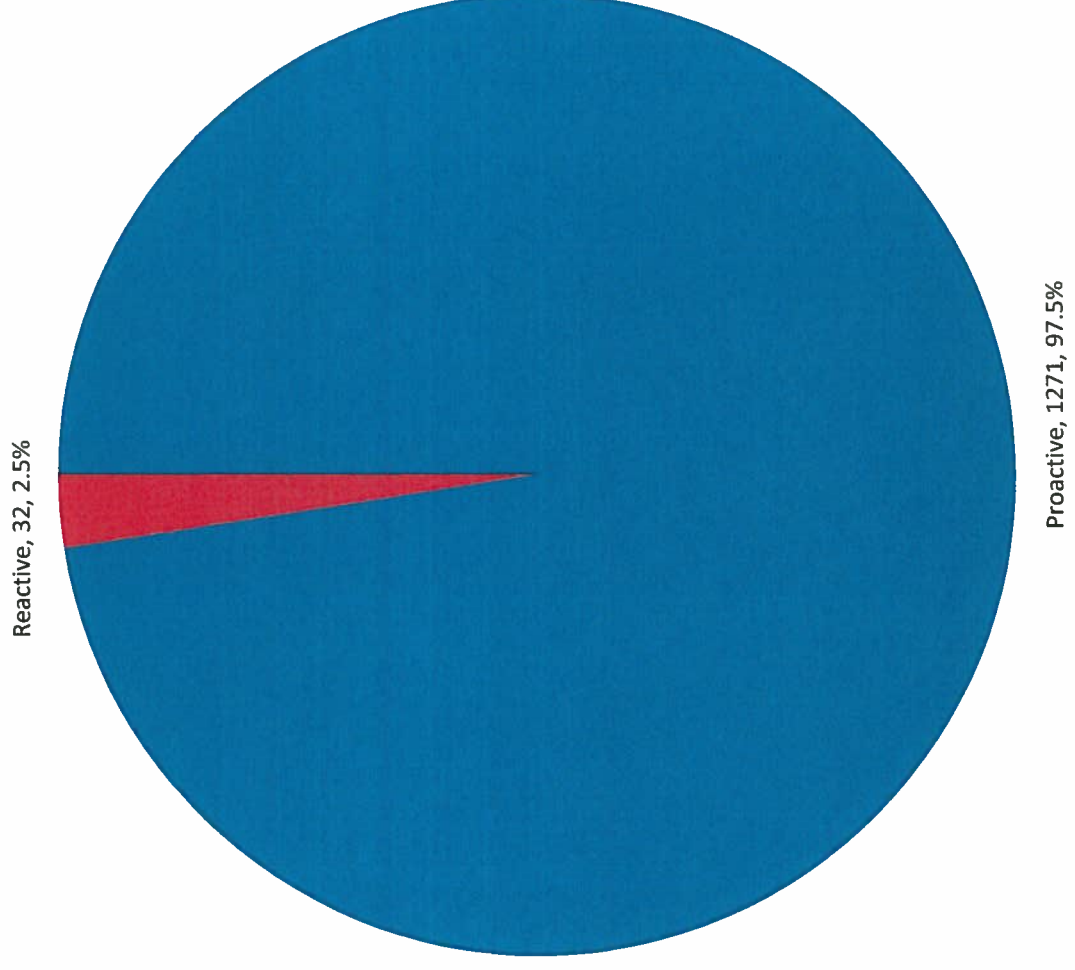
# Code Enforcement Activity Results

## City of Farmersville Police Department



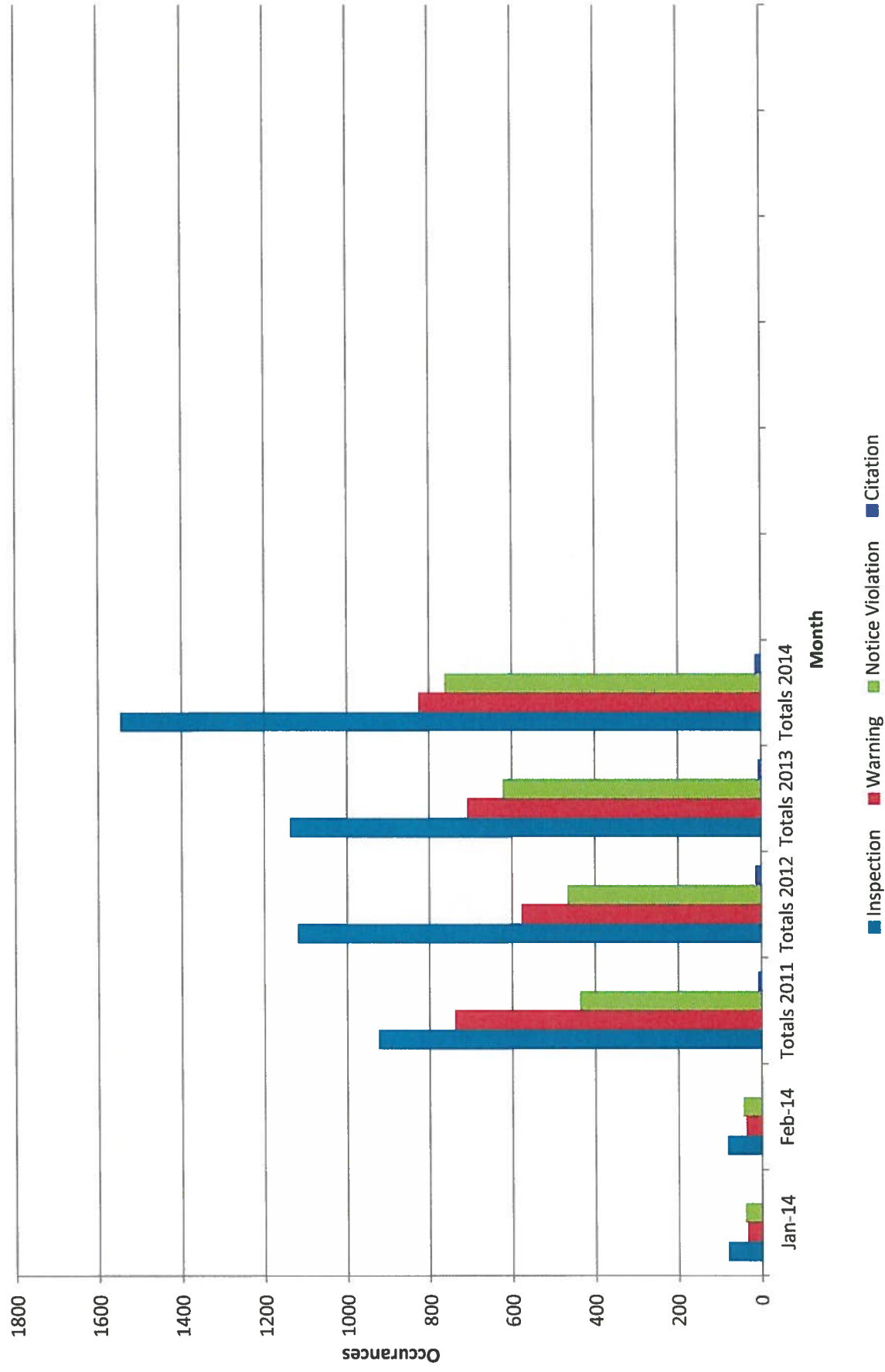
# Code Enforcement Activity Results

## City of Farmersville Police Department





# Code Enforcement Activity Results City of Farmersville Police Department

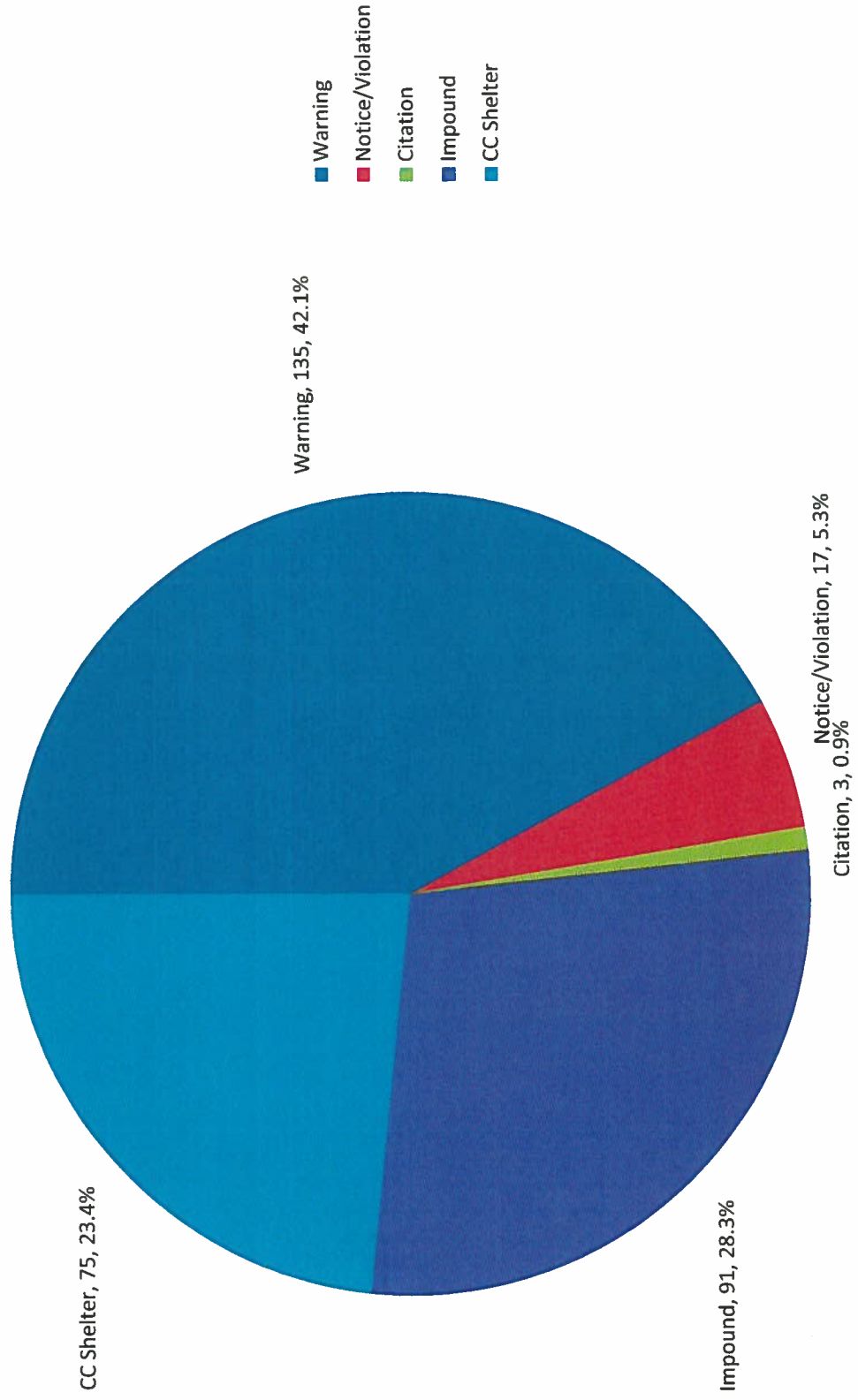


**FARMERSVILLE POLICE DEPARTMENT  
PUBLIC SERVICE OFFICER: ANIMAL CONTROL MONTHLY REPORT**

DATE	TYPE OF CALL	ADDRESS	VIOLATION	WARNING	NOTICE/IOI	CITATION	IMPOUND	CC SHELTER	CFS#
12/01/2014	Pick Up Dog	Pound	CCAS					X	
12/01/2014	Loose Dog	Windom	Unable to Locate						
12/01/2014	Loose Dog	Hale	Unable to Locate						
12/02/2014	Loose Dog	Windom	Returned to Owner	X					
12/02/2014	Loose Dog	Hale	Returned to Owner	X					
12/02/2014	Loose Dog	PR 100	Unable to Locate						
12/02/2014	Stray	Murchison	CCAS					X	
12/02/2014	Loose Dog	PR 100	Unable to Locate						
12/03/2014	Improper Tether	PR 100 #19	Spoke w/Owner	X					
12/03/2014	Loose Dog	PR 100 #15	Spoke w/Owner	X					
12/03/2014	Loose Dog	PR 100 #12	Left Card						
12/03/2014	Loose Dog	PR 100 #27	NOV		X				
12/03/2014	Loose Dog	Woodard/Houston	Unable to locate						
12/03/2014	Stray Dog	Baptist Church	Returned to owner	X					
12/03/2014	Loose Horse	Colle/Buckskin	Returned ti Owner	X					
12/03/2014	Stray Dog	N. Washington	Pound				X		
12/04/2014	Pick Up Dog	Pound	CCAS					X	
12/04/2014	Loose Horse	College	Returned to Owner	X					
12/06/2014	Loose Dog	W. Santa Fe	Unable to Locate						
12/10/2014	Loose Cows	Hwy 380	Returned to Owner	X					
12/12/2014	Help W/Dog	PR 100 #12	Lady needed in House						
12/14/2014	Dog Bite	401 Sid Nelson	Report Made	X					
12/14/2014	Dead Animal	McKinney	Disposed Of						
12/15/2014	Bite Follow Up	228 Santa Fe	Had Rabbits	X					
12/15/2014	Sick Skunk	Gaddy	Shot						
12/17/2014	Mean Dog	1104 Old McKinney	Spoke w/Owner	X					Dog Removed from City
12/17/2014	Stray Dog	McKinney	CCAS					X	
12/23/2014	Loose Livestock	Floyd/380	Put Back In Fence						
12/23/2014	Cat Abuse	1003 S. Main	Sprayed with Bleach						Cat Ok
12/29/2014	Stray Dogs	1427 Red Oak	CCAS (2)					X	
12/29/2014	Abused Dogs	1168 Old McKinney	No Abuse/Fighting						Dogs Ok

# Animal Control Activity Results

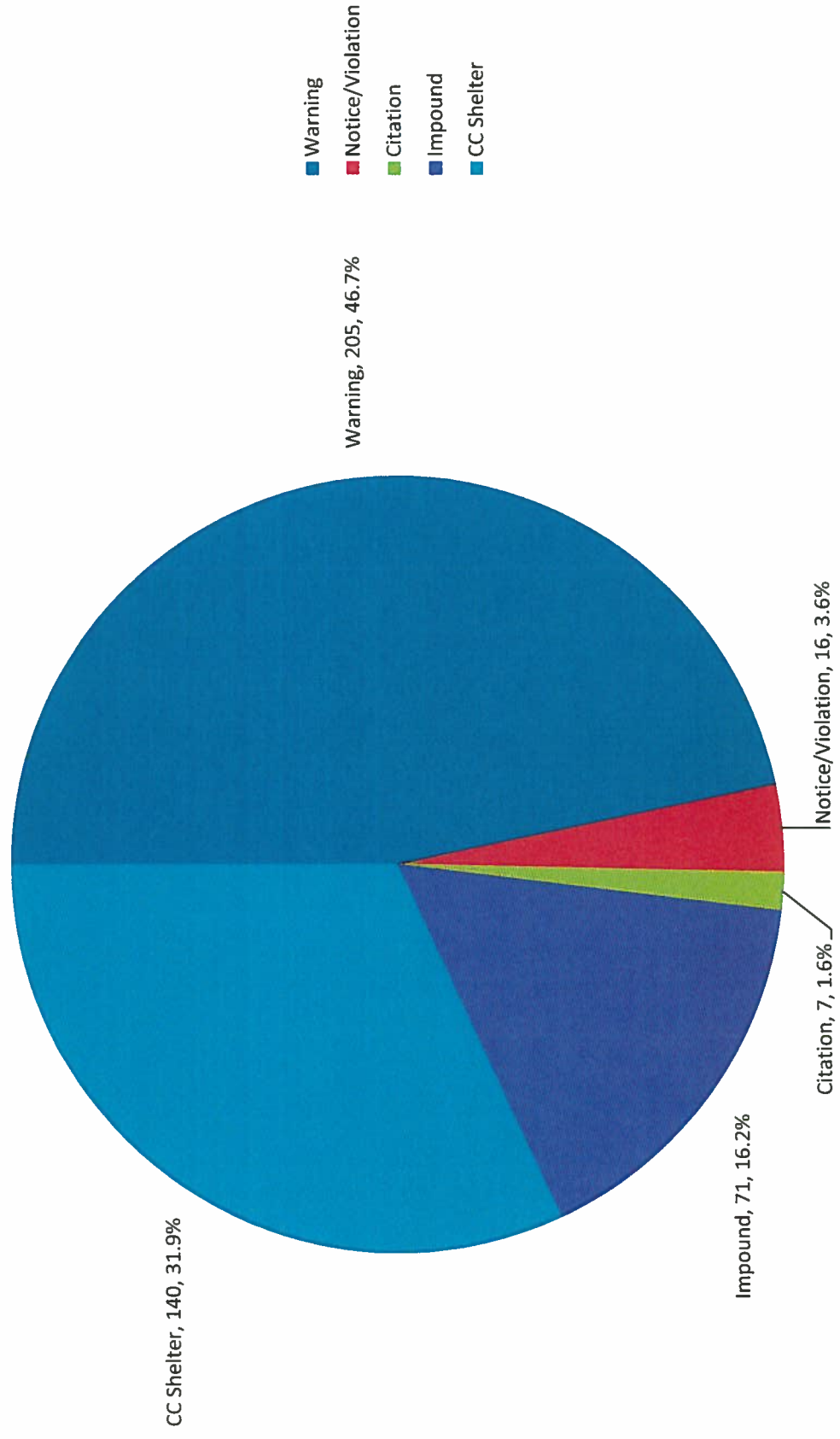
Farmersville Police Department  
Cumulative, Calendar Year 2014





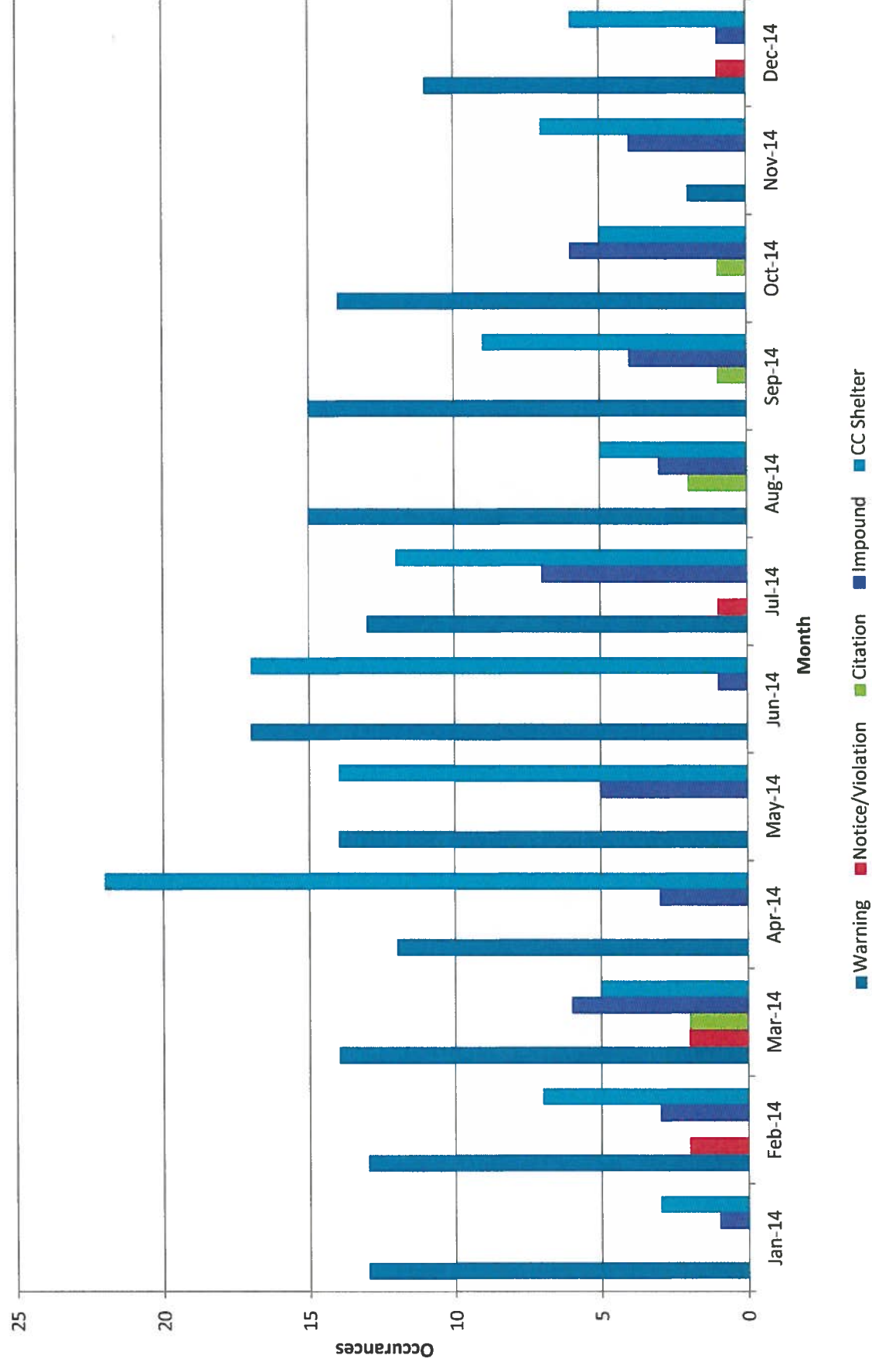
# Animal Control Activity Results

Farmersville Police Department  
Cumulative, Calendar Year 2014



# Animal Control Activity Results

## Farmersville Police Department





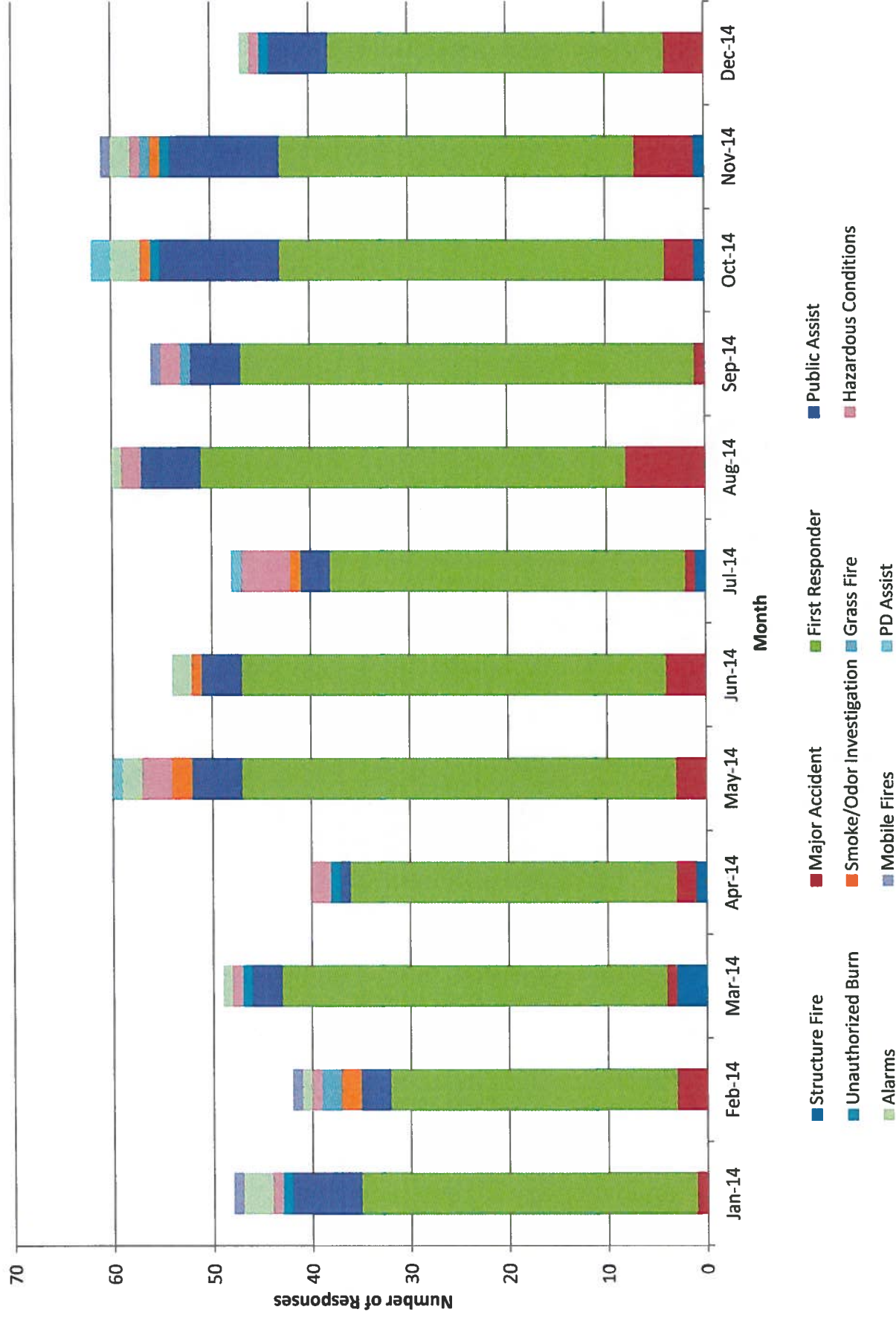
TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: CONSENT AGENDA – Fire Department Report

FARMERSVILLE FIRE DEPARTMENT  
CITY COUNCIL REPORT  
DECEMBER 2014

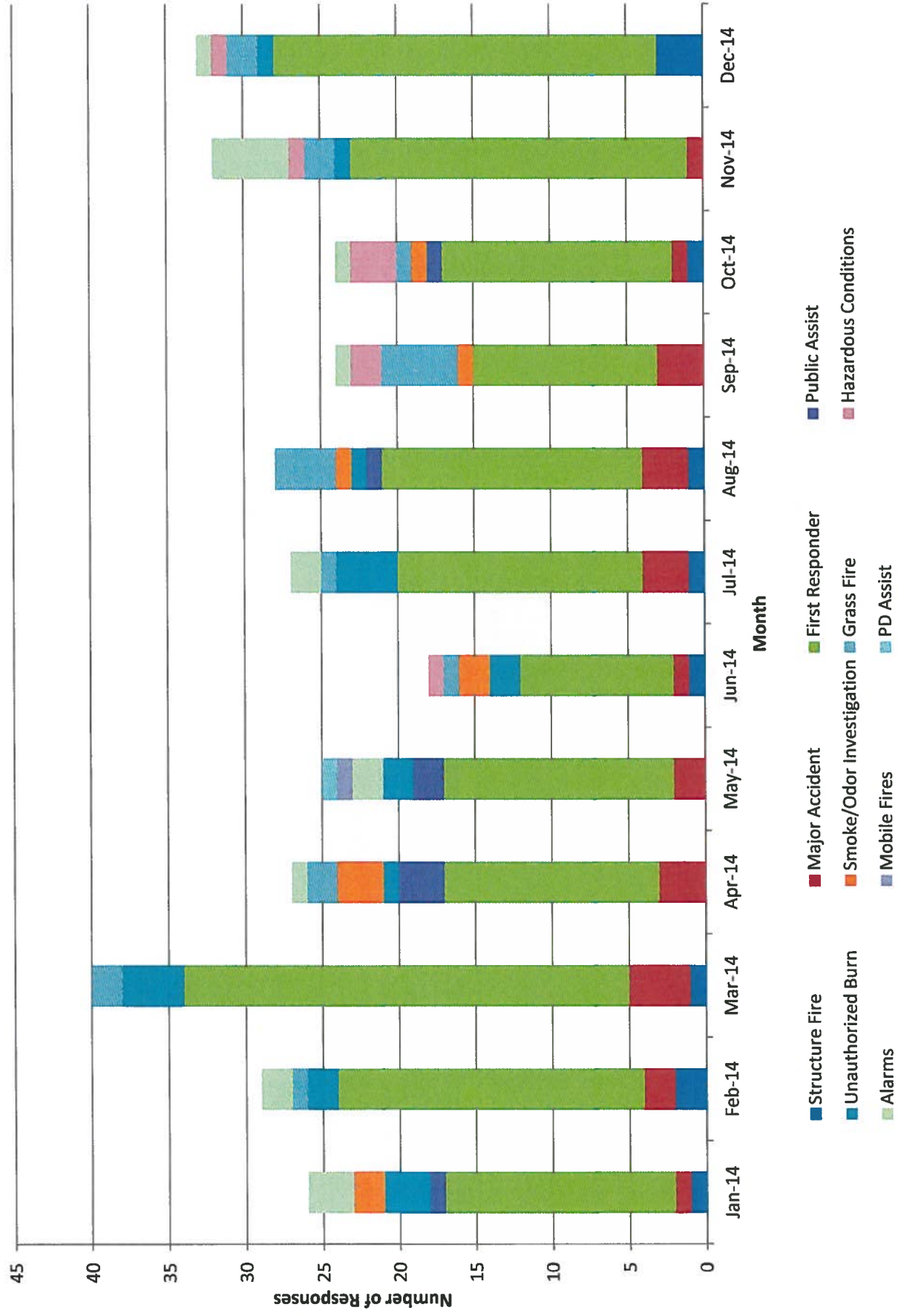
1. The department was represented in 3 Christmas Parades this year, Farmersville, Josephine, and Blue Ridge.
2. The department took over the Chevrolet Tahoe that did belong to the Police Department. This unit will be set up as a command vehicle.
3. The Annual Christmas Banquet and Award Assembly went off very well this year. Firefighter Jake Hansen was given Firefighter of the Year.
4. Officer elections were held for 2015.

KIM R. MORRIS  
Farmersville Fire Chief

# Farmersville Fire Department City Responses



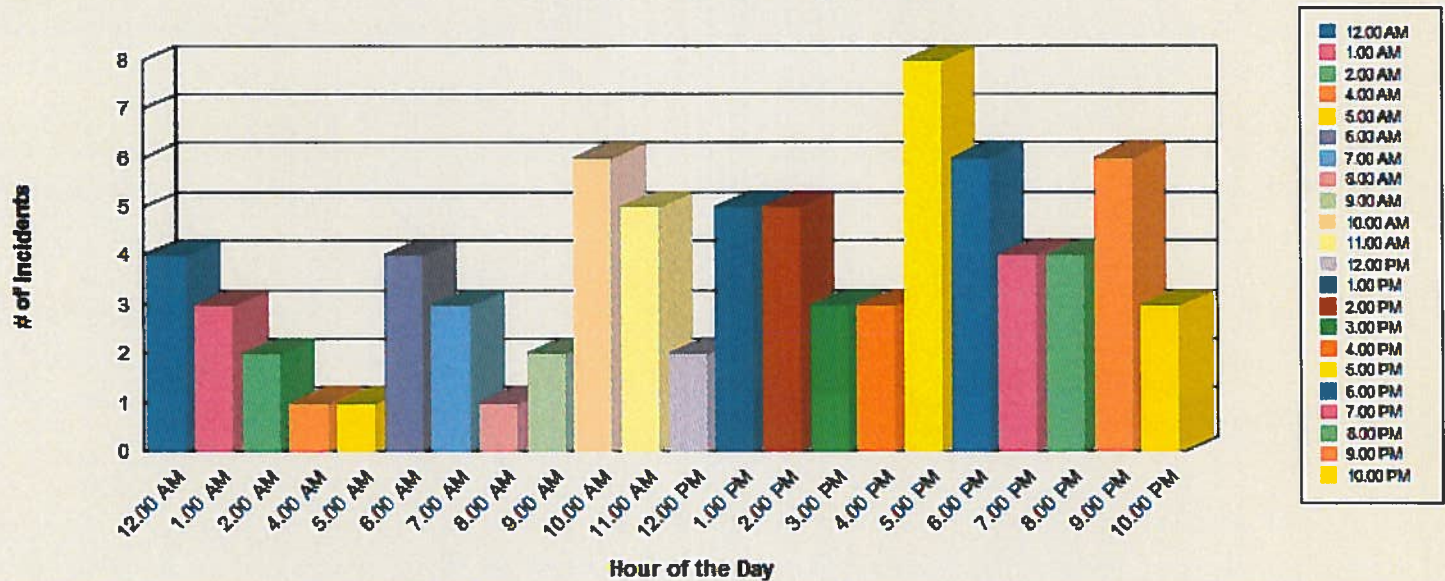
# Farmersville Fire Department County Responses



[illegible]



## December Incident Totals by Hour



**Hour of the Day: 12.00 AM**

Total # of Incidents: 4.00

% of Total Incidents: 4.94%

**Hour of the Day: 1.00 AM**

Total # of Incidents: 3.00

% of Total Incidents: 3.70%

**Hour of the Day: 2.00 AM**

Total # of Incidents: 2.00

% of Total Incidents: 2.47%

**Hour of the Day: 4.00 AM**

Total # of Incidents: 1.00

% of Total Incidents: 1.23%

**Hour of the Day: 5.00 AM**

Total # of Incidents: 1.00

% of Total Incidents: 1.23%

**Hour of the Day: 6.00 AM**

Total # of Incidents: 4.00

% of Total Incidents: 4.94%

**Hour of the Day: 7.00 AM**

Total # of Incidents: 3.00

% of Total Incidents: 3.70%

**Hour of the Day: 8.00 AM**

Total # of Incidents: 1.00

% of Total Incidents: 1.23%

**Hour of the Day: 9.00 AM**

Total # of Incidents: 2.00

% of Total Incidents: 2.47%

**Hour of the Day: 10.00 AM**

Total # of Incidents: 6.00

% of Total Incidents: 7.41%

**Hour of the Day: 11.00 AM**

Total # of Incidents: 5.00

% of Total Incidents: 6.17%

**Hour of the Day: 12.00 PM**

Total # of Incidents: 2.00

% of Total Incidents: 2.47%



**Hour of the Day: 1.00 PM**

Total # of Incidents: 5.00

% of Total Incidents: 6.17%

**Hour of the Day: 2.00 PM**

Total # of Incidents: 5.00

% of Total Incidents: 6.17%

**Hour of the Day: 3.00 PM**

Total # of Incidents: 3.00

% of Total Incidents: 3.70%

**Hour of the Day: 4.00 PM**

Total # of Incidents: 3.00

% of Total Incidents: 3.70%

**Hour of the Day: 5.00 PM**

Total # of Incidents: 8.00

% of Total Incidents: 9.88%

**Hour of the Day: 6.00 PM**

Total # of Incidents: 6.00

% of Total Incidents: 7.41%

**Hour of the Day: 7.00 PM**

Total # of Incidents: 4.00

% of Total Incidents: 4.94%

**Hour of the Day: 8.00 PM**

Total # of Incidents: 4.00

% of Total Incidents: 4.94%

**Hour of the Day: 9.00 PM**

Total # of Incidents: 6.00

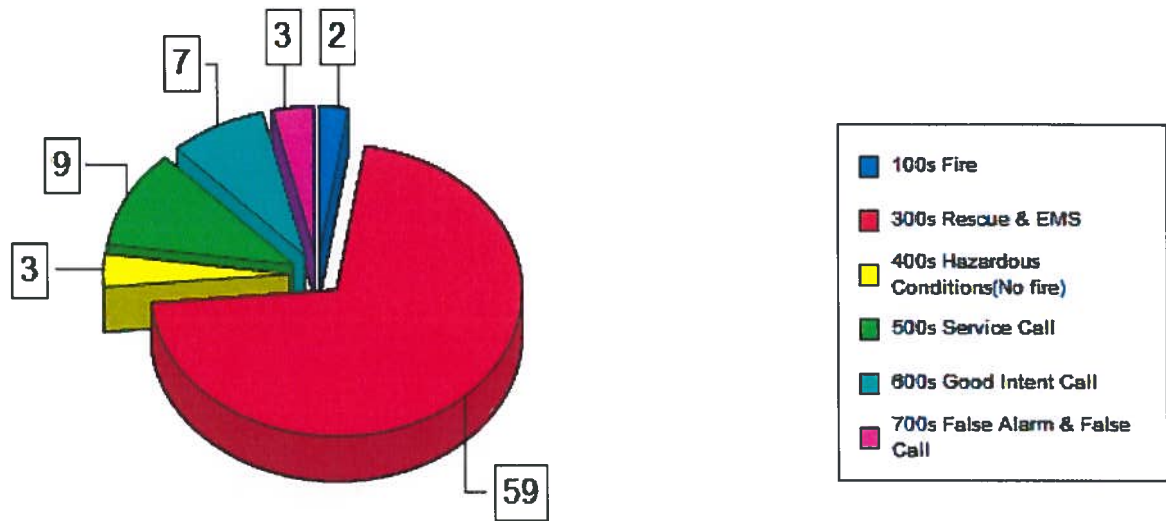
% of Total Incidents: 7.41%

**Hour of the Day: 10.00 PM**

Total # of Incidents: 3.00

% of Total Incidents: 3.70%

**Grand Total Incidents: 81.00**



*Graphed Items are sorted by Incident Type*

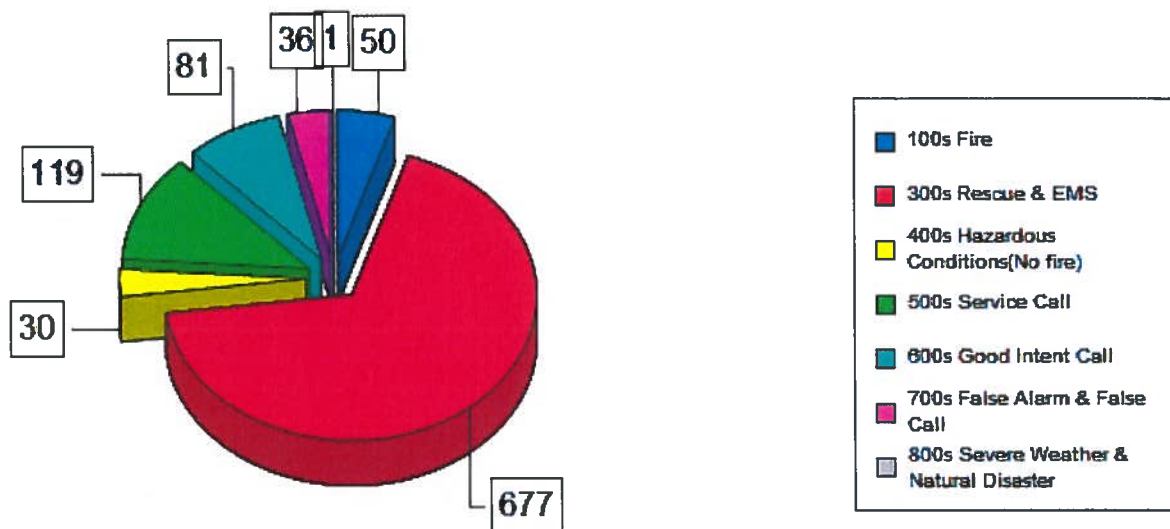
**Type Of Incident:****Total Of Incidents:****Percentage Value:**

100 Series-Fire	2	2.41%
300 Series-Rescue & EMS	59	71.08%
400 Series-Hazardous Conditions(No fire)	3	3.61%
500 Series-Service Call	9	10.84%
600 Series-Good Intent Call	7	8.43%
700 Series-False Alarm & False Call	3	3.61%

**Grand Total:** 83

**Type Of Incident Most Frequent:** 300 Series-Rescue & EMS

Print Date: 1/2/2015



*Graphed Items are sorted by Incident Type*

#### Type Of Incident:

#### Total Of Incidents:

#### Percentage Value:

100 Series-Fire	50	5.03%
300 Series-Rescue & EMS	677	68.11%
400 Series-Hazardous Conditions(No fire)	30	3.02%
500 Series-Service Call	119	11.97%
600 Series-Good Intent Call	81	8.15%
700 Series-False Alarm & False Call	36	3.62%
800 Series-Severe Weather & Natural Disaster	1	0.10%

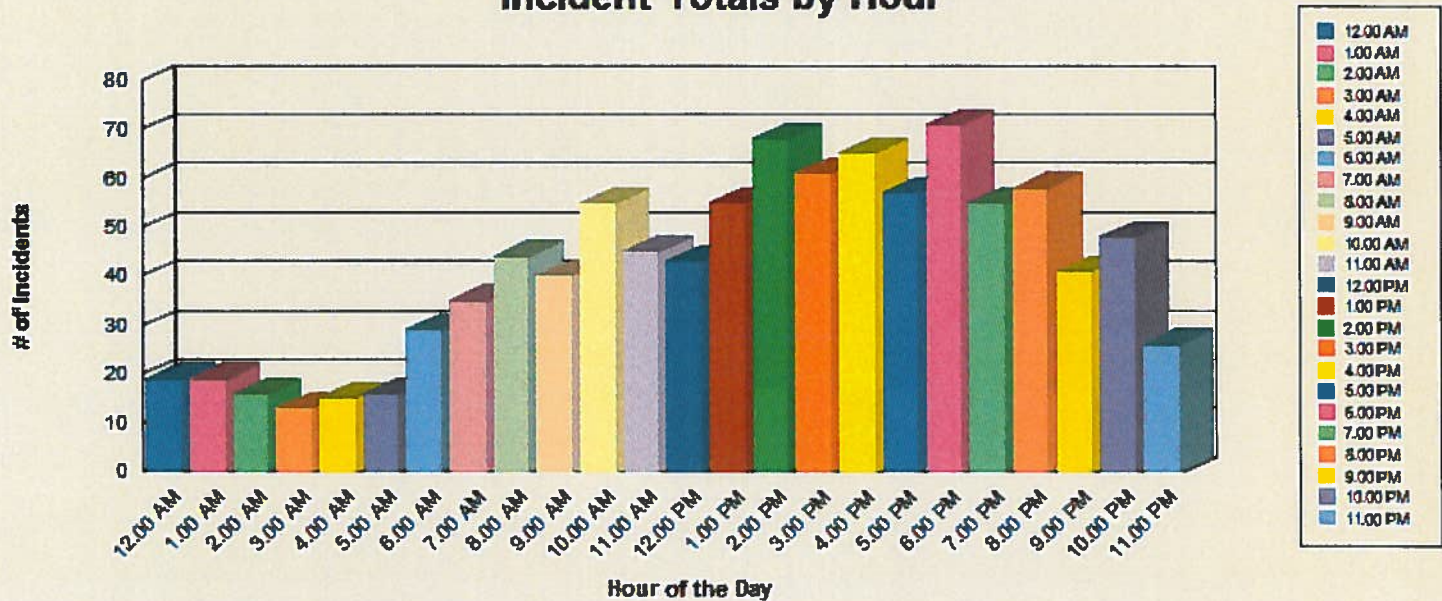
**Grand Total:** 994

**Type Of Incident Most Frequent:** 300 Series-Rescue & EMS

Print Date: 1/2/2015

# 2014

## Incident Totals by Hour



**Hour of the Day: 12:00 AM**

Total # of Incidents: 19.00      % of Total Incidents: 1.91%

**Hour of the Day: 1:00 AM**

Total # of Incidents: 19.00      % of Total Incidents: 1.91%

**Hour of the Day: 2:00 AM**

Total # of Incidents: 16.00      % of Total Incidents: 1.61%

**Hour of the Day: 3:00 AM**

Total # of Incidents: 13.00      % of Total Incidents: 1.31%

**Hour of the Day: 4:00 AM**

Total # of Incidents: 15.00      % of Total Incidents: 1.51%

**Hour of the Day: 5:00 AM**

Total # of Incidents: 16.00      % of Total Incidents: 1.61%

**Hour of the Day: 6:00 AM**

Total # of Incidents: 29.00      % of Total Incidents: 2.92%

**Hour of the Day: 7:00 AM**

Total # of Incidents: 35.00      % of Total Incidents: 3.52%

**Hour of the Day: 8:00 AM**

Total # of Incidents: 44.00      % of Total Incidents: 4.43%

**Hour of the Day: 9:00 AM**

Total # of Incidents: 40.00      % of Total Incidents: 4.02%

**Hour of the Day: 10:00 AM**

Total # of Incidents: 55.00      % of Total Incidents: 5.53%

**Hour of the Day: 11:00 AM**

Total # of Incidents: 45.00      % of Total Incidents: 4.53%

**Hour of the Day: 12.00 PM**

Total # of Incidents:	43.00	% of Total Incidents:	4.33%
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**Hour of the Day: 1.00 PM**

Total # of Incidents:	55.00	% of Total Incidents:	5.53%
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**Hour of the Day: 2.00 PM**

Total # of Incidents:	68.00	% of Total Incidents:	6.84%
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**Hour of the Day: 3.00 PM**

Total # of Incidents:	61.00	% of Total Incidents:	6.14%
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**Hour of the Day: 4.00 PM**

Total # of Incidents:	65.00	% of Total Incidents:	6.54%
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**Hour of the Day: 5.00 PM**

Total # of Incidents:	57.00	% of Total Incidents:	5.73%
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**Hour of the Day: 6.00 PM**

Total # of Incidents:	71.00	% of Total Incidents:	7.14%
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**Hour of the Day: 7.00 PM**

Total # of Incidents:	55.00	% of Total Incidents:	5.53%
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**Hour of the Day: 8.00 PM**

Total # of Incidents:	58.00	% of Total Incidents:	5.84%
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**Hour of the Day: 9.00 PM**

Total # of Incidents:	41.00	% of Total Incidents:	4.12%
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**Hour of the Day: 10.00 PM**

Total # of Incidents:	48.00	% of Total Incidents:	4.83%
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**Hour of the Day: 11.00 PM**

Total # of Incidents:	26.00	% of Total Incidents:	2.62%
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<b>Grand Total Incidents:</b>	<b>994.00</b>
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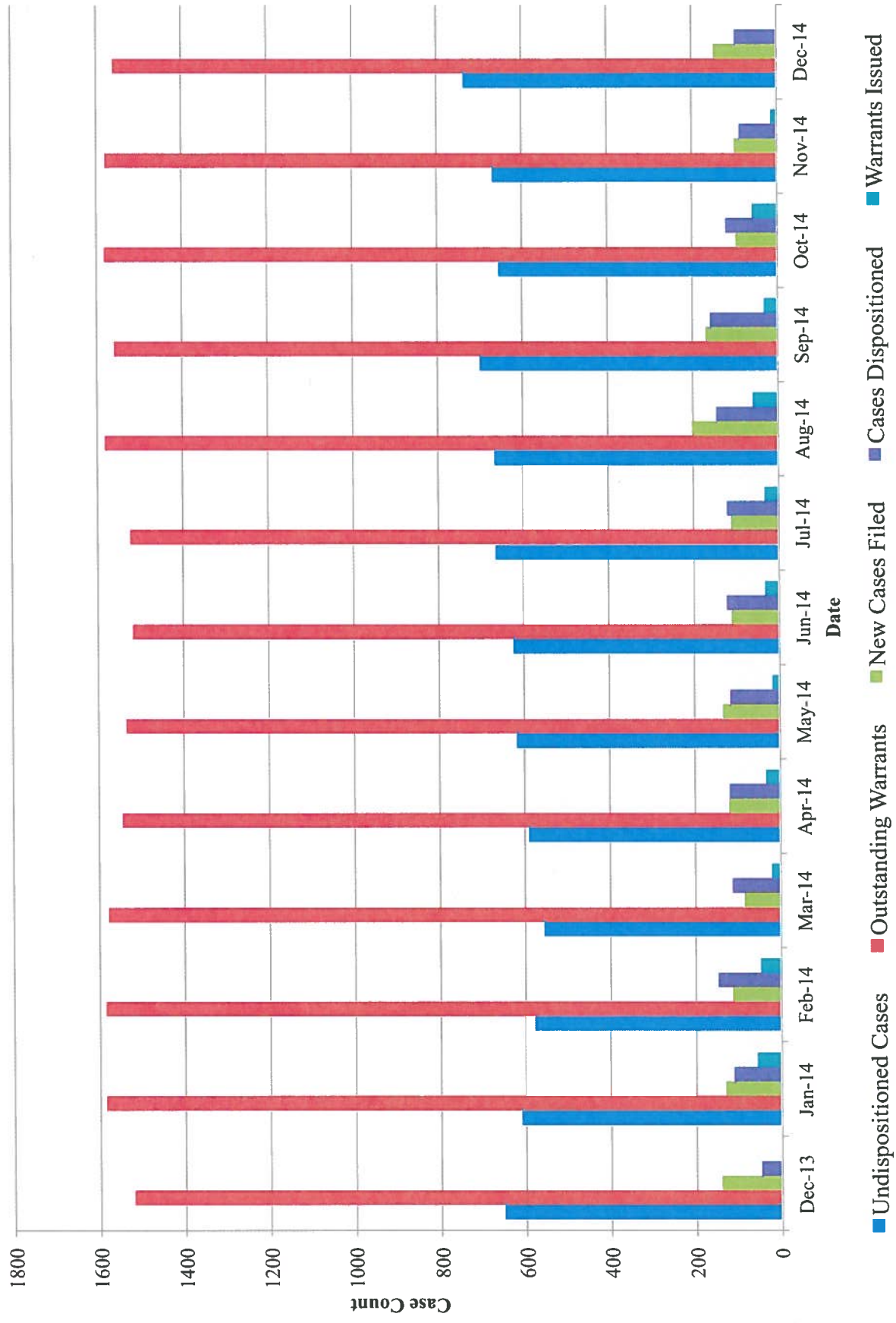
TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: CONSENT AGENDA – Municipal Court Report

# FARMERSVILLE MUNICIPAL COURT

## MONTHLY REPORT DECEMBER 2014

Cases Filed	147
Class C Complaints Received	0
Dispositions Prior to Trial	55
Pre-Trial Hearings Held	0
Non-Jury Trials Held	0
Jury Trials Held	0
Cases Dismissed	
After Driving Safety Course	16
After Deferred Disposition	15
After Proof of Financial Responsibility	3
Compliance Dismissal	1
Dismissed by Prosecutor	0
Number of Disposed Cases	98
Total Revenue	\$13,020.00
Total Kept by City	\$8,462.05
Total Remitted to State	\$4,557.95

# Municipal Court Case and Warrant Rate







TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: CONSENT AGENDA – Warrant Officer Report

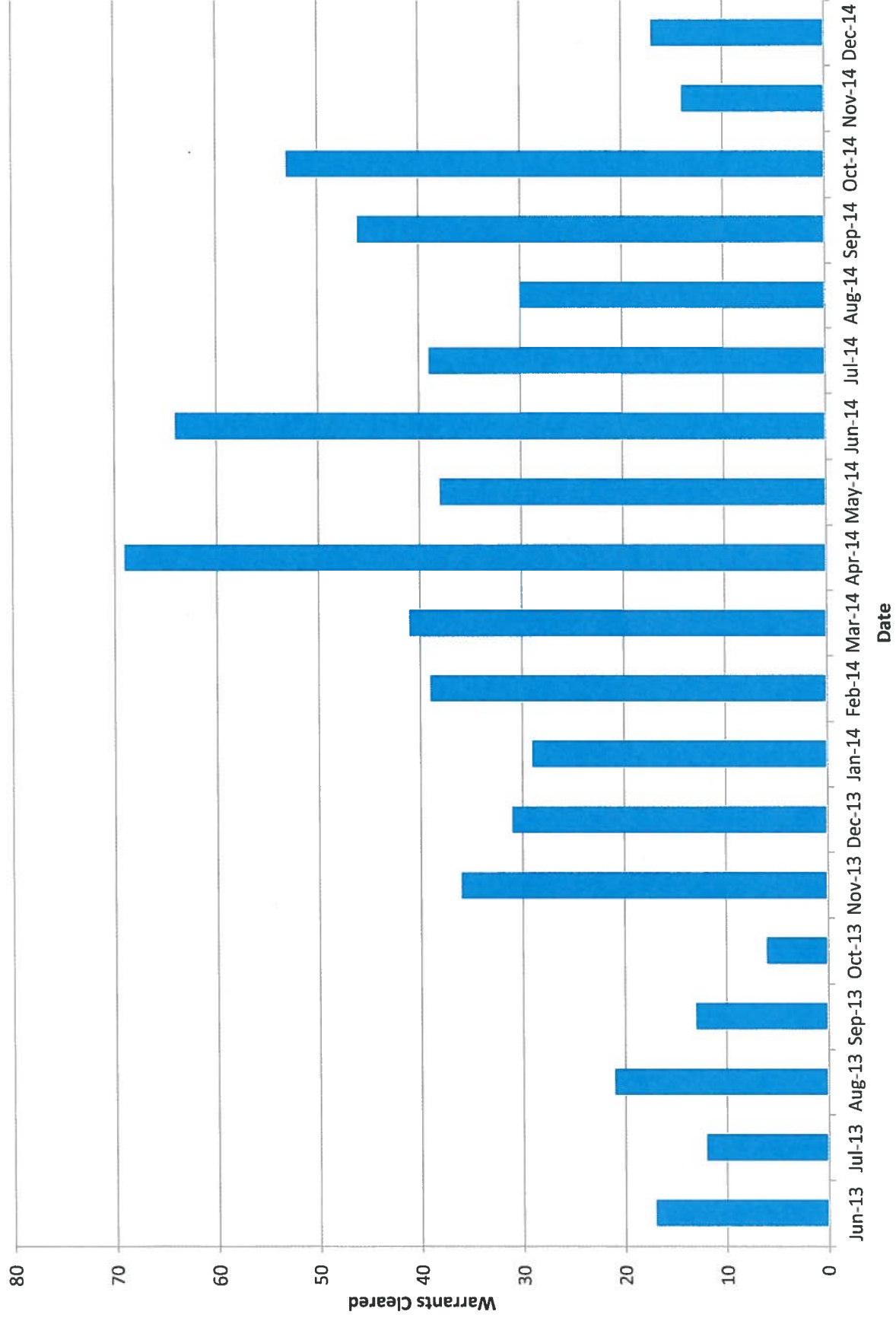


## **FARMERSVILLE MUNICIPAL COURT WARRANT OFFICER REPORT**

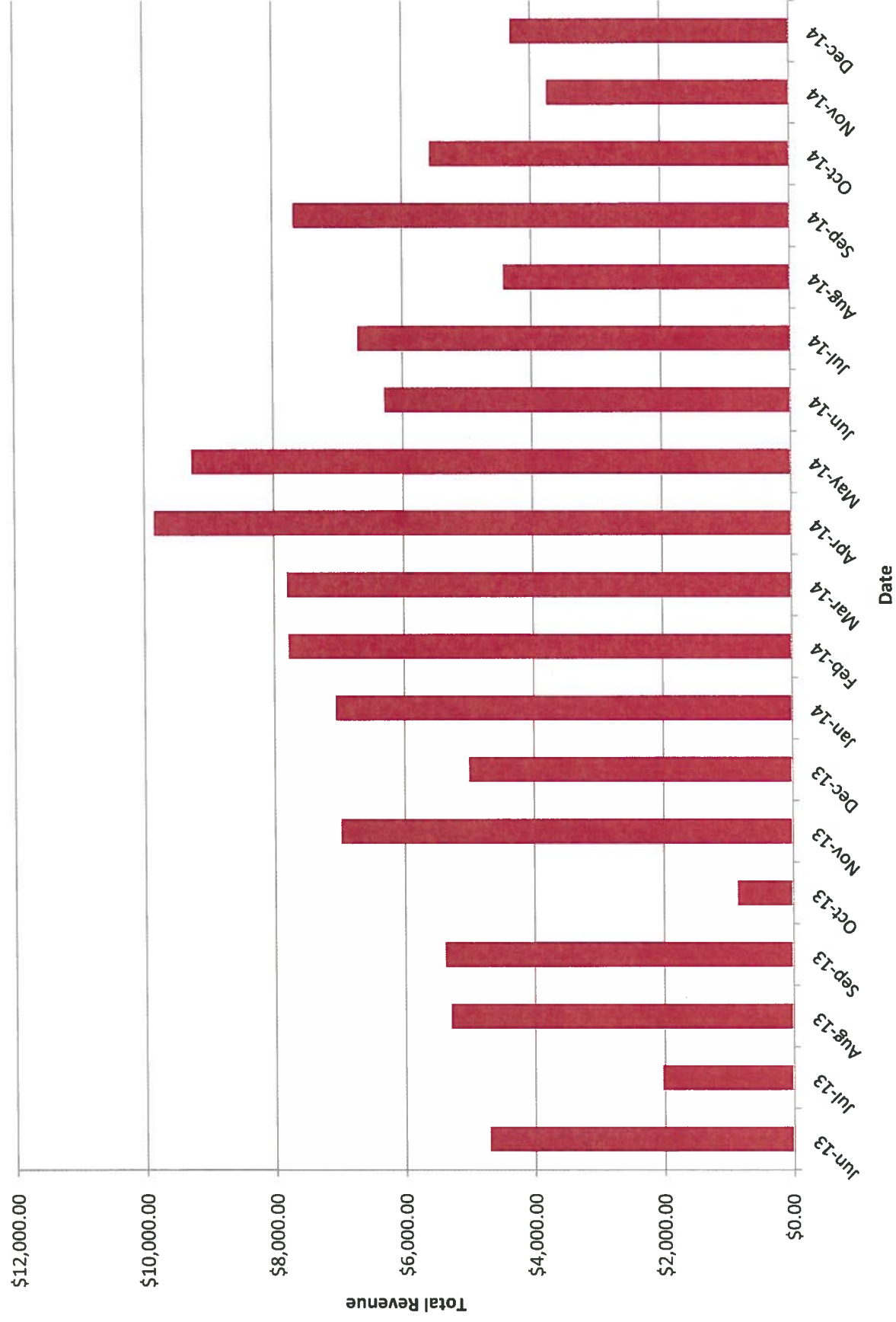
**DECEMBER 2014**

Total Outstanding Warrants	1560
Total Due from Outstanding Warrants	\$441,188.00
New Warrants Issued by Court	0
Total Warrants Cleared	17
Warrants Cleared by Arrest	8
Total on Payment Plan	153
Total Warrant Revenue	\$4,300.50
Total Time Served Credit	\$2,425.00
Total Cash Payments/Bonds Applied	\$1,875.50
Service Attempts (Including Served)	7
Process Served	15

## Total Warrants Cleared



## Total Warrant Revenue



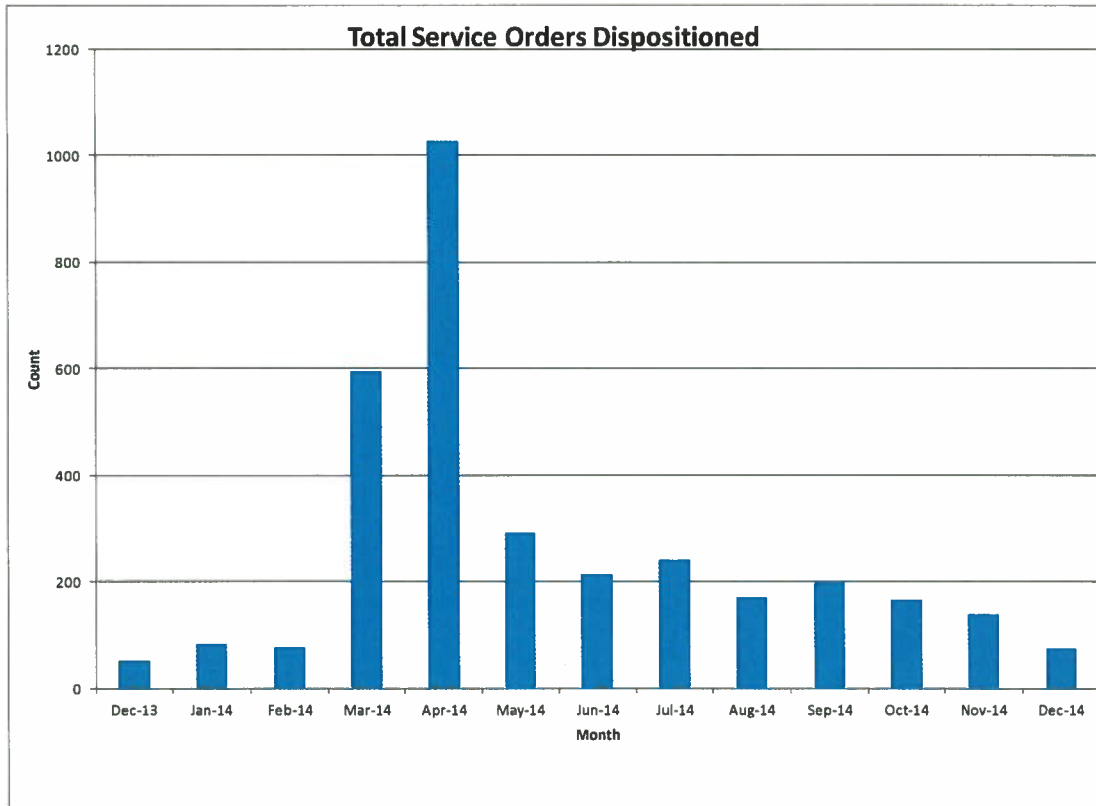


TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: CONSENT AGENDA – Public Works Report



## Public Works Monthly Report

### Service Order Status



Service Order Group	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14
Utility Billing	16	20	22	20	34	92	42	56	70	54	67	32	22
Street System	3	2	3	0	4	4	6	4	5	2	4	4	2
Water System	5	25	31	20	49	26	91	102	35	86	41	61	37
Waste Water System	5	4	5	6	3	3	2	7	2	5	4	4	2
Storm Water System	2	0	0	0	0	0	0	0	0	0	0	0	0
Property and Buildings	0	2	4	6	1	4	2	8	5	5	2	4	2
Electrical System	0	0	0	525	907	147	47	38	34	22	29	19	3
Refuse System	17	25	1	11	20	11	14	13	15	20	15	9	5
Projects	0	0	0	0	0	0	0	0	0	0	0	0	0
Vehicles	0	0	0	0	0	0	0	0	0	0	0	0	0
Public Works	0	0	0	0	0	0	1	2	2	0	3	1	0
Miscellaneous	2	4	9	6	10	4	7	10	2	3	1	4	0
<b>Total</b>	<b>50</b>	<b>82</b>	<b>75</b>	<b>594</b>	<b>1028</b>	<b>291</b>	<b>212</b>	<b>240</b>	<b>170</b>	<b>197</b>	<b>166</b>	<b>138</b>	<b>73</b>

Note:

1. Number of outstanding service orders, 22 days or older (backlog): 51
2. Number of elevated service orders: 0 completed, 0 outstanding

## **Public Works General**

1. No increase in lost time accidents for the year.
  - a. Total Number for 2014-2015: 0
2. Total lost days for 2014-2015: 0
  - a. Accidents in Month: None

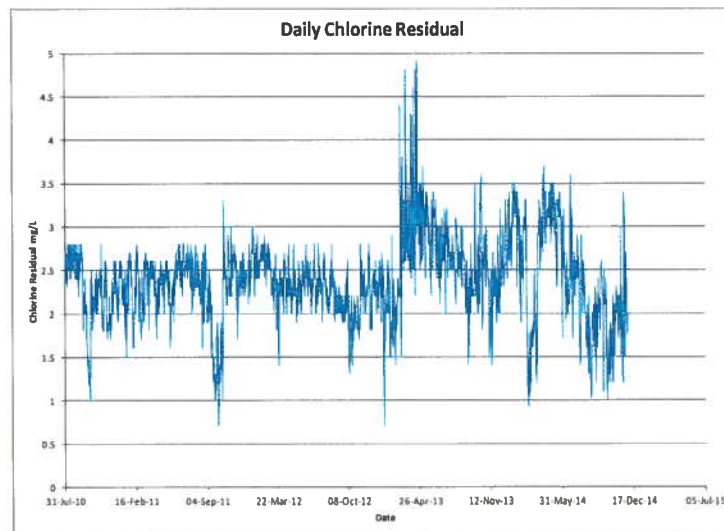
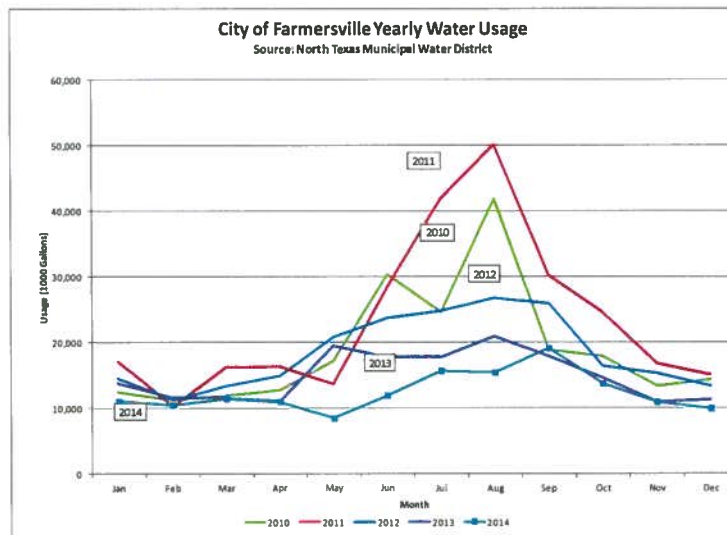
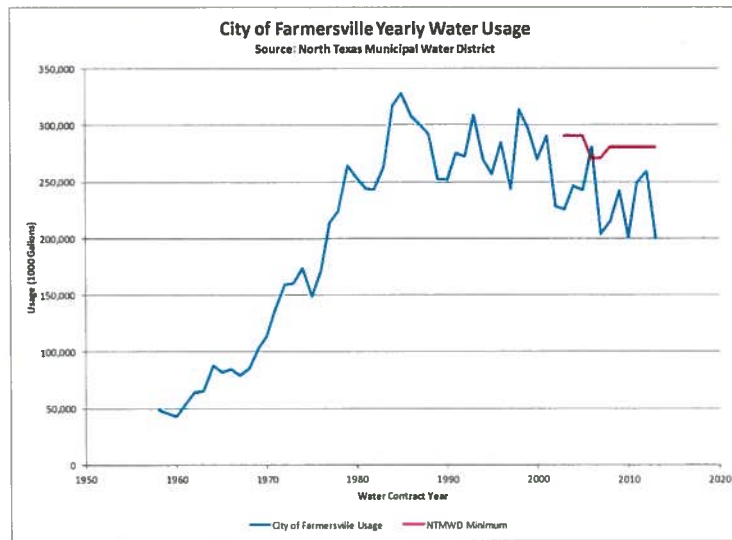
## **Street System**

1. Project Backlog
  - a. Maintenance resurfacing and panel replacement.
    - i. Maple Street
    - ii. Rike Street at Summit, intersection area.
    - iii. Locust Street
    - iv. Hale Street
    - v. Gaddy Street, King Street to Windom Street
    - vi. Propect
    - vii. North Washington Street by school, drainage issues
  - b. Install remainder of school zone signs.
  - c. Paul Glenn with TAS Compliance continues work associated with ADA survey of downtown area to give us recommendations. Completed second site visit and awaiting report.
2. GO Bond related projects. See project status below.
3. US 380 Highway Project status.
  - a. 1st Railroad Bridge, Passing Track: Complete.
  - b. 2nd Railroad Bridge, Main Track: Dec 2014 thru May 2015
  - c. 380 Roadway, East Bound: Complete. Open to two-way traffic.
    - i. East Bound Off-Ramp (Southwest Ramp), Complete Feb 2015
    - ii. East Bound On-Ramp (Southeast Ramp), Complete. Two-way ramp.
  - d. 380 Roadway, West Bound: Feb 2015, however a small section around the RR bridge area will probably be under construction until May 2015.
    - i. West Bound Off-Ramp (Northeast Ramp), Jan 2014
    - ii. West Bound On-Ramp (Northwest Ramp), Feb 2015
    - iii. Street interconnection, Floyd: Complete
    - iv. Street interconnection, Mimosa: week of 12 Jan 2015
    - v. Street interconnection, Rike: End of Jan 2015
    - vi. Street interconnection, Hamilton: End of Jan 2015
    - vii. Street interconnection, Beene: End of Jan 2015
    - viii. Street interconnection, Raymond: End of Jan 2015
    - ix. Street interconnection, Orange: End of Feb 2015
  - e. Main Street Bridge Construction: Complete
    - i. Main Street Roadway: Complete
  - f. Hill Street Crossing: Complete, however sidewalk work still needs to be done.
  - g. Walnut Street Crossing: May 2014
  - h. Main/Summit Street Crossing
    - i. Passing track: Complete
    - ii. Main track: May 2015



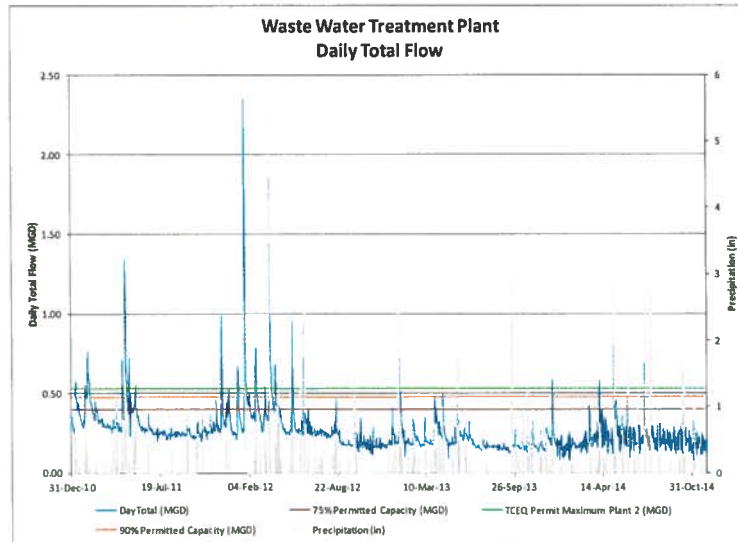
## **Water System**

1. Project backlog
  - a. GO Bond related engineering. See project status below.
  - b. Recoat inside of north elevated water tank.
  - c. Transfer NTMWD customers to CoF along Hwy 380.
  - d. Install water line on Lee Street to replace extremely poor 2" galvanized line.
  - e. Waterline extension for Caddo Park.
2. Continuing to deploy new automated meter reading system. The following meters have been deployed:
  - a. West of SH78
  - b. East of Floyd Road
  - c. FM 2194, Willowbrook, and Merit Road (north of Murchison)
  - d. Pecan Creek
  - e. 100% of the meters along SH78.
  - f. Lincoln Heights.
  - g. Currently working on meters close to electrical system AMI prototype meters.
3. Meter Report (1397 - 3):
  - a. Residential Meters (1157, -2)
  - b. Commercial Meters (186, +0)
  - c. Industrial Meters (29, - 1)
  - d. Public Meters (19, +0)
  - e. Wholesale Meters (6, +0)
4. Consumption Report (Calendar Year Start 21 Dec 2012, Month 18 November 2014 thru 16 December 2014, 28 days)
  - a. Inflow (NTMWD), Calendar Year to Date: 151,932,000
  - b. Inflow (NTMWD), Month: 9,910,000
  - c. Usage, Calendar Year to Date 139,767,920 gallons
  - d. Usage, Month: 9,113,060
  - e. Usage, Average Daily Water Usage for the Month: 325,466 gallons
  - f. Calendar Year Water Loss Percentage (to date): 8.00%
5. Stage 3 water restrictions are in place.



## Waste Water System

1. Project backlog:
  - a. Community Development Block Grant (CDBG) to fund sewer system project. See project status below.
  - b. GO Bond related engineering. See project status below.
  - c. Orange Street sewer lift station reconfiguration.
2. Wastewater Treatment Plant Status
  - a. Advertised an official Request for Qualifications (RFQ) for wastewater treatment plant and interceptor line engineer. Received RFQ responses and forming evaluation team.



## Storm Water System

1. Project backlog:
  - a. Drainage issue behind Hurst Antiques. Elevations have been shot and DBI is currently working on planning drawing. Plans are complete. Planning to start this work in January 2015.
  - b. Drainage issues behind May Furniture building.

## Property and Buildings

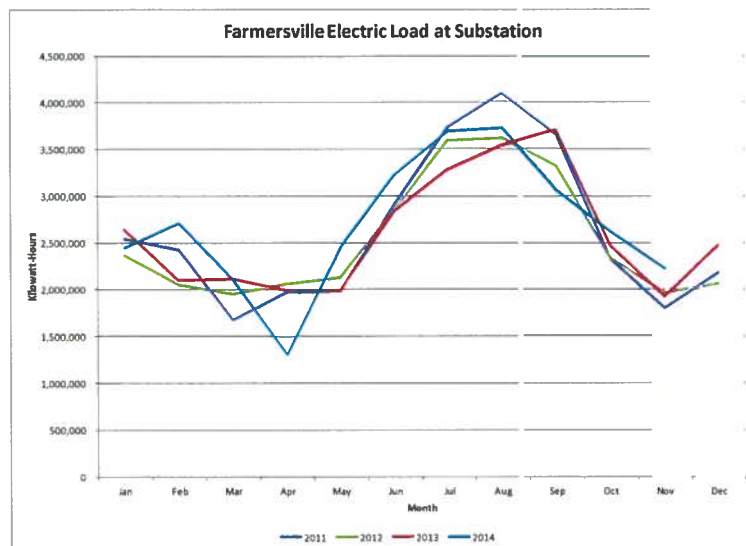
1. See action item list below for Fire Marshal findings.
2. City Hall
  - a. Backlog: Install new generator.
  - b. Backlog: Upgrade parking lot to address ADA requirements at front entrance.
  - c. Backlog: Additional window tinting.
  - d. Backlog: Fix upstairs window.
3. Chamber of Commerce
  - a. Backlog: Upgrade parking lot to address ADA requirements at front entrance.
4. Public Works Annex
  - a. No new news.
5. JW Spain
  - a. No new news.

6. Onion Shed
  - a. No new news.
7. West Onion Shed
  - a. Backlog: Remove picnic tables. (Complete)
8. Charles R. Curington Public Safety Building
  - a. No new news.
9. Chaparral Trail
  - a. See project status below.
10. Riding Arena.
  - a. No new news.
11. Public Works Service Center
  - a. Continued remodeling effort.
12. Rambler Park.
  - a. Backlog: Move gazebo closer to splash pad.
  - b. Backlog: Sidewalk connector to the gazebo.
13. North Lake
  - a. Construct Police shooting range.
14. South Lake Park
  - a. Backlog: The following items are due for replacement/maintenance:
    - i. Repair/remove broken portal.
    - ii. Replace hanging bars, 10.
    - iii. Replace missing grill, qty 2.
    - iv. Replace bench at the boat ramp.
    - v. Replace weak boards on fishing pier.
    - vi. Improve hose bib installation
15. Civic Center/Library
  - a. Backlog: Handicap ramp compliance issues.
  - b. Backlog: Handicap parking striping and signage.
16. Best Center
  - a. Backlog: Change locks.
17. Senior Center
  - a. Backlog: Concrete for entrance area.
  - b. Backlog: Lights for the parking lot.
18. City Park
  - a. Backlog: The following items are due for replacement/maintenance
    - i. Place engineered wood fiber box around slide.
    - ii. Remove rock from underneath playground equipment and replace with engineered wood fiber.
19. Downtown
  - a. Backlog: Install banner mounts.
20. Install historical markers for the following items:
  - a. Backlog: Old city standpipe location.
  - b. Backlog: Ramblers Baseball Park.
  - c. Backlog: Old Train Depot site.
  - d. Backlog: Downtown square, William Gotcher

e. Backlog: Looney-Dowlin First Public School

## Electrical System

1. Meter Report (1549 - 1):
  - a. Residential Meters (1265 - 1)
  - b. Commercial Meters (223 - 0)
  - c. Industrial Meters (16)
  - d. Public Meters (45)
2. Consumption Report (History Started 16 Apr 2014, Month 19 November 2014 thru 16 December 2014, 28 days)
  - a. Usage, Month: 1,672,125 kW-Hr.
3. Continued working on fusing and segmentation approach to help aid in emergency troubleshooting in the future. The fusing project will help increase system reliability.
4. McCord continues working on electrical system standards.
5. Backlog: Create electrical system metrics list
6. Backlog: Install statement billing
7. Backlog: Install average billing
8. Surcharge Projects. Still need to add costs
  - a. Pole Straightening/Change Out
    - i. Wilcoxson, 500 block (complete)
    - ii. North Washington Street
  - b. Wire upgrade. Copper to aluminum/resizing
    - i. North Washington Street
  - c. Transformer resizing.
  - d. Lighting upgrades
    - i. North Washington Street
  - e. Fusing & Sectionalizing.
  - f. Removal of open wire secondary.
    - i. North Washington Street
  - g. Automated Meter Infrastructure System
  - h. Improve efficiency of system



**Refuse System**

1. Progressive and CWD both participated in the Christmas Parade. Refuse trucks never looked so good!!!

**Inspections, Permits, Plats**

1. Amy Carwash building continues progressing. Slowly!!
2. Nursing center on West Audie Murphy Parkway is underway.
3. Dental Office on West Audie Murphy Parkway is underway.

**Vehicles/Tools**

1. No new news.

## Special Projects/Loans/Grants

Description	Total Project Estimate	City's Share	Estimated Construction Begin Date	Estimated Construction Completion Date	Comments and Status
Chaparral Trail Grant Collin County Open Space (Phase III)	\$300,000	\$150,000 (4B, \$60K 2013) (4B, \$60K 2014) (CoF, \$30K 2014)	Feb-15	Jun-15	Bid complete. Cole Construction selected as contractor.
Waste Water System Community Development Block Grant (CDBG)	\$275,000	\$41,250 (Cash from Bond)			State contract is in place. Engineering and grant administration contracts awarded. Construction contracts to follow.
Waste Water Treatment Plant Texas Revolving Fund	\$14,000,000	Loan, 100%			Application turned in. Funded delayed to next calendar year. Started work on procuring a design engineer for the treatment plant.
Farmersville Parkway Phase III Collin County Bond	\$3,800,000	\$1,900,000	On-Hold	On-Hold	On hold awaiting matching funding, 50%.
Floyd Street Extension Collin County Bond	\$200,000	\$100,000	On-Hold	On-Hold	On hold awaiting matching funding, 50%

Red indicates change from last council meeting.



## General Obligation Bond Projects

Project Number	Project Name	Budget	Actual Bond CTD	Status	Estimated Construction Start Date	Estimated Construction End Date
Street Projects						
1	Sycamore Street Panel Replacement (Hwy 78 to Jackson)	123,000	153,791	Complete	Apr-13	Aug-14
2	Orange Street Overlay (380 to Old Josephine, Partially County Funded)	93,245	59,589	Complete	Oct-14	Nov-14
3	CR557 Overlay (US 380 to SH 78), Majority County Funded	4,583	265	Complete	Oct-12	Jul-13
4	Westgate Overlay (Hwy 78 to Wilcoxson)	94,000	895,542	Complete	Dec-13	May-14
5	Hamilton Overlay (McKinney to Yucca)	728,000		Complete	May-14	Sep-14
6	Hamilton Street Overlay (Yucca to Gaddy)	88,000		Complete	May-14	Sep-14
7	Central Overlay (College to Prospect)	101,000		Complete	Apr-14	May-14
8	Beech Street Overlay (Main to Beene)	137,000		Complete	Aug-14	Oct-14
9	Windom Overlay (Maple to McKinney)	46,000		Complete	Nov-14	Nov-14
10	South Washington Overlay (Farmersville Parkway to Sid Nelson)	88,000	629	Bid	Mar-15	Mar-15
11	Sid Nelson Overlay (South Washington to Hamilton)	88,000		Bid	Apr-15	Apr-15
12	Hamilton Street (380 to Farmersville Parkway)	1,384,000	16,763	Engineering	May-15	Oct-15
13	Santa Fe Reconstruct (Johnson to Main)	504,000		Bid	May-15	May-15
14	Street Signs and Installation	95,000	340	Ready for Construction	Dec-15	Jul-15
Street Projects Total		3,573,828	1,126,919	2,446,909		
Street Projects GO Bond Allocation		3,575,000				
Water Projects						
15	North ET/North Main Street	189,000	548,983	Construction	Apr-14	Jan-15
16	Sycamore St/Hwy 78	329,000		Complete	Apr-14	Oct-14
17	Hamilton St		24,737	Complete	Jun-14	Jul-14
18	Rike/Houston/Austin Street	163,500		Engineering	Mar-15	Jul-15
19	Automated Meter Reading System	520,000	381,124	Construction	Mar-13	May-15
20	Bob Tedford Drive	83,000	25,305	Construction	Nov-14	Feb-15
21	CR 608/CR 609	63,500		Not Started	Jan-15	Feb-15
Wastewater Projects						
22	S Main & Abbey – Gravity Main	52,000		Not Started	Mar-15	Jul-15
23	Hwy 78 & Maple St – Gravity Main	57,000		Not Started	Apr-15	Dec-15
24	Hwy 78 & CR 611 – Gravity Main	172,500		Not Started	Apr-15	Nov-15
25	Floyd St – Lift Station	50,000		Not Started	Mar-15	Jul-15
26	Sycamore – Gravity Main	23,000	16,497	Complete	May-13	Jul-13
27	Hamilton St - Gravity Main		16,608	Complete	Jun-14	Jul-14
28	Hwy 380 & Welch Dr – Gravity Main	164,500		Not Started	Mar-15	Jul-15
29	Hwy 380 (AFI to Floyd St) – Lift Station & Force Main	445,000		Not Started	Jul-15	Dec-15
30	Locust – Gravity Main	88,500		Not Started	Mar-15	Jul-05
Water and Wastewater Projects Total		2,400,500	1,013,254	1,387,246		
Water and Wastewater Projects GO Bond		2,400,000				

## Action Item List

Project Name	Project Description	Date of Request	Person Assigned	Service Order Number	Notes	Close Date
Brick and Tree	for all past city council and mayors	14-Jan-13	Paula Jackson			Open
Painted Stop Lines	Painted stop lines at the intersection of Summit and Rike	2-Dec-14	Ben White			Open
Water hole in the sidewalk at Tony's Restaurant	have public works look to see what can be done to correct	14-Jan-13	Public Works	149337		Open
Requirements for thickness of driveways	Research Suddivision and Zoning for the thickness for driveways. Questions regarding 6 in accompanied by geotechnical study	15-Jan-13	Ben White/Paula			Open
Rambler Park	The Playground in in need of mulch	12-Mar-13	Public Works			Open
Goettcher Street Sign	Install street signs related to Goettcher Street	17-May-13	Ben White		Received quotes and downselected supplier. Sign on order with Roadrunner.	Open
Replacement Meter Covers	Replace hand made water meter covers downtown. People are tripping over them.	14-Jan-14	Ben White			Open

Project Name	Project Description	Date of Request	Person Assigned	Service Order Number	Notes	Close Date
Side walk repairs needed	the Sidewalk infront of Independent Bank and infront of McGuire Building	15-Jan-14				Open
City Hall	floor - replacement and duct cleaning	20-Feb-14				Open
City Hall Fire Marshal Action Items	1. provide panic hardware on second exit 2. secure chairs together(when 4 in row) 3. provide fire extinguisher in council chabmbers 4. remove extension cords	25-Mar-14	Ben White		3. Complete	Open
Sewer Plant Fire Marshal Action Items	1. provide fire extinguisher 2. label diesel tank 3. open spaces in elect panel 4. SCBA missing (is this required per emergency plan?)	25-Mar-14	Ben White		1. Complete	Open
J.W. Spain Fire Marshal Action Items	1. Provide commercial ansul system with hood above frier and flat top. <alt-enter> 2. Provide fire extinguisher in concession stand. 3. Repair damaged bleachers.	28-Mar-14	Ben White		2. Complete 3. Complete	Open

Project Name	Project Description	Date of Request	Person Assigned	Service Order Number	Notes	Close Date
Riding Arena Fire Marshal Action Items	1. comply with ICC bleacher requirements 2. provide access to building (key provided did not work	28-Mar-14	Ben White			Open
Public Works Annex Fire Marshal Action Items	No violations Note: recommended to put "Do Not Enter" sign on storage side of the building or provide rails	28-Mar-14	Ben White			Open
Public Safety Building Fire Marshal Action Items	PD: Fire: 1. Repair rear exit sign 2. gas must be stored in metal UL can 3. provide ansul kitchen system or do not cook w/grease vapors. EMS: 1. Provide no smoking sign above oxygen 2. provide ansul kitchen system or do not cook w/grease vapors. 3. do not stor combustibles in hot water heater closet.	28-Mar-14	Ben White		PD: No action Fire: 1. Complete 2. Complete 3. Complete EMS 1. Complete 3. Complete	Open

Project Name	Project Description	Date of Request	Person Assigned	Service Order Number	Notes	Close Date
Civic Center Fire Marshal Action Items	1. Provide panic hardware(all doors except main entrance 2. Post occ load 3.Provide ansul cooking system	28-Mar-14	Ben White		1. Complete 2. Occupant load sign on order	Open
JW Spain Handicap Parking	Install parking places for handicap parking	28-Mar-14	Ben White			Open
Restrooms at parks	Audrey has requested a number of things to be fixed or replaced at the restrooms like signs on the mens and womens and fix the water fountain and the toilet lids	15-Apr-14	Paula Jackson		Ben and I are looking into signs to be placed.	Open
Welcome Sign north	fix the welcome billboard	22-Apr-14	public works		On hold pending artwork completion	Open





TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: CONSENT AGENDA – Library Report





## **Charles J. Rike Memorial Library**

203 Orange Street - Farmersville, Texas

[www.rikelibrary.com](http://www.rikelibrary.com)

972-782-6681

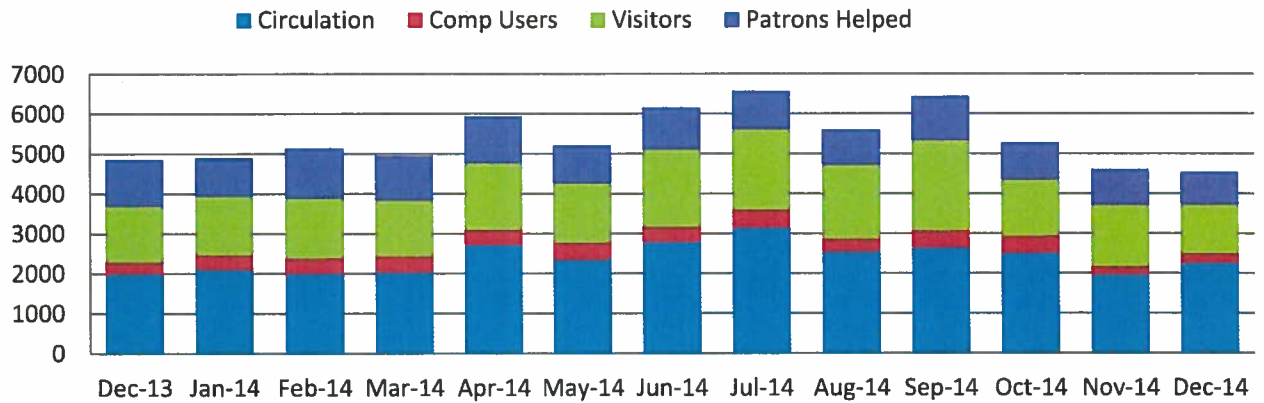
### **December – 2014**

<b>Circulation:</b>	<b>2251</b>
<b>Computer Users:</b>	<b>223</b>
<b>Wi-Fi User Estimate:</b>	<b>55</b>
<b>Visitors:</b>	<b>1229</b>
<b>Inter-library Loan</b>	
<b>Books loaned to other libraries:</b>	<b>4</b>
<b>Books borrowed for our patrons:</b>	<b>3</b>
<b>Patrons Saved \$ *</b>	<b>\$ 30,383.18</b>
<b>New Patrons:</b>	<b>10</b>
<b>Volunteer Hours Donated:</b>	<b>31 hours</b>

The library has started it's "Food for Fines" program started November 1, 2014 and will continue until February 28, 2015. All food donated benefits the Farmersville Food Pantry. Library members have given 45 items of food, resulting in \$25 in fines forgiven for November and 33 items of food with \$25.80 fines forgiven for the month of December.

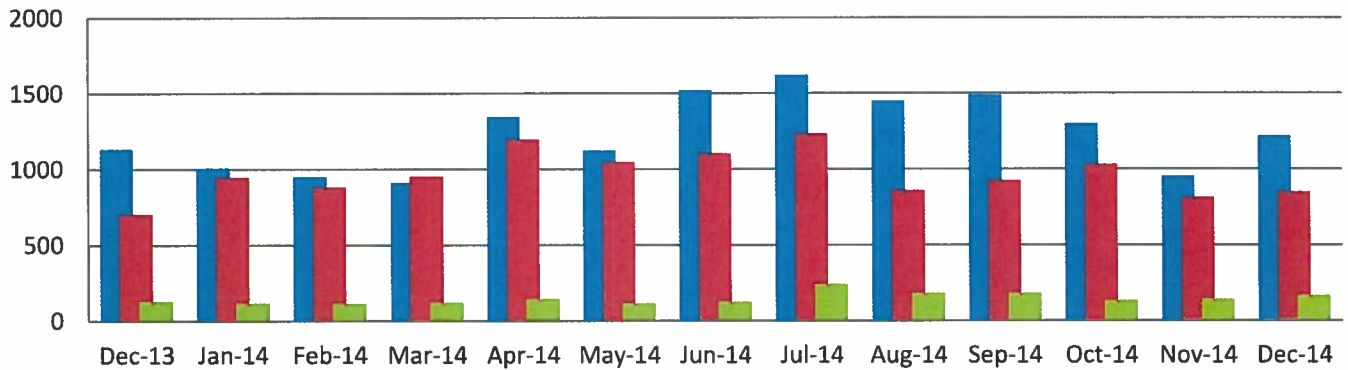
The library held its 2<sup>nd</sup> annual "Count the Elves on our Shelves" event in December. There were approximately 40 participants and out of those, 5 found all of the elves. Six prizes were given away. It was great fun for everyone!

## Library Usage



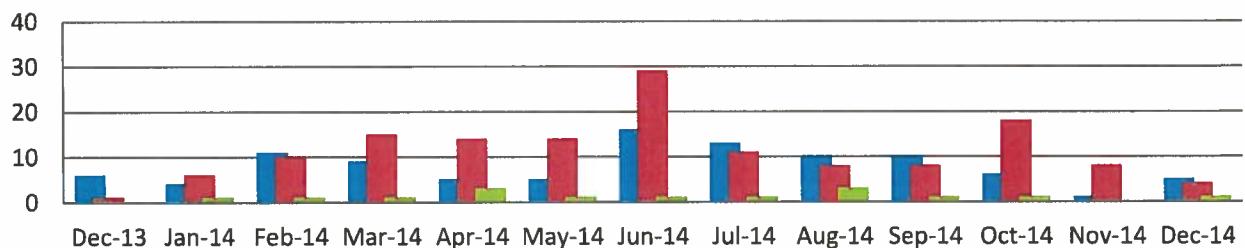
	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14
Patrons Helped	1171	965	1254	1131	1184	950	1057	967	886	1112	938	905	828
Visitors	1406	1474	1513	1412	1674	1489	1952	2011	1859	2265	1409	1540	1229
Comp Users	286	363	378	399	377	432	367	446	317	419	421	198	223
Circulation	1994	2097	1997	2020	2713	2335	2784	3141	2539	2642	2504	1958	2251

## Circulation by Patron Type



	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14
City	1135	1008	952	912	1346	1124	1521	1621	1451	1491	1299	953	1216
County	704	945	881	951	1196	1045	1101	1232	858	925	1030	809	846
Other	128	116	115	120	143	114	122	240	180	179	130	140	163

## New Patrons



	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14
City	6	4	11	9	5	5	16	13	10	10	6	1	5
County	1	6	10	15	14	14	29	11	8	8	18	8	4
Out of County		1	1	1	3	1	1	1	3	1	1		1



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: CONSENT AGENDA – City Manager’s Report



## City Manager Monthly Report

### City Manager General

#### 1. Attended the following meetings:

Meeting Description	Attended
City Council Meeting	1
Farmersville Economic Development Corporation (FEDC)	1
Farmersville Community Development Corporation (FCDC)	1
Planning and Zoning Commission	1
Citizens Advisory Committee	0
Parks and Recreation Board	0
Main Street Board	0
Downtown Merchants Meeting	0
Capital Improvements Advisory Commission	0
Building and Property Standards Meeting	0
Farmersville Garden Club	0
Realtors Meeting	0
Chamber of Commerce Board Meeting	0
Chamber of Commerce Networking Meeting	0
Farmersville Riding Club	0
Herb Ellis Jazz Concert Meeting	1
Northeast Texas Trail Association (NETT)	0

### Ordinances and Ordinance Changes

#### 1. Backlog

##### a. New

- i. Knox boxes.
- ii. TCEQ on-site sewage amendment.
- iii. Revise the City's Thoroughfare Plan and the City's design standards to remove areas of disagreement between the documents.
- iv. Contractor registration ordinance.
- v. Master fee schedule changes to accommodate contractor registration fees
- vi. Sharyland franchise fee ordinance (complete)

##### b. Change

- i. Standard design details for: water, wastewater, electrical, etc.

## **Contracts**

1. Backlog
  - a. Chaparral Trail Phase III
  - b. Phase II of GO Bond street projects (complete)
  - c. Wastewater treatment plant and interceptor line engineer
  - d. J.W. Spain Athletic Complex park planner
  - e. Farmersville Towne Centre planner
  - f. Auditor contract

## **Planning**

1. Advertised a Request for Qualifications document to procure engineering planning services for the Towne Centre project. (in-work)

## **Policy Changes**

1. Backlog
  - a. Information Technology policy.
  - b. Financial procedures.

## **Personnel Related Matters**

1. Employee Performance Review preparations are getting underway.
2. Will be moving Eddie Brock to the Public Works Service Center and moving Farmersville Electric crew to the Public Works Annex.

## **Customer Service Window**

1. No new news.

## **Budget/Finance**

1. Closed out 2013/2014 books.
2. Budget amendments will be required for the following carrying over items: service center project, electrical fund clean-up (TCOS), asset sale items via Renee Bates.
3. In-house segment of yearly audit is complete. Awaiting report.

## **Information Technology**

1. Upcoming projects
  - a. Better backup processes (50% complete)
  - b. Microsoft Office Suite 2013
  - c. Hardware and software review audit (20% complete)
  - d. Inter-office fiber optic line planning
2. Started installing solid state drives to enhance the performance and lengthen the life of our current desktop computer systems. (Completed 5 out of 7)
3. Continued preparations for electrical AMI system.

## **Special Events**

1. Helped with preparations for Herb Ellis Jazz Festival, 21 March 2015.
2. Christmas Parade was a huge success.



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – FEDC (4A) Meeting Minutes

- Minutes were not available for the Council packet. Minutes for the December meeting will be provided for the February 10<sup>th</sup> Council Meeting.

Electronic minutes are found at the following link:

[http://www.farmersvilletx.com/government/agendas\\_and\\_minutes/economic\\_development/index.jsp](http://www.farmersvilletx.com/government/agendas_and_minutes/economic_development/index.jsp)



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – FEDC (4A) Financial Report

**Farmersville Economic Development Corp 4A  
Investment and Budget Report**

**December 2014**

**Prepared by: Daphne Hamlin**



***Farmersville Economic Development Corp 4A***  
***December 2014***

<b>Statement Balance 12-1-2014</b>	<b>\$67,686.23</b>
<b>Deposits:</b>	
<b>Sales Tax:</b>	<b>\$21,003.44</b>
<b>Cking Int .05%</b>	<b>\$3.34</b>
<b>CD Interest</b>	<b>\$71.92</b>
<b>Transfer to Texpool</b>	
<b>New Checks</b>	
<b>Transfer Fee</b>	
<b>Statement balance 12-31-2014</b>	<b>\$88,764.93</b>
<b>Outstanding Transactions</b>	
<b>Sales Tax</b>	
<b>Transfer to Texpool</b>	
<b>CD Interest</b>	
<b>Check</b>	<b>\$(25,000.00)</b>
<b>Balance 1-8-2015</b>	<b>\$63,764.93</b>

[illegible]

## CITY OF FARMERSVILLE

## EXHIBIT A

2014-2015 BUDGET/REVISION (5) 1-8-2015

GOVERNMENTAL FUNDS	ESTIMATED BEGINNING FUND BALANCE	REVENUES	EXPENDITURES	INTERFUND TRANSFERS IN (OUT)	PROPOSED ENDING FUND BALANCE
Electric Fund Note Using remaining balance to complete <u>Publi Works Maintenance Facility</u>	\$ 121,635	\$ -	\$ 121,635	\$ -	\$ -



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – FCDC (4B) Meeting Minutes

Electronic minutes are found at the following link:

[http://www.farmersvilletx.com/government/agendas\\_and\\_minutes/community\\_development/index.jsp](http://www.farmersvilletx.com/government/agendas_and_minutes/community_development/index.jsp)

## **FARMERSVILLE COMMUNITY DEVELOPMENT CORPORATION BOARD (4B)**

**MINUTES December 8, 2014**

### **CALL TO ORDER, ROLL CALL AND RECOGNITION OF VISITORS**

The Farmersville Community Development Corporation Board met on December 8, 2014 in the City Council Chambers at City Hall. President Leaca Caspari convened the meeting at 5:45 p.m. and announced that a quorum was present after roll call. The following board members were present: Leaca Caspari, Donna Williams, John Garcia, Paul Kelly, and Dick Seward. President Caspari welcomed Main Street Manager Adah Leah Wolf and City Manager Ben White.

### **CONSIDER FOR APPROVAL OCTOBER 13, 2014 MEETING MINUTES**

Paul Kelly motioned to accept the October 13, 2014 minutes as written. Donna Williams seconded the motion, which passed the full Board.

### **CONSIDERATION AND POSSIBLE APPROVAL OF ITEMS FOR PAYMENT**

President Caspari presented items for payment, as well as a suggestion that the board consider a monetary award each to Adah Leah Wolf and Daphne Hamlin for uncompensated work they have done throughout the year. A motion was made by Paul Kelley and seconded by Donna Williams to award \$500 each to Ms. Wolf and Ms. Hamlin using funds designated as miscellaneous. The motion passed unanimously. Paul Kelly motioned to approve the items presented for payment; John Garcia seconded the motion, which passed the full board.

### **CONSIDER POSSIBLE ADDITIONAL CHRISTMAS EXPENSES**

There was discussion regarding the positive response from the community to this year's Christmas lighting. Several people have asked if the tops of the buildings on the West side of Main Street could be lit as well, and also have requested that the rest of the light poles on Main Street be decorated with lighted garland. Wolf recommended that three specific additional light poles be decorated on Main Street; at an estimated cost of \$300 each.

Paul Kelly made a motion to approve an additional \$1,000 for Christmas lighting of three light poles on Main Street; motion seconded by Donna Williams. The board discussed the matter further, and costs for the additional lighting on the tops of the buildings were obtained via phone by Ben White. Paul Kelly withdrew his original motion and made another. Paul Kelly made a motion to approve an additional \$3,000 for Christmas lighting, to decorate three additional light poles on Main Street, to decorate the tops of the buildings on the West side of Main Street, and to decorate as many additional light poles as the money would allow. Motion was seconded by John Garcia, and passed the full board.

### **CONSIDERATION AND POSSIBLE ACTION REGARDING FINANCIAL STATEMENTS FOR OCTOBER AND NOVEMBER 2014 AND ANY REQUIRED BUDGET AMENDMENTS**

Donna Williams motioned to accept the October and November 2014 financial statements as presented, with a budget amendment of \$3,000 to cover additional Christmas expenses. Paul Kelly seconded the motion, which passed the full board.

### **CITY MANAGER REPORT—BEN WHITE**

City Manager Ben White presented a written report, and highlighted the following: The final bleacher has been assembled and is at the JW Spain Athletic Complex. The Onion Shed repairs will be completed early next year. The bid package for Chaparral Trail improvements Phase III will be opened this week and work should begin in January. The old railroad bridge on Hwy 380 has been demolished. The Hill Street RR crossing is complete. Repairs on Beech and Windom Streets are complete. Plumbing is being constructed for the new nursing home on Hwy 380. The gazebo still needs to be moved.

#### **MONTHLY MAIN STREET PROGRAM UPDATE—ADAH LEAH WOLF**

Main Street Manager Adah Leah Wolf presented a monthly report, and highlighted the following: Manager and Mary Tate attended the Texas Downtown Association conference in Granbury. The Main Street Board coordinated hot chocolate and cookies for Tatum grades K-1 and homeschoolers on Dec. 5. Approximately 50 participants in the Bike Across Texas event stayed overnight in the Onion Shed on Nov. 2. The Christmas events postcard was designed, printed and mailed to the 75442 zip code. Shop Late and Celebrate Thursdays are Dec. 4, 11 and 18. The Pink Pug has opened at 113 McKinney Street. The Allen Building (111 McKinney) sustained vandalism to upstairs windows on Nov. 3. Planning for the Jazz on Main event continues.

#### **DISCUSSION OF PLACING ITEMS ON FUTURE AGENDAS**

The next meeting will be on January 12, 2015. The board is interested in learning more about the Town Center project from the 4A Board, perhaps through a joint meeting, or by visiting a 4A board meeting.

#### **ADJOURNMENT**

There being no further business, President Caspari adjourned the meeting at 6:44 PM.

Signatures:

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Leaca Caspari, President

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Donna K. Williams, Secretary



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – FCDC (4B) Financial Report

**Farmersville Community Development Corp 4B  
Investment and Budget Report**

**December 2014**

**Prepared by: Daphne Hamlin**



**Farmersville Community Development Corp 4B**  
**December 2014**

<b>Statement Balance 12-1-2014</b>	<b>\$142,420.55</b>
<b>Deposits:</b>	
<b>Sales Tax:</b>	<b>\$21,003.44</b>
<b>Cking Int .05%</b>	<b>\$6.40</b>
<b>Stop payment Fee</b>	
<b>Transfer to Texpool</b>	
<b>Transfer from Texpool</b>	<b>\$-</b>
<b>Checks 2276,2277,2279,2284-2295,2297,2298</b>	<b><u>\$(9,102.44)</u></b>
<b>Statement balance 12-31-2014</b>	<b>\$154,327.95</b>

**Outstanding Transactions**

<b>Sales Tax</b>	
<b>Transfer to Texpool</b>	
<b>CD Interest</b>	
<b>Checks 2296</b>	<b>\$(80.00)</b>

<b>Balance 1-08-2015</b>	<b><u><u>\$154,247.95</u></u></b>
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Farmersville Community Development Corporation  
Financial Statement  
For the Fiscal Year Ended September 30, 2015

	October	November	December	January	February	March	April	May	June	July	August	September
Beginning Bank Balance	133,432.32	\$125,474.21	\$142,040.29									
Deposits:												
Sales tax deposits	16,546.49	17,755.33	\$21,003.44									
Interest income-bank	5.56	5.61	\$6.40									
Transfer to TaxPool												
Transfer From Texpool to First Bank												
Refund from Boudnary Solutions												
Reimbursement for Marketing												
Reimbursement for Main Street Mgr.												
Adjusting Entry												
<b>Total Revenues</b>	<b>149,984.37</b>	<b>143,235.15</b>	<b>163,050.13</b>				<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$ -</b>
Disbursements:												
Main Street Salary			\$ 1,000.00									
Miscellaneous	\$ 868.60	\$ 187.81	\$ 1,318.30									
Main Street Supplies	\$ 13,000.00											
Marketing Program												
Reimburse city for accounting												
Chaparral Trail Improvements			\$ 2,500.00									
Collin College Scholarship sponsorship												
Chamber of Commerce												
May Taxes												
Christmas Activities	\$ 4,988.18											
Land Purchase												
Fire Works	\$ 5,000.00											
Bain Honaker House Restoration	\$ 643.38	\$ 920.34	\$ 740.88									
National Register District Project												
Herb Ellis Jazz Event												
Onion Shed Repair			\$ 3,243.00									
Bleachers For Spain Complex												
Farmersville Heritage Museum												
<b>Total Expenses</b>	<b>24,510.16</b>	<b>1,108.15</b>	<b>\$ 8,802.18</b>			<b>\$-</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Ending Bank Balance</b>	<b>125,474.21</b>	<b>142,040.29</b>	<b>154,247.95</b>									
TEXPOOL Balance	84,839.20	\$84,841.20	\$84,884.18									
Interest Income-TEXPOOL	1.94	\$ 2.00	\$ 2.98									
<b>Total Available Funds</b>	<b>210,313.41</b>	<b>226,881.49</b>	<b>239,132.13</b>									

Signed:





TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Planning & Zoning Minutes

Electronic minutes are found at the following link:

[http://www.farmersvilletx.com/government/agendas\\_and\\_minutes/planning\\_and\\_zoning/index.jsp](http://www.farmersvilletx.com/government/agendas_and_minutes/planning_and_zoning/index.jsp)

FARMERSVILLE PLANNING & ZONING COMMISSION  
REGULAR SESSION MINUTES  
December 15, 2014

The Farmersville Planning and Zoning Commission met in regular session on December 15, 2014 at 6:30 p.m. at the City of Farmersville Council Chambers with the following members present: Bryce Thompson, Todd Rolen, Craig Overstreet, Charles Casada and Chad Dillard. Commission members absent were Patti Ford and Mark Vincent. Staff members present were City Manager Ben White, David Ritter filling in for City Attorney Alan Lathrom and City Secretary Edie Sims. Council Liaison John Klostermann was present.

**CALL TO ORDER AND RECOGNITION OF CITIZENS/VISITORS**

Chairman Bryce Thompson called the meeting to order at 6:30pm. Edie Sims called roll and announced that a quorum was present. Craig Overstreet offered the invocation and led the audience in the Pledge of Allegiance to the American and Texas Flags.

**Item II – A) CONSIDER, DISCUSS AND ACT UPON MINUTES FROM OCTOBER 20, 2014 AND NOVEMBER 17, 2014 REGULAR P&Z MEETINGS**

Craig Overstreet motioned to approve both minutes as written with Chad Dillard seconding the motion. Motion carried unanimously.

**Item II – B) CONSIDER, DISCUSS AND ACT UPON A PLAT IN THE GRAYWOODS ADDITION ON SOUTH MAIN**

City Manager Ben White informed the Commission the plat has completed the proper procedures and has been approved by himself and the City Engineer. The plat is fairly simple; two lots are being subdivided into three. This area was not originally platted which is the reason the plat is being presented before the Commission. The plat will be held until all buyers have taken proper possession. All frontage requirements have been met.

With the layout of the plat, Craig Overstreet questioned if Lot 3 could have a house in the back portion of the lot, with Mr. White expressing it is possible. Lot 3 was evaluated for all circumstances, including a flag lot. Due to the frontage width, the lot does not meet a flag lot definition which is not allowed within the City of Farmersville. If a home is built at the back of Lot 3, all fire codes would have to be met.

A 15' right-of-way has been dedicated which meets the Comprehensive Plan. Todd Rolen motioned to approve the plat as presented with Chad Dillard seconding the motion. Motion carried unanimously.

**Item II – C) CONSIDER, DISCUSS AND ACT UPON AN ORDINANCE REGARDING DRIVEWAY APPROACHES, DRIVEWAYS AND PARKING HAZARDS**

City Manager Ben White presented the information as discussed at previous meetings in ordinance format. All concerns have been addressed. The only other change of recent discussion regarded circle drives being independent from others. Craig Overstreet questioned the distance between curbs with Mr. White identifying the distance as 20 feet per Section 71-168(6), page 5 of 13. A single resident will have a driveway of 20 feet while a multi-family driveway will be 24 feet. A penalty was added to allow the enforcement of this ordinance.

Todd Rolen expressed concerns of restricting how many vehicles can be parked in the street per residence. Mr. Rolen was directed to page 6 where large vehicles were addressed. Mr. Rolen also expressed concern of a corner lot where a fire hydrant is located and residential parking limits access to the fire hydrant. Mr. White stated restricting parking to one side of the street may have to be addressed at a later time. Streets must also be wide enough to allow for parking in the streets. Mr. White stated he will address these concerns with the Council and receive direction.

Craig Overstreet motioned to approve the ordinance and recommended approval consideration from the Council with Charles Casada seconding the motion. Motion carried unanimously.

**Item III) ADJOURNMENT**

With no further business, Craig Overstreet motioned to adjourn with Todd Rolen seconding the motion. Commission adjourned at 6:53pm.

ATTEST:

\_\_\_\_\_  
Chairman Bryce Thompson

\_\_\_\_\_  
Patti Ford, Secretary



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Capital Improvements Advisory Commission Minutes

- There was not a meeting of the Capital Improvements Advisory Commission during the month of December 2014.

Electronic minutes are found at the following link:

[http://www.farmersvilletx.com/government/agendas\\_and\\_minutes/planning\\_and\\_zoning/index.jsp](http://www.farmersvilletx.com/government/agendas_and_minutes/planning_and_zoning/index.jsp)



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Citizens Advisory Committee Minutes

- The next Citizens Advisory Committee will meet January 22, 2015

Electronic minutes are found at the following link:

[http://www.farmersvilletx.com/government/agendas\\_and\\_minutes/planning\\_and\\_zoning/index.jsp](http://www.farmersvilletx.com/government/agendas_and_minutes/planning_and_zoning/index.jsp)





TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Sign Board of Appeals Minutes

- There was not a meeting of the Sign Board of Appeals during the month of December 2014.

Electronic minutes are found at the following link:

[http://www.farmersvilletx.com/government/agendas\\_and\\_minutes/planning\\_and\\_zoning/index.jsp](http://www.farmersvilletx.com/government/agendas_and_minutes/planning_and_zoning/index.jsp)



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Parks Board Minutes

- There was not a meeting of the Parks Board the month of December 2014.

Electronic minutes are found at the following link:

[http://www.farmersvilletx.com/government/agendas\\_and\\_minutes/parks\\_and\\_recreation\\_board\\_meetings.jsp](http://www.farmersvilletx.com/government/agendas_and_minutes/parks_and_recreation_board_meetings.jsp)



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Main Street Board Minutes

- There was not a meeting of the Main Street Board the month of December 2014.

Electronic minutes are found at the following link:

[http://www.farmersvilletx.com/government/agendas\\_and\\_minutes/main\\_street\\_board/index.jsp](http://www.farmersvilletx.com/government/agendas_and_minutes/main_street_board/index.jsp)



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Main Street Report

Main Street Report is attached.



Main Street Monthly Report  
December 2014  
Reported by Adah Leah Wolf,  
Main Street Program Manager



**ORGANIZATION:**

8	4B Board. Budget amendment passed for additional Christmas lighting to complete décor on light poles, and on the tops of the buildings on the West side of Main Street.
	Main Street Board did not meet in December
10	Manager attends city staff meeting
9, 16, 22	Mary Tate is assisting in completing our National Register District nomination. Working on the narrative Statement of Significance
18, 30	Debbie Ranspot assisted with administrative tasks
2,3,23,26	Manager takes vacation leave
18	Farmersville Heritage Museum Board Meeting. PowerPoint presentation created, stationery created, ad place in newspaper, donations received. The picnic tables have been removed from the onion shed in preparation for construction. Collections Policy drafted.

**PROMOTION:**

5	Main Street provides hot chocolate and cookies for grades K-1 from Tatum Elementary and for local homeschoolers. Over 200 students served, with numerous volunteers assisting.
6	Farmers & Fleas Market was held. Good weather and good shopping day.
	Farmers & Fleas Market ads ordered and press releases sent
	Volunteer Jack Smith provides photos of holiday décor and activities from Dec. 5.
	Database for Market vendors created and email newsletter sent
	Shop Late and Celebrate signs placed downtown and ads placed
10	Jazz on Main event planning meeting
13	Numerous Christmas events today: Bain Honaker House is open; Chamber coordinates Photos with Santa and parade. Main Street coordinates caroling at Gazebo before the parade.
12, 29	E Newsletter sent to downtown building and business owners.

**DESIGN:**

	Doug Laube has completed façade renovations (129 McKinney Street)! Work continues on the interior renovations.
	Additional garland and Christmas lights are installed: West side of Main Street completed, and several additional light poles are decorated as well. Permission from building owners secured.
	Work continues on old Candy Kitchen Building: North side patio is framed
	Laundromat on Main Street is under construction

**ECONOMIC RESTRUCTURING:**

	Shop Late and Celebrate nights were December 4, 11, 13, and 18
	Nelly's Beauty Salon has closed and the space is for lease (120 McKinney Street)
	Downtown Merchants get together cancelled for December.
	Downtown space for sale or lease has been updated on city website
	Year in Review information summarized and submitted to The Farmersville Times.
13	Chris Lair State Farm Insurance holds grand opening at their new location (125 S. Main)



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Building & Property Standards Commission Minutes

- There was not a meeting of the Building & Property Standards Commission the month of December 2014. The next scheduled meeting is January 8, 2015.

Electronic minutes are found at the following link:

[http://71.6.142.67/revize/farmersville/government/agendas\\_and\\_minutes/building\\_and\\_property\\_standards\\_meetings.jsp](http://71.6.142.67/revize/farmersville/government/agendas_and_minutes/building_and_property_standards_meetings.jsp)



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – TIRZ Board Minutes

- There was not a meeting of the TIRZ Board during the month of December 2014.

Electronic minutes are found at the following link:

[http://71.6.142.67/revize/farmersville/government/agendas\\_and\\_minutes/other\\_boards\\_and\\_committees.jsp#revize\\_document\\_center\\_rz305](http://71.6.142.67/revize/farmersville/government/agendas_and_minutes/other_boards_and_committees.jsp#revize_document_center_rz305)



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Library/Civic Center Board Minutes

- There was not a meeting of the Library/Civic Center Board during the month of December 2014.

Electronic minutes are found at the following link:

[http://71.6.142.67/revize/farmersville/government/agendas\\_and\\_minutes/library\\_civic\\_center\\_board.jsp](http://71.6.142.67/revize/farmersville/government/agendas_and_minutes/library_civic_center_board.jsp)





TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – Farmersville Public Housing Authority Report

- The December Texoma Housing Partners Board Agenda is attached for review

Electronic agendas are found at the following link:

<http://www.texoma.cog.tx.us/departments/client-services/texoma-housing-partners/>



## TCOG Governing Board

### Meeting Agenda

1117 Gallagher Drive, Sherman, Texas  
Thursday, December 18, 2014 – 5:30 p.m.

- A. **Call to Order & Declaration of a Quorum**
- B. **Invocation and Pledges**
- C. **Welcome Guests**
- D. **Induct New Governing Board Member for 2014-2015**  
TCOG Governing Body Pledge:  
In accepting this responsibility as a Governing Body member,  
Do you pledge:
  - To uphold the bylaws of the organization
  - To be faithful in attendance
  - To strive to achieve the TCOG mission while representing our constituents
  - To foster full and active participation of all Governing Body members, and
  - To promote our strengths as a region
- E. **Approval of Minutes:** Approve Meeting Minutes for November 2014 – page 3
- F. **Executive Director's Report**
  - 1. Beyond ABC: Children's Health in Texoma, Working Group Update
  - 2. CTR Legislative Priorities Update
  - 3. Texoma Craft Beverage Project Update
  - 4. EPA Regional Brownfields Grant Update
  - 5. Whitewright Project Update
  - 6. Christmas Donations Report
  - 7. 2015 Strategic Plan Preview
- G. **Consent**

All items on Consent Agenda are considered to be routine by the Council of Governments and will be enacted with one motion. There will not be separate discussion of these items unless a member of the Governing Body or a citizen so requests, in which event these items will be removed from the general order of business and considered in normal sequence.

  - 1. **November 2014 Liabilities (AF):** Authorize the Secretary/Treasurer to make payments in the amounts as listed.  
**Stacey Sloan, Finance Director – page 5**
- H. **Action**
  - 1. **TCOG 9-1-1 PSAP Working Group (PD):** Create TCOG 9-1-1 PSAP Working Group, transfer TCOG's 9-1-1 Advisory Committee budget and program oversight to TCOG Governing Board, and formally dissolve the 9-1-1 Advisory Committee.  
**CJ Durbin-Higgins, Public Safety Program Manager – page 15**
  - 2. **Annual Membership Dues for National and State Associations (AF):** Authorize payment of annual membership dues to National Association of Development Organizations (NADO) in the amount of \$2,000, Texas Association of Regional Councils (TARC) in the amount of \$6,820.83, and Corporation for Texas Regionalism (CTR) in the amount of \$5,000; and name TCOG Board Member and Alternate Designee to NADO, TARC and CTR.  
**Susan B. Thomas, PhD, Executive Director – page 16**

3. **Mileage Reimbursement Rate Change (AF):** Authorize the increase of personal vehicle mileage rate reimbursement to \$0.575 per mile effective January 1, 2015.

**Stacee Sloan, Finance Director – page 19**

4. **FYE 2015 Budget Status Update (AF):** Accept recommendation, if any, regarding TCOG FYE 2015 Budget.

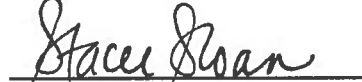
**Stacee Sloan, Finance Director – page 25**

**I. President's Report**

1. Outgoing Board Recognition

**J. Adjourn**

**APPROVAL**



**Stacee L. Sloan, Finance Director**



**Susan B. Thomas, PhD, Executive Director**

AS: Aging Services Department  
AF: Administration & Finance Department  
CS: Client Services Department  
PD: Planning & Development Department

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Administration & Finance at 903-813-3510 two (2) work days prior to the meeting so that appropriate arrangements can be made. The above Agenda was posted online at <http://www.tcog.com> and physically posted at the Texoma Council of Governments offices in a place readily accessible to the public. The Agenda was also faxed to the County Clerk offices in Cooke, Fannin and Grayson Counties, Texas on Friday, December 12, 2014.

**Members Present: Keith Clegg, Cary Wacker, Teresa Adams, Roy Floyd, Phyllis James, Cecil Jones, Bill McFatridge, J.D. Roane**

- A. Keith Clegg called the meeting to order at 5:33 p.m.
- B. Cecil Jones provided the invocation, followed by Bill Lindsay, who led the pledges.
- C. Executive Director's Report
  - 1. Assessing Children's Health in the North Texas Corridor Special Report.
  - 2. Aging Services Department restructure
  - 3. Virginia Rhodes provided a presentation on the Senior Corps Programs.
  - 4. Dr. Thomas reported that both Stacey Sloan and Randy McBroom were out of the office recovering from surgeries.
- D. Welcome Guests & Staff: Bill Lindsay, Martha Lowery, Judy Fullylove, Renee Griffin, Logan Cunningham, Vicky Hestand, Sean Norton, Virginia Rhodes, Judy Conner, CJ Durbin-Higgins
- E. Chris Burch was absent from the meeting and therefore unable to take the pledge at this time.
- F. A motion was made by Cary Wacker to approve the meeting minutes for October 2014. This motion was seconded by Teresa Adams. Motion carried.
- G. A quorum was declared at 6:01 p.m.
- H. A motion was made by Roy Floyd to approve the Consent Items. This motion was seconded by Cecil Jones. Motion carried.
  - 1. Authorize the Secretary/Treasurer to make payments in the amounts as listed.
  - 2. Authorize Executive Director to execute amendment to the current contract with the Texas Association of Community Action Agencies (TACAA).
  - 3. Approve amendment to Cooke County GIS Interlocal agreement.
- I. Action
  - 1. A motion was made by Cary Wacker to authorize submission of the 3-year Planning Grant to the Economic Development Administration (EDA). This motion was seconded by JD Roane. Motion carried.
  - 2. A motion was made by Cary Wacker to approve submission of Livengood Charitable Trust Foundation Proposal 2015. This motion as seconded by Cecil Jones. Motion carried.
  - 3. A motion as made by Roy Floyd to approve the Texoma Regional Implementation Plan for 2015, Threat and Hazard Identification and Risk Assessment, and Texoma Regional Preparedness Report. This motion was seconded by JD Roane. Motion carried.
  - 4. A motion was made by Cary Wacker to approve the recommended Executive Director Employment Agreement. This motion was seconded by Cecil Jones. Motion carried.
  - 5. A motion was made by Cecil Jones to approve the recommended amendments to the TCOG Personnel Policy Manual as follows: 1. Out-side Activities (Section 8.6). 2. Leave Time (Section 13.3.3 Accumulation of Annual Leave, 13.3.6 Transfer, 13.5.6 Accumulation of Sick Leave, 13.14 Funeral Leave, 13.15 Crisis Leave). 3. Holidays (Section 13.17.1). This motion was seconded by Phyllis James. Motion carried.

6. A motion was made by Cary Wacker to accept this report of investments for the period of August 1, 2014 through October 31, 2014. This motion was seconded by Roy Floyd. Motion carried.
  7. A motion was made by Cary Wacker to accept recommendation to increase the indirect rate to 39.98% and reduce the employee benefit rate to 48.60% effective December 1, 2014. This motion was seconded by Teresa Adams. Motion carried.
- J. At 6:34 p.m., Keith Clegg adjourned the meeting.



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: INFORMATIONAL ITEM – North Texas Municipal Water District Board Agenda

- The agenda for the December meeting is attached.

Electronic agendas are found at the following link:

[https://ntmwd.com/meeting\\_agendas.html](https://ntmwd.com/meeting_agendas.html)



## **NORTH TEXAS MUNICIPAL WATER DISTRICT**

**505 E. Brown Street • Wylie, Texas 75098  
(972) 442-5405 – Phone • (972) 295-6440 – Fax**

**BOARD OF DIRECTORS  
REGULAR MEETING  
THURSDAY, DECEMBER 18, 2014  
4:00 P.M.**

Notice is hereby given pursuant to V.T.C.A., Government Code, Chapter 551, that the Board of Directors of North Texas Municipal Water District will hold a regular meeting, open to the public, on Thursday, December 18, 2014, at 4:00 p.m., at the North Texas Municipal Water District offices, 505 E. Brown Street, Wylie, Texas.

The Board of Directors is authorized by the Texas Open Meetings Act to convene in closed or executive session for certain purposes. These purposes include receiving legal advice from its attorney (Section 551.071); discussing real property matters (Section 551.072); discussing gifts and donations (Section 551.073); discussing personnel matters (Section 551.074); or discussing security personnel or devices (Section 551.076). If the Board of Directors determines to go into executive session on any item on this agenda, the Presiding Officer will announce that an executive session will be held and will identify the item to be discussed and provision of the Open Meetings Act that authorizes the closed or executive session.

### **AGENDA**

- I. **INVOCATION** – DIRECTOR RICHARD SHEEHAN
- II. **ROLL CALL**
- III. **RECOGNITION OF GUESTS/EMPLOYEES**
  - A. 2014 Carl W. Riehn Employee of the Year Award Recognition
  - B. Recognition of Engineering Excellence Awards from the American Council of Engineering Companies of Texas
    - i. Wilson Creek Regional Wastewater Treatment Plant Expansion and Advanced Treatment
    - ii. Texoma-to-Wylie Water Treatment Plant Pipeline

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<sup>1</sup>Persons with disabilities who plan to attend the NTMWD Board of Directors meeting and who may need auxiliary aids or services are requested to contact John Montgomery in the NTMWD Administrative Offices at (972) 442-5405 as soon as possible. All reasonable efforts will be taken to make the appropriate arrangements.

IV. PUBLIC COMMENTS

The Board of Directors allows individuals to speak to the Board. Prior to the meeting, speakers must complete and submit a "Public Comment Registration Form." The time limit is five (5) minutes per speaker, not to exceed a total of thirty (30) minutes for all speakers. The Board may not discuss these items, but may respond with factual or policy information.

V. CONSENT AGENDA ITEMS

The Consent Agenda allows the Board of Directors to approve all routine, noncontroversial items with a single motion, without the need for discussion by the entire Board. Any item may be removed from consent and considered individually upon request of a Board member.

- A. Consider Approval of Board of Directors Meeting Minutes – November 20, 2014  
(Please refer to Consent Agenda Item No. 14-12-01)
- B. Consider Adoption of Resolution No. 14-29 Authorizing Conveyance of Property in the Form of An Encroachment Agreement Between North Texas Municipal Water District and the City of Richardson, Texas  
(Please refer to Consent Agenda Item No. 14-12-02)
- C. Consider Adoption of Resolution No. 14-28 Authorizing Conveyance of Property at Dublin Relift Station in the Form of a Permanent Easement to Oncor Electric Delivery Company, LLC  
(Please refer to Consent Agenda Item No. 14-12-03)
- D. Consider Authorization to Make Final Payment on Project No. 259, Water Treatment Plant I Conversion to Biologically Active Filtration and Improvement of Existing Underdrains  
(Please refer to Consent Agenda Item No. 14-12-04)
- E. Consider Authorizing Change Order No. 3 and Authorization to Make Final Payment on Project No. 293, Bonham Water Treatment Plant Sludge Lagoon Improvements  
(Please refer to Consent Agenda Item No. 14-12-05)

VI. AGENDA ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Consider Authorizing Change Order No. 29 on Project No. 153, Water Treatment Plants I, II, III, and IV Ozonation  
(Please refer to Administrative Memorandum No. 4322)
- B. Consider Authorizing Additional Legal Services on Project No. 153, Water Treatment Plants I, II, III, and IV Ozonation  
(Please refer to Administrative Memorandum No. 4323)



- C. Consider Authorizing Execution of Interlocal Agreement between Trinity River Authority of Texas and North Texas Municipal Water District to Transfer Duties of Administrative Agent and Political Subdivision Acting on Behalf of Region C Water Planning Group  
(Please refer to Administrative Memorandum No. 4324)
- D. Consider Authorizing Additional Engineering Services on Project No. 304, Royse City No. 1 Tank and Delivery Point Improvements, and Project No. 305, Garland No. 4 Delivery Point Improvements  
(Please refer to Administrative Memorandum No. 4325)
- E. Consider Authorizing Execution of Engineering Services Agreement on Project No. 375, Wylie Water Treatment Plant I Rapid Mix and Sedimentation Improvements  
(Please refer to Administrative Memorandum No. 4326)
- F. Consider Authorizing Award of Construction Contract on Project No. 220, McKinney-Prosper Interceptor and Indian Creek Trunk Sewer Improvements  
(Please refer to Administrative Memorandum No. 4327)
- G. Consider Authorizing Additional Engineering Services on Project No. 366, Lower Bois d'Arc Creek Reservoir Mitigation Property Preliminary Engineering  
(Please refer to Administrative Memorandum No. 4328)
- H. Consider Authorizing Right-of-Way Acquisition Program and Adoption of Resolution No. 14-30 Authorizing the Use of Eminent Domain to Acquire Right-of-Way for Project No. 353, Beck Branch Interceptor Improvements, Phase I  
(Please refer to Administrative Memorandum No. 4329)
- I. Consider Authorizing Change Order No. 1 on Project No. 289, South Delivery Point Improvements, Priority 2  
(Please refer to Administrative Memorandum No. 4330)
- J. Consider Authorizing Right-of-Way Acquisition Program and Adoption of Resolution No. 14-31 Authorizing the Use of Eminent Domain to Acquire Right-of-Way for Project No. 356, Wilson Creek Gravity Interceptor Improvements, Phase II  
(Please refer to Administrative Memorandum No. 4331)
- K. Consider Authorizing Change Order No. 3 on Project No. 210, North McKinney Pipeline System, Phases I and II  
(Please refer to Administrative Memorandum No. 4332)
- L. Consider Authorizing Award of Construction Contract on Project No. 334, Indian Creek/Preston Road Force Main Surge Improvements  
(Please refer to Administrative Memorandum No. 4333)
- M. Consider Authorizing Execution of Engineering Services Agreement on Project No. 354, Wylie Water Treatment Plants Chemical Systems Evaluation  
(Please refer to Administrative Memorandum No. 4334)

- N. Consider Authorizing Change Order No. 1 on Project No. 301, Structural Repairs, Building Renovations, and Building Additions, Task Nos. 2 and 3  
(Please refer to Administrative Memorandum No. 4335)

VII. DISCUSSION

- A. Water Supply Update
- B. Review 2015 Board Meeting Schedule
- C. Update on Internal Auditor Selection Process

VIII. ADJOURNMENT



TO: Mayor and Councilmembers

FROM: Ben White, City Manager

DATE: January 13, 2015

SUBJECT: Second Reading – Consider, discuss and act upon an removing stop signs at the intersection of Orange and Beech Streets

- Ordinance is presented for review.
- Council approved the first reading of this ordinance on December 16, 2014

**ACTION: Accept or deny the ordinance as presented.**

**CITY OF FARMERSVILLE  
ORDINANCE #O-2015-0113-001**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, DIRECTING THE REMOVAL OF THE STOP SIGNS FROM THE NORTHBOUND AND SOUTHBOUND DIRECTIONS OF ORANGE STREET AT ITS INTERSECTION WITH BEECH STREET THEREBY ALLOWING ORANGE STREET TO BE THE THROUGH STREET AT SUCH INTERSECTION; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the intersection of Orange Street and Beech Street is a four-way stop intersection; and

**WHEREAS**, City Staff desires to improve traffic flow and modify this four-way stop intersection to make Orange Street the through street at its intersection with Beech Street; and

**WHEREAS**, the City Council of the City of Farmersville, Texas, finds and determines that removing the stop signs from Orange Street thereby allowing Orange Street to be the through street at its intersection with Beech Street is in the best interest and public health, safety, and welfare of the citizens of the City of Farmersville, Texas.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, THAT:**

**SECTION 1. INCORPORATION OF FINDINGS**

The findings set forth above are found to be true and correct and are hereby incorporated into the body of this Ordinance and made a part hereof for all purposes as if fully set forth herein.

**SECTION 2. CITY MANAGER TO REMOVE STOP SIGNS**

The City Council of the City of Farmersville, Texas, hereby directs the City Manager to cause the stop signs regulating northbound and southbound traffic on Orange Street at its intersection with Beech Street to be removed thereby allowing Orange Street to become the through street at its intersection with Beech Street.

**SECTION 3. REPEALER**

This Ordinance shall be cumulative of all other Ordinances, resolutions, and/or policies of the City, whether written or otherwise, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Any and all Ordinances, resolutions, and/or policies of the City, whether written or otherwise, which are in any manner in conflict with or inconsistent with this

Ordinance shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

#### **SECTION 4. SEVERABILITY**

It is hereby declared to be the intent of the City Council that the several provisions of this Ordinance are severable. In the event that any court of competent jurisdiction shall judge any provisions of this Ordinance to be illegal, invalid, or unenforceable, such judgment shall not affect any other provisions of this Ordinance which are not specifically designated as being illegal, invalid, or unenforceable.

#### **SECTION 5. PENALTIES FOR VIOLATION OF THE ORDINANCE**

Any person, firm or corporation who violates any provision of this Ordinance, upon conviction, shall be guilty of a misdemeanor and shall be fined up to \$2,000.00 per violation for a violation of a provision of this Ordinance governing fire safety, zoning, or public health and sanitation, including dumping or refuse, and up to \$500.00 for all other violations of this Ordinance. Each occurrence and each day that a violation continues shall be considered a separate offense and punished accordingly.

#### **SECTION 6: INJUNCTIVE RELIEF**

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Farmersville.

#### **SECTION 7: PUBLICATION**

The City Secretary is hereby directed to publish in the Official Newspaper of the City of Farmersville the Caption, Penalty, and Effective Date Clause of this Ordinance as required by Section 52.011 of the Local Government Code.

#### **SECTION 8: ENGROSSMENT AND ENROLLMENT**

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date Clause in the minutes of the City Council of the City of Farmersville, and by filing this Ordinance in the Ordinance records of the City.

#### **SECTION 9: SAVINGS**

All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

#### **SECTION 10: EFFECTIVE DATE**

This Ordinance shall take effect immediately from and after its passage and publication as required by law.

**PASSED** on first reading on the 16<sup>th</sup> day of December, 2014, and second reading on the 13<sup>th</sup> day of January, 2015 at properly scheduled meetings of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

**APPROVED THIS 13<sup>th</sup> DAY OF JANUARY, 2015.**

**BY: \_\_\_\_\_**  
**Joseph E. Helmberger, P.E., Mayor**

**ATTEST:**

**BY: \_\_\_\_\_**  
**Edie Sims, City Secretary**



TO: Mayor and Councilmembers

FROM: Ben White, City Manager

DATE: January 13, 2015

SUBJECT: First Reading – Consider, discuss and act upon an ordinance regarding driveway approaches, driveways and parking hazards

- Ordinance is presented for review.
- Council approved the first reading of this ordinance on December 16, 2014

**ACTION: Accept or deny the ordinance as presented.**

**CITY OF FARMERSVILLE  
ORDINANCE # O-2015-0127-001**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, AMENDING THE CODE OF ORDINANCES, CITY OF FARMERSVILLE, TEXAS, AS HERETOFORE AMENDED THROUGH THE AMENDMENT OF CHAPTER 71, "TRAFFIC AND VEHICLES," BY DELETING SECTIONS 71-167, "DEFINITIONS," 71-168, "REGULATIONS," AND 71-169, "MAINTENANCE," IN THEIR ENTIRETY AND REPLACING SAID SECTIONS WITH NEW SECTIONS 71-167, ENTITLED "DEFINITIONS," 71-168, ENTITLED "FRONT YARD AND LIMITS ON PAVING," AND 71-169, ENTITLED "STOPPING, STANDING, STORING, OR PARKING IN RESTRICTED AREA," AND BY ADDING NEW SECTIONS 71-170 THROUGH 71-181 REGARDING THE PARKING OF VEHICLES WITHIN AND ABOUT THE CITY; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City desires to modify certain parts of the Traffic and Vehicles Chapter of the Farmersville Code as it pertains to the parking of vehicles within and about the City; and

**WHEREAS**, the City Council of the City of Farmersville, Texas, finds and determines that amending the Traffic and Vehicles Chapter as it pertains to the parking of vehicles in and about the City is in the best interest and public health, safety, and welfare of the citizens of the City of Farmersville, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS:**

**SECTION 1: INCORPORATION OF FINDINGS**

The findings set forth above are found to be true and correct and are hereby incorporated into the body of this Ordinance and made a part hereof for all purposes as if fully set forth herein.

**SECTION 2: AMENDMENT OF CHAPTER 71, "TRAFFIC AND VEHICLES," BY DELETING SECTION 71-167, "DEFINITIONS," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 71-167 ALSO ENTITLED "DEFINITIONS,"**

From and after the effective date of this Ordinance, Chapter 71, "Traffic and Vehicles," is hereby amended by deleting Section 71-167, "Definitions," in its entirety and replacing said Section with a new Section 71-167 also entitled "Definitions" to read as follows:



**“Sec. 71-167. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Corner lot* means a lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees..

*Driveway* means the improved parking surface that provides egress and ingress from a garage, carport, parking pad or parking lot to an adjacent street or alley.

*Driveway, double-* means a driveway having an improved parking surface not more than 24 feet in width at the property line and which may flare out to tie into a Two-car or three-car parking pad, carport or garage.

*Driveway, single-* means a driveway having an improved parking surface not more than 12 feet in width at the property line and which may flare out to tie into a one-car, two-car or three-car parking pad, carport or garage.

*Front yard* means the area between the front building lines of a residential structure to the front property line or street right-of-way line or, when a structure does not exist, the area defined as front yard in Chapter 77, Zoning.

*Paving or Improved parking surface* means a continuous paved surface area used for the parking or storage of vehicles that is overlaid or otherwise paved with concrete, asphalt, paving stones or other hard surfaced durable material approved by the building official.

*Loop driveway* means a single-driveway with an improved parking surface of not more than 12 feet in width at the property line flaring out to 20 feet in width at and about the apex of the loop that provides egress and ingress from and to the same adjacent street.

*Loop driveway with extension* means a loop driveway with an extension from the loop driveway and which extension from the loop driveway is an improved parking surface that is no wider than allowed for a single-driveway, as set forth herein, with a flared approach to provide egress and ingress from a one-car, two-car or three-car garage, carport or parking pad.

*Lot* means a lot, plot or tract of land occupied, or to be occupied, by a building and its accessory buildings, and including such open spaces as are required under the City's Code of Ordinances and having its principal frontage upon a public street or officially approved place.

*Parking pad* means paving or an improved parking surface used for the off-street parking or storage of up to three vehicles, and which parking pad has no covering.

*Parking lot* means paving or an improved parking surface used for the off-street parking of vehicles required to serve a property that is zoned and/or used for multi-family or non-residential purposes.

*Restricted parking area* means that area of a lot which is situated outside of the driveway, loop driveway or loop driveway with extension and any associated parking pad, carport or garage that is specifically allowed or permitted by Section 71-168 or the approved Site Plan or Concept Plan for the property in question.

*Side yard* means the area from the side of a residential structure to the side property line or, when no structure exists, the area defined as a side yard in Chapter 77, Zoning.

*Through lot or double-frontage lot* means a residential lot, other than a corner lot, abutting more than one street and having access to more than one street.

*Vehicle* means every device in, upon or by which any person or property is or may be transported, drawn or moved upon a street, highway, waterway or airway. The term "vehicle" includes, but is not necessarily limited to, any one or more of the following:

- a. Automobile;
- b. Bus;
- c. Truck;
- d. Tractor;
- e. Motor home;
- f. Farm machinery;
- g. Motorcycles;
- h. Scooters;
- i. Mopeds;
- j. All-terrain vehicles;
- k. Boats;
- l. Aircraft;
- m. Recreational vehicles;
- n. Golf carts;

- o. Go-carts;
- p. Trailers;
- q. Fifth-wheel trailers;
- r. Campers;
- s. Camper shells;
- t. Wheeled towing frames;
- u. Semi-tractor trailers;
- v. Truck beds mounted on chassis;
- w. Commercial equipment whether self-propelled or mounted on a trailer or skid;
- x. Roll-off Dumpsters;
- y. Storage Containers of any style, size or nature including, but not limited to, "ReloCubes" and "PODS"; and
- z. Mobile homes.

This definition of *Vehicle* does not include:

- a. Non-motorized bicycles;
- b. Small engine lawn mowers; and
- c. Devices of similar scale."

**SECTION 3: AMENDMENT OF CHAPTER 71, "TRAFFIC AND VEHICLES," BY DELETING SECTION 71-168, "REGULATIONS," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 71-168 ENTITLED "FRONT YARD AND LIMITS ON PAVING"**

From and after the effective date of this Ordinance, Chapter 71, "Traffic and Vehicles," is hereby amended by deleting Section 71-168, "Regulations," in its entirety and replacing said section with a new Section 71-168 entitled "Front Yard and Limits on Paving" to read as follows:

**"Sec. 71-168. Front Yard and Limits on Paving.**

(a) The open space in a required front yard in the A, SF-1, SF-2, SF-3, 2F, MF-1, MF-2, P, O, NS, GR, C, HC, I-1, I-2, or PD zoning classifications shall not be diminished by paving the front yard, except in compliance with the following conditions. Paving will be allowed for:

- (1) Sidewalks not more than six feet in width, or such width as is otherwise required by the City's ordinances, extending from property line to property line upon and across that portion of the lot adjacent to the roadway as well as one sidewalk not more than six feet in width extending from the curb or edge of pavement to the front door or front porch of the primary residence or primary structure on the lot; and

- (2) One single-driveway per lot to serve a property that is zoned and/or used for single-family residential purposes which has a one-car parking pad, carport or garage constructed on the said lot; or
- (3) One single-driveway per lot to serve each residential unit on a property that is zoned and/or used for duplex, triplex or quadplex residential purposes where each unit on said lot has a separate one-car parking pad, carport or garage -- or otherwise to be treated as a multi-family use; or
- (4) One double-driveway per lot or one single-driveway per lot to serve a property that is zoned and/or used for single-family residential purposes which has one two-car or three-car parking pad, carport or garage on the said lot; or
- (5) One double-driveway per lot or one single-driveway per lot to serve a property that is zoned and/or used for duplex, triplex or quadplex residential purposes where each unit on said lot has a separate two-car parking pad, carport or garage -- or otherwise to be treated as a multi-family use; or
- (6) One loop driveway per lot that is situated upon and across the front yard of a lot to serve a property that is zoned and/or used for single-family residential purposes; or
- (7) One loop driveway with extension per lot that is situated upon and across the front yard of a lot to serve a property that is zoned and/or used for single-family residential purposes; or
- (8) Driveways on corner lots to accommodate up to:
  - (a) one single-driveway or one double-driveway or one loop driveway or one loop driveway with extension providing ingress and egress to the public street on which the lot is addressed plus one single-driveway providing ingress and egress to the public street on the adjacent side of the lot, provided that all of such drives shall conform to the regulations set forth herein-above; or
  - (b) one loop driveway providing ingress and egress between the corner lot and the adjacent public streets on both sides of the lot provided that such loop driveway shall conform to the regulations set forth herein-above and does not loop around any structures on the lot plus one additional single-driveway providing ingress and egress to the public street on which the lot is not addressed; or

(9) Through lots to accommodate either one-single driveway or one double-driveway or one loop driveway (with or without extension) providing ingress and egress to the public street on which the lot is addressed and one single-driveway providing ingress and egress to the public street on the other side of the lot fronting onto a public street, all of which drives shall conform to the regulations set forth herein-above and which driveways shall not be allowed to intersect or otherwise connect to a connecting parking pad, carport or garage; or

(10) A driveway comprised of a combination of single-driveways and double-driveways, adjacent and abutting or separated by islands, up to a combined maximum width of 45 feet at its widest point measured from outside edge to outside edge of such driveway(s) near, or at, the property line to providing ingress and egress to a parking lot to serve a property that is zoned and/or used for multi-family or non-residential purposes, it being understood that multi-family or non-residential uses may require more than one driveway per lot as set forth in the City's ordinances in which event such City ordinances shall control; or

(11) A parking lot to provide the minimum required number of parking spaces necessary to serve a property that is zoned and/or used for multi-family or non-residential purposes.

(b) The City Manager shall have the ability to waive one or more of the foregoing provisions to allow additional or alternative paving based on the conditions and circumstances presented on a case by case basis.

(c) The total paving area specifically including the driveway, regardless of combination and configuration, parking pad, parking lot and any other impervious surfaces shall not exceed 75 percent of the required front yard for any single-family residential use."

**SECTION 4: AMENDMENT OF CHAPTER 71, "TRAFFIC AND VEHICLES," BY DELETING SECTION 71-169, "MAINTENANCE," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 71-169 ENTITLED "STOPPING, STANDING, STORING, OR PARKING IN RESTRICTED AREA"**

From and after the effective date of this Ordinance, Chapter 71, "Traffic and Vehicles," is hereby amended by deleting Section 71-169, "Maintenance," in its entirety and replacing said section with a new Section 71-169 entitled "Stopping, standing, storing, or parking in Restricted Area" to read as follows:

**“Sec. 71-169. Stopping, standing, storing, or parking in Restricted Area.**

(a) No person shall stop, stand, store, or park any vehicle within the restricted parking area of any improved or unimproved residential single-family or duplex lot or tract.

(b) It shall be a defense to prosecution hereunder if said vehicle is concealed from view from all public street rights-of-way by:

(1) A solid, opaque screening fence or wall at least six feet in height;

(2) Permanently planted vegetation consisting of a solid hedgerow of evergreen shrubs, or trees and shrubs, providing full screening from the ground to a minimum height of six feet; or

(3) Any combination of subsections (b)(1) and (b)(2) of this section that effectively conceals the vehicle from view and accomplishes the required screening height.”

**SECTION 5: AMENDMENT OF CHAPTER 71, “TRAFFIC AND VEHICLES,” BY ADDING NEW SECTIONS 71-170 THROUGH 71-181 REGARDING THE PARKING OF VEHICLES WITHIN AND ABOUT THE CITY**

From and after the effective date of this Ordinance, Chapter 71, “Traffic and Vehicles,” is hereby amended by adding new Sections 71-170 through 71-181 regarding the parking of vehicles within and about the City to read as follows:

**“Sec. 71-170. Stopping, standing or parking on sidewalk.**

No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, on a sidewalk or any part of the sidewalk area, which area is hereby defined as the entire space between the curb-line or the lateral line of a roadway and the adjacent property line along any street, irrespective of whether such area has been improved by concrete, gravel or other walkways.

**Sec. 71-171. Parking prohibited generally.**

No person shall park, stop or stand a vehicle in violation of any official sign, curb marking or street marking erected as provided for in this article.

**Sec. 71-172. Unattended vehicles in public places.**

(a) No person shall allow a vehicle to remain unattended in any place maintained by any governmental entity for a period of time in excess of 48 hours. After such a period of time, if the owner thereof cannot be located by reasonable effort, such vehicle may be impounded. The occasional movement of a vehicle within the same public area for the purpose or effect of evading the restriction imposed by this section shall not toll the running of the 48-hour period prescribed herein.

(b) No person shall park a vehicle in any place maintained by any governmental entity unless such vehicle is currently in operable condition and in a state of good repair.

(c) For the purpose of this section:

(1) *Currently in operable condition* means presently capable of being lawfully operated on the streets and highways of the state, being currently registered with proper license plates displayed, having a current safety inspection and being in running condition without the necessity of first being repaired such as, but not limited to, the inflating of tires or charging of the battery.

(2) *Place maintained by any governmental entity* means, but is not limited to, a street, alley, highway, park or public parking area including the grounds of a public school.

(3) *State of good repair* means the absence of such items as broken glass, substantial body damage (including, but not limited to, crushed or missing fenders, body panels, doors, hoods, or truck deck) or missing parts otherwise necessary for operable condition.

(d) The affixing of a legible notice to the vehicle regarding the prohibition of this section shall be deemed to be a reasonable effort to locate the owner.

(e) This section shall not apply to storage or repair facilities owned, operated or maintained by a governmental entity. Nothing contained in this section shall be construed to restrict or prevent the immediate removal of a vehicle in such cases otherwise allowed by law.

**Sec. 71-173. Parking for sale, washing and repairing vehicles prohibited.**

No person shall stand or park a vehicle upon any public street, shopping center parking lot, park, playground or athletic field for the principal purpose of displaying it for sale. No person shall wash, grease or

repair any vehicle upon any public street, playground, or athletic field, except for such repairs necessitated by an emergency.

**Sec. 71-174. Ten feet of roadway to be left available for traffic.**

No person shall stop, stand or park any vehicle upon a street in such a manner or under such conditions as to leave available less than ten feet of the width of either lane of a roadway for free movement of the vehicular traffic, except that a driver may stop temporarily during the actual loading or unloading of passengers or when necessary in obedience to traffic regulations or traffic signs or signals of a police officer.

**Sec. 71-175. Stopping, standing, parking or driving upon or across curbs.**

No person shall stop, stand, park or drive a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, upon, over or across a curb or any part of the curb area, which area is hereby defined as the concrete edging built along a street to form part of a Gutter. Gutter means a low area at the edge of a Street designed with the intent to carry off surface water. A gutter shall only be crossed at a location having a properly constructed driveway approach permitted by the City and installed for such purpose in accordance with all applicable City regulations.

**Sec. 71-176. Prohibition against overnight parking; exceptions.**

(a) No person shall stop, stand or park any vehicle with a rated capacity of one and one-half tons or more, or with more than six wheels, any truck, truck-tractor, trailer, semitrailer, pole trailer or any combination thereof on any street during the hours from sundown to sunup.

(b) Temporarily disabled vehicles which are protected by flares or other approved signal devices may be parked on the street during the hours from sundown to sunup.

(c) The City Manager shall have the ability to grant a temporary waiver of the foregoing requirements based on the conditions and circumstances presented on a case by case basis.

**Sec. 71-177. Presumption regarding illegally parked vehicles.**

In any prosecution charging a violation of any law or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such law



or regulation, together with proof that the defendant named in the complaint was, at the time of such parking, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where and for the time during which such violation occurred.

**Sec. 71-178. Loading or unloading tractor/trailers.**

No person shall cause, suffer or permit a road tractor, trailer or semitrailer to be unloaded or loaded on a roadway, except for delivery of goods, wares and merchandise permitted by ordinance.

**Sec. 71-179. Parallel and angle parking.**

(a) At any place where official signs do not prohibit stopping or parking, except as otherwise provided by the city council and so indicated by signs or markings, every vehicle stopped or parked shall be so stopped or parked upon a roadway where there are adjacent curbs so that the right-hand wheels of such vehicle are parallel and within 18 inches of the right-hand curb or edge of roadway, except where head-in parking is allowed.

(b) The department of public works, with the approval of the city council, shall determine upon which streets angle parking shall be permitted and shall mark or sign such streets, but such angle parking shall not be indicated upon any federal aid or state highway within this city unless the state engineer director for highways and public transportation has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic. Angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive upon the left side of the street or upon any railway tracks.

(c) Upon those streets which have been signed or marked for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

(d) Whenever parking spaces are marked by lines on the pavement, whether for parallel or angle parking, a vehicle must be parked entirely within the lines of the parking space.

**Sec. 71-180. Prohibitions against stopping, standing or parking of vehicles in specific areas.**

No person shall stop, stand, or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with law or

directions of a police officer or traffic control device in any of the following spaces:

- (a) In front of a public or private driveway;
- (b) Within an intersection;
- (c) On a crosswalk or within 15 feet of a crosswalk or intersection, unless the traffic authorities indicate a different length by signs or markings;
- (d) Within 15 feet of a fire hydrant, unless otherwise marked;
- (e) Within 30 feet of a stop sign or marking of a roadway where vehicles would normally stop;
- (f) Between a safety zone and the adjacent Curb or within 30 feet of points on the Curb immediately opposite the ends of a safety zone, unless the zone has been indicated a different length by signs or markings;
- (g) Within 20 feet of the driveway entrance to any fire station;
- (h) Alongside or opposite any excavation or street obstruction when stopping, standing, or parking would obstruct traffic;
- (i) On the roadway side of any vehicle stopped or parked at the edge or Curb of a Street; and
- (j) Where signs are erected or curbs are painted indicating that such is not allowed.

#### **Sec. 71-181. Maintenance.**

All improved parking surfaces shall be maintained in a good and safe condition and be free of holes, cracks or other failures that may affect the use, safety, appearance or drainage of the surface or of the adjoining property, at no cost to the City."

#### **SECTION 6: REPEALER**

This Ordinance shall be cumulative of all other Ordinances, resolutions, and/or policies of the City, whether written or otherwise, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Any and all Ordinances, resolutions, and/or policies of the City, whether written or otherwise, which are in any

manner in conflict with or inconsistent with this Ordinance shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

#### **SECTION 7: SEVERABILITY**

It is hereby declared to be the intent of the City Council that the several provisions of this Ordinance are severable. In the event that any court of competent jurisdiction shall judge any provisions of this Ordinance to be illegal, invalid, or unenforceable, such judgment shall not affect any other provisions of this Ordinance which are not specifically designated as being illegal, invalid, or unenforceable.

#### **SECTION 8: PENALTIES FOR VIOLATION OF THE ORDINANCE**

Any person, firm or corporation who violates any provision of this Ordinance, upon conviction, shall be guilty of a misdemeanor and shall be fined up to \$2,000.00 per violation for a violation of a provision of this Ordinance governing fire safety, zoning, or public health and sanitation, including dumping or refuse, and up to \$500.00 for all other violations of this Ordinance. Each occurrence and each day that a violation continues shall be considered a separate offense and punished accordingly.

#### **SECTION 9: INJUNCTIVE RELIEF**

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Farmersville.

#### **SECTION 10: PUBLICATION**

The City Secretary is hereby directed to publish in the Official Newspaper of the City of Farmersville the Caption, Penalty, and Effective Date Clause of this Ordinance as required by Section 52.011 of the Local Government Code.

#### **SECTION 11: ENGROSSMENT AND ENROLLMENT**

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date Clause in the minutes of the City Council of the City of Farmersville, and by filing this Ordinance in the Ordinance records of the City.

#### **SECTION 12: SAVINGS**

All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such

Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 13: EFFECTIVE DATE**

This Ordinance shall take effect immediately from and after its passage and publication as required by law.

**PASSED** on first reading on the 13<sup>th</sup> day of January, 2015, and second reading on the 27<sup>th</sup> day of January, 2015 at properly scheduled meetings of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

**APPROVED THIS THE 27<sup>th</sup> DAY OF JANUARY, 2015.**

**BY: \_\_\_\_\_**  
**Joseph E. Helmberger, P.E., Mayor**

**ATTEST:**

**BY: \_\_\_\_\_**  
**Edie Sims, City Secretary**



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: First Reading – Consider, discuss and act upon regarding registration for contractors within the City of Farmersville

- An ordinance is presented for review

**ACTION: Approve or disapprove the ordinance as presented.**

**CITY OF FARMERSVILLE  
ORDINANCE # O-2015-0127-002**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, AMENDING THE CODE OF ORDINANCES, CITY OF FARMERSVILLE, TEXAS, AS HERETOFORE AMENDED THROUGH THE AMENDMENT OF CHAPTER 17, "BUSINESSES," BY ADOPTING A NEW ARTICLE IV ENTITLED "CONTRACTORS" ESTABLISHING REQUIREMENTS FOR THE REGISTRATION OF GENERAL, PLUMBING, MECHANICAL, ELECTRICAL, AND IRRIGATION CONTRACTORS INCLUDING BACKFLOW TESTERS IN THE CITY OF FARMERSVILLE, TEXAS; PROVIDING FOR THE SUSPENSION AND/OR REVOCATION OF A CONTRACTOR'S REGISTRATION; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City desires to require the registration of general, plumbing, mechanical, electrical, and irrigation contractors including backflow testers within the City of Farmersville; and

**WHEREAS**, the City Council of the City of Farmersville, Texas, finds and determines that requiring general, plumbing, mechanical, electrical, and irrigation contractors including backflow testers to register with the City to be eligible to receive a permit and perform work within the City is in the best interest and public health, safety, and welfare of the citizens of the City of Farmersville, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS:**

**SECTION 1: INCORPORATION OF FINDINGS**

The findings set forth above are found to be true and correct and are hereby incorporated into the body of this Ordinance and made a part hereof for all purposes as if fully set forth herein.

**SECTION 2: AMENDMENT OF CHAPTER 17, "BUSINESSES," BY ADOPTING A NEW ARTICLE IV ENTITLED "CONTRACTORS"**

From and after the effective date of this Ordinance, Chapter 17, "Businesses," is hereby amended by adopting a new Article IV entitled "Contractors" to read as follows:

## **"ARTICLE IV. – CONTRACTORS**

### **Sec. 17-100. - Registration required**

- A. It shall be unlawful for any person, firm, corporation or business entity in the business of contracting services which require, by State statute or local law, a license to perform such services, to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any structure, plumbing, electrical, mechanical, irrigation, or private sewage disposal system in Farmersville, unless such person, firm, corporation or business entity is the holder of a valid registration with the City of Farmersville. Such person, firm, corporation or business entity shall be herein designated and referred to as Contractor, Applicant or Registrant.
- B. Registration shall also be required for any person, firm, corporation or business entity providing removal and disposal of construction debris services, including roofing contractors, in the City of Farmersville, Texas.
- C. In extending the rights and privileges of such registration, the City of Farmersville makes no statement of the technical competency of those persons, firms, corporations or business entities so registered, and no manner of license is proffered.
- D. General, plumbing, mechanical, electrical, and irrigation contractors including backflow testers (referred to collectively as "Contractor") shall not be eligible to receive a permit within the City or approve test reports for backflow prevention devices unless they are currently registered with the City; provided, however, property owners performing work on their primary place of residence shall be exempt from the registration requirements.

### **Sec. 17-101. - Application for registration**

- A. An application for registration containing the following required information shall be provided to the City prior to receiving a registration permit:
  - 1. A completed Contractor registration application supplied by the City including the complete name, mailing address, physical address (if different from the mailing address), business telephone number and cellular number of the Contractor making application. If the applicant is a firm, corporation or business entity, there must be provided the name and private mailing address of a principal of the firm, corporation or business entity who is authorized to bind the

firm, corporation or business entity in legal agreements. Each applicant must also provide the names of all employees authorized to obtain a permit under the Contractor's name.

2. A copy of the Applicant's valid license, issued by the appropriate State board or agency with the authority to issue licenses for that particular trade, i.e., master plumber's license, irrigator's license, backflow tester certification, mechanical license, and/or master electrician's license.
3. Proof of liability insurance in the amount of \$500,000 or a bond in the amount of \$500,000.
4. Make, model and registration number on all vehicles used for the jobs located within the City of Farmersville.
5. Valid Driver's License of the owner or an officer of the Applicant and (a) master plumber, (b) irrigator, (c) backflow tester, (d) licensed mechanical contractor, and/or (e) master electrician through whose license the applicant works issued by his home state or if the person does not possess such a valid driver's license then such other identity card or document issued by the federal or state government containing the picture and signature of said person.
6. Any other information deemed necessary by the City of Farmersville.

#### **Sec. 17-102. - Transfer of registration prohibited**

No registrant under this Ordinance shall for any purpose allow its registration, by name or any other identification, to be transferred to, assigned to, or in any manner directly or indirectly used by, any person, firm, corporation or business entity other than the one to whom the registration was issued.

#### **Sec. 17-103. - Requirement to update information**

If a change occurs in the information previously provided by Registrant to City under the provisions of this Ordinance, then Registrant shall provide written notice of the updated information to the City of Farmersville within thirty (30) days of the change.

#### **Sec. 17-104. - Registration fee and renewal**



The City of Farmersville does not charge a registration fee; however, each registration shall be valid for a period of one year from the date of issuance and shall expire annually on the anniversary date of the initial registration or subsequent renewal. The registration shall be routinely reactivated by the Contractor's reapplication. No permits will be issued to a Contractor who is not registered or whose registration has expired.

#### **Sec. 17-105. - Suspension or revocation of registration**

A Registrant's privileges under this Ordinance may be suspended or revoked for any of the following reasons:

- (a) Providing false or misleading information;
- (b) Failure to provide updated information within thirty (30) days of any change;
- (c) Failure to request and obtain a final inspection prior to the expiration of a permit;
- (d) Allowing the use or occupancy of the structure for which a permit was obtained without first obtaining the required authorization from the City;
- (e) The Contractor has been found by the building official to have been grossly negligent in the performance of his work;
- (f) Failure to maintain licensure from the appropriate agency having licensing authority;
- (g) Suspension of licensure;
- (h) Transferring or allowing another person, firm, or corporation to use the registration;
- (i) Failure to maintain certificate of liability insurance;
- (j) Conviction of two violations of this Ordinance or any other ordinance of the City of Farmersville within a twelve (12) month period; or,
- (k) For any conviction involving a crime of moral turpitude.

#### **Sec. 17-106. - Appeal of suspension or revocation**

A Contractor whose registration has been suspended or revoked may appeal the action to the Board of Adjustment. In the case of an appeal to the Board of Adjustment, the action of the City Manager or his designee shall stand until the final determination of the appeal is made by the Board of Adjustment. The appeal must be filed within ten business days of the suspension or revocation of the Contractor's registration. After hearing the case, the Board of Adjustment may take the following action:

- (a) Affirm the suspension;
- (b) Overrule the suspension or revocation and reinstate the registration of the Contractor;
- (c) Affirm the suspension or revocation, but waive any or all of the reinstatement requirements set forth in this Ordinance; or
- (d) Affirm the suspension or revocation and require conditions for reinstatement in addition to any other requirements set forth in this Ordinance including, but not limited to, prohibiting reinstatement for up to six months.

#### **Sec. 17-107. - Reinstatement of registration**

A Contractor whose registration has been suspended or revoked may reapply for registration if:

- (a) All circumstances leading to the suspension or revocation have been corrected;
- (b) The contractor reapplies for registration;
- (c) In the case of a suspension, a period of at least three months has passed;
- (d) In the case of a revocation, a period of at least twelve months has passed; and
- (e) Any additional conditions set by the Board of Adjustment pursuant to section 18-33(4) have been met."

#### **SECTION 3: REPEALER**

This Ordinance shall be cumulative of all other Ordinances, resolutions, and/or policies of the City, whether written or otherwise, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Any and all Ordinances,

resolutions, and/or policies of the City, whether written or otherwise, which are in any manner in conflict with or inconsistent with this Ordinance shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

#### **SECTION 4: SEVERABILITY**

It is hereby declared to be the intent of the City Council that the several provisions of this Ordinance are severable. In the event that any court of competent jurisdiction shall judge any provisions of this Ordinance to be illegal, invalid, or unenforceable, such judgment shall not affect any other provisions of this Ordinance which are not specifically designated as being illegal, invalid, or unenforceable.

#### **SECTION 5: PENALTY FOR VIOLATION**

Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City of Farmersville from filing suit to enjoin the violation. The City of Farmersville retains all legal rights and remedies available to it pursuant to local, state and federal law.

#### **SECTION 6: INJUNCTIVE RELIEF**

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Farmersville.

#### **SECTION 7: PUBLICATION**

The City Secretary is hereby directed to publish in the Official Newspaper of the City of Farmersville the Caption, Penalty, and Effective Date Clause of this Ordinance as required by Section 52.011 of the Local Government Code.

#### **SECTION 8: ENGROSSMENT AND ENROLLMENT**

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date Clause in the minutes of the City Council of the City of Farmersville, and by filing this Ordinance in the Ordinance records of the City.

#### **SECTION 9: SAVINGS**

All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending

litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 10: EFFECTIVE DATE**

This Ordinance shall take effect immediately from and after its passage and publication as required by law.

**PASSED** on first reading on the 13<sup>th</sup> day of January, 2015, and second reading on the 27<sup>th</sup> day of January, 2015 at properly scheduled meetings of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

**APPROVED THIS 27<sup>th</sup> DAY OF JANUARY, 2015.**

BY: \_\_\_\_\_  
Joseph E. Helmberger, P.E., Mayor

**ATTEST:**

BY: \_\_\_\_\_  
Edie Sims, City Secretary



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: Only Reading – Consider, discuss and act upon an ordinance regarding a franchise agreement with Sharyland Utilities

- An ordinance is presented for review
- A representative from Sharyland Utilities will be present to answer questions

**ACTION: Accept or deny the ordinance as presented.**

**CITY OF FARMERSVILLE  
ORDINANCE # O-2015-0113-002**

**AN ORDINANCE OF THE CITY OF FARMERSVILLE, TEXAS, GRANTING TO SHARYLAND UTILITIES, L.P. THE NON-EXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO ERECT, MAINTAIN, OPERATE AND REMOVE ELECTRIC LINES AND PERTINENT FACILITIES IN THE CITY OF FARMERSVILLE, TEXAS, WITHIN SHARYLAND UTILITIES CERTIFICATE OF CONVENIENCE AND NECESSITY; TO ERECT, MAINTAIN, OPERATE AND REMOVE ITS FACILITIES IN, OVER, UNDER, ACROSS, UPON AND ALONG THE PRESENT AND FUTURE PUBLIC STREETS, ALLEYS, AND OTHER PUBLIC PROPERTY WITHIN THE CITY WITHIN SHARYLAND UTILITIES CERTIFICATE OF CONVENIENCE AND NECESSITY; AND PRESCRIBING COMPENSATION FOR THE RIGHTS, PRIVILEGES, AND FRANCHISE CONFERRED HEREUNDER.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS:**

**SECTION 1. PARTIES:** The City of Farmersville, Texas, hereinafter called "City," a municipal corporation created under Title 28 of the Texas Revised Civil Statutes, hereby grants the non-exclusive right, privilege, and franchise herein stated to Sharyland Utilities, L.P., a corporation, its successors and assigns, herein called Grantee.

**SECTION 2. NATURE OF GRANT:** The City hereby grants to Grantee a non-exclusive right, privilege and franchise to erect, maintain, operate and remove electric lines and pertinent facilities, herein referred to as "Grantee's Facilities," over, under, across, upon and along the streets, alleys and other public property within the City, herein referred to as "Public Right-of-Way".

**SECTION 3. PURPOSES:** The provisions set forth in this ordinance represent the terms and conditions under which Grantee shall erect, maintain, operate and remove Grantee's Facilities with the City. In granting this Franchise, City does not in any manner surrender or waives its regulatory or other rights and powers under and by virtue of the Constitution and Statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the City. Grantee, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

**SECTION 4. TERM:** This Franchise shall exist for a term of **ten (10)** years to end December 31, 2024.

**SECTION 5. LOCATION OF FACILITIES:** Grantee's Facilities shall be placed and maintained in such manner as not to interfere with traffic, and the location, relocation, construction, and manner of erection of Grantee's Facilities shall at all times be subject to the police power of the City.

**SECTION 6. RELOCATION OF FACILITIES:** Grantee shall at its own expense change, rearrange, relocate, alter or remove any of Grantee's Facilities maintained by Grantee

under this Franchise when the changing, rearranging, relocation, altering or removal thereof may be reasonably necessary in the reconstruction or construction of any public work or project or public improvement undertaken or directed by the City, alone or jointly. The City acknowledges that any modifications to the Grantee's Facilities may affect the safety and reliability of electric transmission and delivery within portions of the City and the City hereby agrees to consult with Grantee on any such rearrangement, relocation, alteration or removal before allowing Grantee to do so. Notwithstanding the foregoing, Grantee shall not be responsible for relocation costs:

a) if the specific excavation, construction or relocation is done to accommodate the actions or plans of private individuals or entities who are developing or intend to develop property, then such private individuals or entities shall be responsible for the relocation costs, provided that in no event shall the City be liable for such relocation costs; or

b) state or federal law requires the City to pay for such relocation.

**SECTION 7. EXCAVATIONS AND OBSTRUCTIONS:** Any and all excavations and obstructions in and upon the public rights-of-way and other public places in the City caused by Grantee's operations under this Franchise shall be repaired and removed by Grantee as quickly as is reasonably possible, under the circumstances.

**SECTION 8. INDEMNITY & INSURANCE:** The Grantee shall hold the City harmless from any liability arising from any negligent act or omission of the Grantee in the erection, maintenance, and operation of Grantee's Facilities in the City.

**SECTION 9. Street Rents:** As compensation for the right, privilege, and franchise herein conferred, Grantee shall pay to the City for each calendar quarter, or portion thereof, during the term of this franchise, a fee for the use of the public streets based on all kilowatt hours (kWh) delivered within the City limits regardless of customer class. The charge per delivered kWh shall be determined by (1) dividing the total electric franchise fee revenue for calendar year 2013 by the total number of kWh delivered to all customers within the City limits in 2013 and (2) multiplying the charge per kWh determined for 2013 by the number of kWh delivered within the City during each calendar quarter. Grantee calculates that charge to be **\$0.003112** per kWh. The charge herein made shall be in lieu of, to the extent permitted by law, any other charges or fees of any kind by the City based on, connected with, or incident to the exercise of the non-exclusive rights, privilege, and franchise herein granted.

**SECTION 10. Prior Ordinances/Contracts Repealed:** All ordinances and contracts granting an electric franchise to Grantee is hereby superseded and repealed.

**SECTION 11. Adoption:** Passed and adopted with all necessary procedural formalities by the City Council of the City of Farmersville, Texas, at a regular meeting held at the regular place, at which meeting a quorum was present throughout.

**PASSED AND APPROVED** on this the 13<sup>th</sup> day of January, 2015.

\_\_\_\_\_  
Joseph E. Helmberger, P.E., Mayor  
City of Farmersville, Texas

**ATTEST:**

\_\_\_\_\_  
Edie Sims, City Secretary





Sharyland Utilities, L.P.  
Dallas Corporate Office  
1807 Ross Avenue, Suite 460  
Dallas, Texas 75201  
Toll Free: 866-354-3335  
Phone: 214-978-8958  
Fax: 214-978-8810

May 15, 2014

Ms. Edie Sims  
City Secretary  
City of Farmersville, Texas  
205 S. Main  
Farmersville, Texas 75442

Dear Ms. Sims:

I am writing on behalf of Sharyland Utilities, L.P. (Sharyland) to notify you of an upcoming change related to the calculation of the franchise charges that Sharyland pays to the City of Farmersville.

Sharyland currently pays franchise fees to the City of Farmersville equal to **2%** of Sharyland's gross revenues from sales within the City of Farmersville's jurisdiction. Under Sharyland's current franchise agreement with the city, these payments are made annually every March. This current agreement expired on December 1, 2010.

As you know, Sharyland began transitioning our customers to the competitive retail electric market starting on May 1, 2014. Once this transition is complete, Sharyland will no longer be in the business of buying and selling power to customers, but will simply serve as a transmission and distribution service provider or "wires" company. This change will require a new formula to calculate the franchise charges that Sharyland will pay to the City of Farmersville going forward once the transition is complete.

Section 33.008 of the Public Utility Regulatory Act (PURA) sets forth the methodology for calculating franchise charges following a utility's transition to competition. A copy of Section 33.008 is attached for your review. The methodology is as follows:

- The utility starts with the total franchise fees that were paid to the city for the previous calendar year. For 2013, Sharyland paid the City of Farmersville a total franchise fee of **\$2,941.55**.
  - *(Note: The actual language in PURA requires that utilities start with franchise fees paid in 1998. This was done as part of the state's original move to competition in 2002. However, since 1998 would not be an appropriate year for our purposes with the City of Farmersville, Sharyland has decided to use 2013 as the base year. This is consistent with an analogous provision found in PURA § 39.402(b).)*

- The utility must then take the total fees paid in 2013 and divide that number by the amount of total kilowatt hours (kWh) that the utility delivered within the city's jurisdiction during that year. In 2013, Sharyland delivered a total of **945,266 kWh** within the City of Farmersville's jurisdiction.
- **\$2,941.55** divided by **945,266 kWh** equals a new rate of **\$.003112/kWh**.

Once the transition is complete in early June, Sharyland will use this new rate to calculate the franchise payments we make to the City of Farmersville. Since this change is taking effect mid-year, Sharyland would like to recommend amending our current franchise agreement with the City of Farmersville that would address the following provisions:

- Sharyland will use the old rate of 2% of gross revenues to calculate the franchise charges incurred from January 1 through May 31, 2014.
- Sharyland will then use the new rate of \$.003112/kWh to calculate franchise charges incurred after June 1, 2014.
- Sharyland and the City of Farmersville agree to extend the current franchise agreement for a period of ten (10) years through December 31, 2024.

I would welcome the opportunity to visit with you further regarding this matter. Please let me know if you are available to meet and if so, what date and time would be most convenient for you. I can be reached by phone at 214-978-8536 or by email at [pschulze@sharyland.com](mailto:pschulze@sharyland.com).

Your assistance is greatly appreciated.

Sincerely,



Paul R. Schulze  
Vice President – Public Affairs  
Sharyland Utilities

Attachment



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: Only Reading – Consider, discuss and act upon a budget amendment ordinance regarding Service Center funding

- An ordinance is presented for review

**ACTION: Accept or deny the ordinance as presented.**

**CITY OF FARMERSVILLE  
ORDINANCE O-2015-0113-003**

**AN ORDINANCE AMENDING THE BUDGET FOR THE FISCAL YEAR 2014 – 2015 IN ACCORDANCE WITH EXISTING STATUTORY REQUIREMENTS, APPROPRIATING THE VARIOUS AMOUNTS HEREIN; REPEALING ALL PRIOR ORDINANCES AND ACTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Farmersville, Texas is a Type A General-Law Municipality located in Collin County, created in accordance with the provisions of Chapter 6 of the Texas Local Government Code, and operating pursuant to the enabling legislation of the State of Texas;

**WHEREAS**, the City Manager of the City of Farmersville has reviewed the budget and which budget was adopted by the City Council for the Fiscal Year 2014 – 2015; and

**WHEREAS**, the City Manager of the City of Farmersville believes that the budget requires certain amendments and has submitted to the Mayor and the City Council proposed amendment(s) to the budget of the revenues and expenditures of conducting the affairs of said City, and providing a complete financial plan for the Fiscal Year 2014 – 2015; and,

**WHEREAS**, the City Council has determined that it is in the best interest of the City to amend the Fiscal Year 2014 – 2015 budget to adopt the proposed amendment(s) to the budget of the revenues and expenditures from the Electric Fund Note to allow the funding of capital expenditures to include the renovation of the Public Works Service Center.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS:**

**SECTION 1. BUDGET AMENDMENT ADOPTION**

From and after the effective date of this Ordinance, the amendments to the budget of the revenues and expenditures for the Fiscal Year 2014 – 2015 that are attached hereto as Exhibit "A" and incorporated herein by reference are hereby adopted and the budget for Fiscal Year 2014 – 2015 is hereby accordingly so amended and the amended budget for Fiscal Year 2014 – 2015 adopted.

**SECTION 2. SEVERABILITY**

It is hereby declared to be the intention of the City Council that the several provisions of this Ordinance are severable, and if any court of competent jurisdiction shall judge any provisions of this Ordinance to be illegal, invalid, or unenforceable, such judgment shall not affect any other provisions of this Ordinance which are not specifically designated as being illegal, invalid or unenforceable.

**SECTION 3. REPEALER**

This Ordinance shall be cumulative of all other Ordinances, resolutions, and/or policies of the City, whether written or otherwise, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Any and all ordinances,

resolutions, and/or policies of the City, whether written or otherwise, which are in any manner in conflict with or inconsistent with this Ordinance shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

#### **SECTION 4. ENGROSSMENT AND ENROLLMENT**

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the City Council of the City of Farmersville and by filing this Ordinance in the Ordinance records of the City.

#### **SECTION 5. SAVINGS**

All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

#### **SECTION 6. EFFECTIVE DATE**

This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by Texas law.

**PASSED** on first reading and only reading on the 13<sup>th</sup> day of January, 2015 at properly scheduled meeting of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

**APPROVED THIS 13<sup>th</sup> DAY OF JANUARY, 2015.**

\_\_\_\_\_  
Joseph E. Helmberger, P.E., Mayor  
City of Farmersville, Texas

**ATTEST:**

\_\_\_\_\_  
Edie Sims, City Secretary

## CITY OF FARMERSVILLE

## EXHIBIT A

2014-2015 BUDGET/REVISION (5) 1-8-2015

GOVERNMENTAL FUNDS	ESTIMATED BEGINNING FUND BALANCE	REVENUES	EXPENDITURES	INTERFUND TRANSFERS IN (OUT)	PROPOSED ENDING FUND BALANCE
Electric Fund Note Using remaining balance to complete <u>Publi Works Maintenance Facility</u>	\$ 121,635	\$ -	\$ 121,635	\$ -	\$ -



TO: Mayor and Councilmembers

FROM: Ben White, City Manager

DATE: January 13, 2015

SUBJECT: Consider, discuss and act upon a notice to award, contract with Vessels Construction and authorize the Mayor to sign the notice to proceed regarding the asphalt overlay project Phase II through the General Obligation Bond street projects

- A notice to award and contract with Vessels Construction is attached for review.

**ACTION: Accept or deny the award documents as presented.**

# CONTRACT DOCUMENTS

FOR

## ASPHALT OVERLAY PROJECT PHASE II

TO SERVE THE

CITY OF FARMERSVILLE

COLLIN COUNTY, TEXAS

December 2014



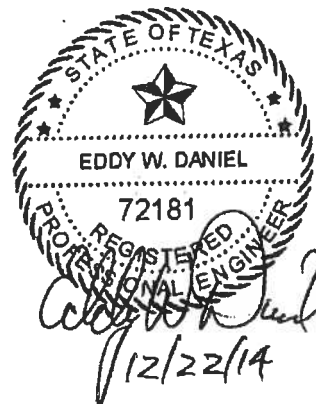
**DANIEL & BROWN INC.**

**ENGINEERS/CONSULTANTS/PLANNERS**

P.O. Box 606, Farmersville, Texas 75442

972-784-7777

FIRM REGISTRATION #: F-002225





## **TABLE OF CONTENTS**

<b><u>DESCRIPTION</u></b>	<b><u>SECTION</u></b>
<b>Contract Agreement</b>	<b>105</b>
<b>Proposal Form</b>	
<b>Bid Bond</b>	
<b>Notice of Award</b>	<b>104</b>
<b>Notice to Proceed</b>	<b>106</b>
<b>Terms and Conditions</b>	
<b>Addendums</b>	
<b>Performance Bond</b>	<b>EJCDC C-610</b>
<b>Payment Bond</b>	<b>EJCDC C-615</b>
<b>Maintenance Bond</b>	<b>611</b>
<b>Standard General Conditions</b>	<b>EJCDC C-700</b>
<b>Supplemental General Conditions</b>	<b>108</b>
<b>Specifications</b>	
<b>Reworking Base Material</b>	
<b>Lime Stabilization</b>	
<b>Hot Mix Asphaltic Concrete Pavement</b>	
<b>Flexible Base Crushed Limestone</b>	
<b>Location and Plan Sheets</b>	

## **CONTRACT AGREEMENT**

**THIS AGREEMENT**, is dated as of the \_\_\_\_\_, 2014, by and between the City of Farmersville (hereinafter called **Owner**) and **Vessels Construction** (hereinafter called Contractor).

Please do not date at this time.

**Owner** and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **Article 1. WORK.**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

#### **Asphalt Overlay Project Phase II**

### **Article 2. ENGINEER.**

The Project has been designed by Daniel & Brown Inc. Who is hereinafter called Engineer and who is to act as **Owner's** representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### **Article 3. CONTRACT TIME.**

The Work will be substantially completed within 150 calendar days after the date when the Contract Times commence to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 150 calendar days after the date when the Contract Times commence to run.

**Liquidated Damages.** **Owner** and Contractor recognize that time is of the essence of this Agreement and that **Owner** will suffer financial loss if the Work is not completed within the times specified in Article 3 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions.

They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by **Owner** if the Work is not completed on time. Accordingly, instead of requiring any such proof, **Owner** and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay **Owner Two Hundred Dollars (\$200.00)** for each day that expires after the time specified in paragraph 3 for Substantial Completion until the work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3 for completion and readiness for final payment or any proper extension thereof granted by **Owner**, Contractor shall pay **Owner Two Hundred Dollars (\$200.00)** for each day that expires after the time specified in paragraph 3 for completion and readiness for final payment.

#### **Article 4. CONTRACT PRICE AND PAYMENT PROCEDURE.**

**Owner** shall pay Contractor for completion of the Work in accordance with the Proposal Documents in current funds for all Unit Price Work, an amount equal to the sum of the established proposal and/or any percentage thereof as determined by **Owner**.

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by **Owner**.

#### **Article 5. CONTRACTOR'S REPRESENTATIVES.**

In order to induce **Owner** to enter into this Agreement, Contractor makes the following representations:

Contractor has examined and carefully studied the Proposal Documents (including the Addenda) and the other related data identified in the Proposal Documents including "technical data."

Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the work;

Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical

conditions in or relating to existing surface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that **Owner** and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding documents with respect to Underground Facilities at or contiguous to the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the work in accordance with the time, price and other terms and conditions of the Contract Documents.

Contractor is aware of the general nature of Work to be performed by **Owner** and others at the site that relates to Work for which this Proposal is submitted as indicated in the Contract Documents.

Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

## **Article 6. CONTRACT DOCUMENTS.**

The Contract Documents which comprise the entire agreement between **Owner** and Contractor concerning the Work consist of the following:

This Agreement; Notice to Proceed; General Conditions; Supplementary Conditions; Technical Specifications, Drawings; Contractor's Proposal;

any Addenda issued by Engineer; Performance Bond; Payment Bond and Insurance Certificate. Written amendments and other documents amending, modifying or supplementing the Contract Documents may be delivered or issued after the Effective Date of the Agreement, but are not attached hereto.

#### **Article 7. MISCELLANEOUS.**

No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent, and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

**Owner** and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon **Owner** and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in the year and day first above written.**

**OWNER:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

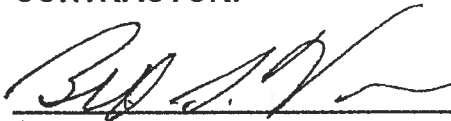
\_\_\_\_\_  
Attest

\_\_\_\_\_  
City of Farmersville  
Company Name

205 S. Main Street  
Farmersville, Texas 75442

(Corporate Seal)

**CONTRACTOR:**

  
\_\_\_\_\_  
Signature

*Bill E. Vessels, Pres.*  
\_\_\_\_\_  
Printed Name & Title

  
\_\_\_\_\_  
Attest

\_\_\_\_\_  
Vessels Construction  
Company Name

P.O. Box 28  
Sherman, Texas 75091-0028

\_\_\_\_\_  
License Number (if applicable)

(Corporate Seal)

**PROPOSAL (REVISED 12-08-2014)**  
**CITY OF FARMERSVILLE, TEXAS**  
**ASPHALT OVERLAY PROJECT PHASE II**

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Proposal Unit Price</u>	<u>Proposal Price</u>
1	Installation of sod, 1 yard beyond back of curb, for the sum of:	SY	3,378	\$3.21	\$10843.38
2	Installation of flex base, per 2", as specified for the sum of:	SY	16,384	\$3.29	\$53922.36
3	Installation of curbs and gutters as specified for the sum of:	LF	10,135	\$20.82	\$211011.37
4	Installation of 3" asphalt overlay as specified for the sum of:	SY	16,384	\$16.49	\$270172.16
5	Pulverization and lime stabilization of existing base, as specified for the sum of:	SY	16,384	\$8.09	\$132546.56
6	Installation of concrete driveway approaches, sidewalk, street intersection valleys, as specified, for the sum of:	SY	921	\$57.22	\$52699.62
7	Project mobilization and overhead, for the sum of:	LS	1	\$33615	\$33615.00
Proposal Total					\$764840.47

Offeror acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of proposals, and final payment for all Unit Price proposal items will be based on actual final installed quantities. Quantities or locations may be increased, decreased, modified or deleted by the City of Farmersville, TX as may be deemed necessary to accommodate the locations or available funds.

By signature hereon affixed, the Offeror hereby certifies that the Offeror will meet the minimum standards established by the City of Farmersville, TX and the RFP document, plans and specifications for the City of Farmersville, TX Asphalt Overlay Project Phase II and will perform such services accordingly. Any exceptions to the City of Farmersville, TX minimum standards or RFP document, plans or specifications are hereby noted:

SIGNED

NAME (PLEASE PRINT)

TITLE

NAME OF FIRM

ADDRESS

Phone 903-870-0428

PHONE 903-870-0428

PROPOSAL DEADLINE: Friday, December 12, 2014 at 4:00 p.m.

Mark on Sealed Envelope: **PROPOSAL FOR ASPHALT OVERLAY PROJECT PHASE II, CITY OF FARMERSVILLE, TEXAS**

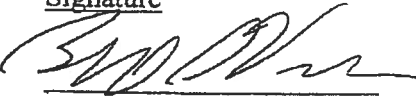
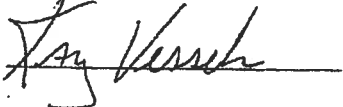


## CORPORATE AUTHORIZATION RESOLUTION

A. I, Bill Vessels, certify that I am the duly elected and qualified President of Vescor, Inc. (the "Corporation") organized under the laws of Texas, and that the following is a correct copy of resolutions adopted at a meeting of the Board of Directors of the Corporation duly and properly called and held on August 25<sup>th</sup>, 2000. These resolutions appear in the minutes of this meeting and have not been rescinded or modified.

### **B. BE IT RESOLVED THAT,**

(1) Any person listed below is authorized to represent and bind the company contractually

<u>Name and Title</u>	<u>Signature</u>
a) Bill Vessels, President	
b) Kay Vessels, Vice-President	

**MERCHANTS**  
**BONDING COMPANY**

MERCHANTS BONDING COMPANY (MUTUAL) • MERCHANTS NATIONAL BONDING, INC.  
2100 FLEUR DRIVE • DES MOINES, IOWA 50321-1158 • (800) 678-8171 • (515) 243-3854 FAX

Bond No.: N/A

**BID BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that we Vessels Construction, a Division of VESCOR, Inc.

as Principal, hereinafter called the Principal, and

MERCHANTS NATIONAL BONDING, INC.

a corporation duly organized under the laws of the State of Iowa

as Surety, hereinafter called the Surety, are held and firmly bound unto  
City of Farmersville, Texas

as Obligee, hereinafter called the Obligee, in the sum of

Five Percent of the Greatest Amount Bid----- Dollars ( 5% G.A.B. ----- ),

for the payment of which sum well and truly to be made, the said Principal and the said Surety,  
bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally,  
firmly by these presents.

WHEREAS, the Principal has submitted a bid for

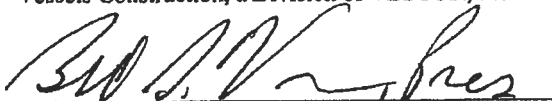
Asphalt Street Overlay Project, Phase 2, Farmersville, Texas

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall  
enter into a Contract with the Obligee in accordance with the terms of such bid, and give such  
bond or bonds as may be specified in the bidding or Contract Documents with good and  
sufficient surety for the faithful performance of such Contract and for the prompt payment of  
labor and materials furnished in the prosecution thereof, or in the event of the failure of the  
Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the  
Obligee the difference not to exceed the penalty hereof between the amount specified in said bid  
and such larger amount for which the Obligee may in good faith contract with another party to  
perform the Work covered by said bid, then this obligation shall be null and void, otherwise to  
remain in full force and effect.

Signed and sealed this 12th day of December, 2014


PRINCIPAL:

Vessels Construction, a Division of VESCOR, Inc.



SURETY:

Merchants National Bonding, Inc.

  
Trenae Donovan, Attorney-in-Fact



## IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact your insurance agent at the telephone number provided by your insurance agent.

You may call Merchants Bonding Company's toll-free telephone number for information or to make a complaint at:

**1-800-678-8171**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

**1-800-252-3439**

You may write the Texas Department of Insurance at:

P. O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

**PREMIUM AND CLAIM DISPUTES:** Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**ATTACH THIS NOTICE TO YOUR POLICY:** This notice is for information only and does not become a part or condition of the attached document.

**MERCHANTS**  
**BONDING COMPANY™**  
**POWER OF ATTORNEY**

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations duly organized under the laws of the State of Iowa (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint, individually,

**Clem F Lesch; Eric Lesch; Jennifer Picchi; Lisa Borhaug; Roger Bales; Steven W  
Lewis; Trenae Donovan**

of **Dallas** and State of **Texas** their true and lawful Attorney-In-Fact, with full power and authority hereby conferred in their name, place and stead, to sign, execute, acknowledge and deliver in their behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

**FIVE MILLION (\$5,000,000.00) DOLLARS**

and to bind the Companies thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the Companies, and all the acts of said Attorney-In-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following By-Laws adopted by the Board of Directors of the Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 13th day of **August**, 2014.



MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.

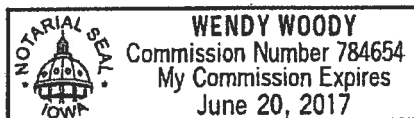
By

*Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF POLK ss.

On this 13th day of **August**, 2014, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument is the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



*Wendy Woody*

Notary Public, Polk County, Iowa

STATE OF IOWA  
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 12th day of **December**, 2014.



*William Warner Jr.*  
Secretary

## **NOTICE OF AWARD**

**DATE:** December 16, 2014

**TO:** Vessels Construction

**ADDRESS:** P.O. Box 28  
Sherman, Texas 75091-0028

**OWNER:** City of Farmersville

**PROPOSAL:** **Asphalt Overlay Project Phase II**

You are hereby notified that your proposal submitted on December 12, 2014 for the above referenced project has been considered and accepted.

Your Company has been awarded the project for Asphalt Overlay Project Phase II in accordance with the Request for Proposal documents and your submitted Proposal.

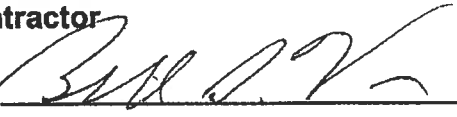
Acknowledgement of this Notice of Award is the acceptance of the proposal and to be bound by the Request for Proposal conditions thereto.

**City of Farmersville**  
**Owner**

By: 

Title: MAYOR

**Vessels Construction**  
**Contractor**

By: 

Title: Pres.

## **NOTICE TO PROCEED**

**DATE:** \_\_\_\_\_

**TO:** Vessels Construction

**ADDRESS:** P.O. Box 28  
Sherman, Texas 75091-0028

**OWNER:** City of Farmersville (herein after referred to as Owner).

**PROJECT:** Asphalt Overlay Project

You are hereby notified that the Contract Times under the above contract will commence to run on \_\_\_\_\_, 2014.

By that date, you are to start performing your obligations under the Contract Agreement. You are to complete the work within the time specified in Article 3 of the Contract Agreement.

**City of Farmersville**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

## **ACCEPTANCE OF NOTICE**

**Vessels Construction**  
**Contractor**

**By:** 

**Title:** Pres.

**Date:** \_\_\_\_\_

**CITY OF FARMERSVILLE, TEXAS  
REQUEST FOR PROPOSAL (RFP)  
ASPHALT OVERLAY PROJECT**

**TERMS AND CONDITIONS**

**Submission of Proposal**

Proposals shall be submitted in a sealed envelope upon the blank forms provided and plainly marked, **PROPOSAL FOR ASPHALT OVERLAY PROJECT, CITY OF FARMERSVILLE, TEXAS.**

**Deadline**

All proposals must be submitted prior to 4:00 P.M. on Friday, December 12, 2014. Any proposals received after closing time will be returned unopened. Proposals must be mailed or delivered to City of Farmersville, c/o Daniel & Brown Inc., City Engineer, 118 McKinney Street, Farmersville, Texas 75442.

**Name of Offeror**

Offeror party must give full firm name and address. Failure to manually sign the proposal will disqualify it. Person signing the proposal should show TITLE and AUTHORITY TO BIND HIS FIRM IN A CONTRACT.

**Contract**

This proposal, when properly accepted by the City of Farmersville, Texas ('The City') shall constitute a contract equally binding between the successful Offeror and The City. The City may delay acceptance of proposals for 30 days from date of opening.

**Alterations by Offeror**

Proposals cannot be altered or amended after opening time. Any alterations made before opening time must be initialed by Offeror or his authorized agent. No proposal may be withdrawn after opening, without approval, and based on a written acceptable reason.

**Addenda**

The City reserves the right to revise or amend the specifications prior to the date set for opening proposals. Such revisions or amendments, if any, will be announced by addenda or addendum to these specifications, copies of such addenda so issued will be furnished to all prospective offering parties.

**Assignment**

The successful Offeror shall not sell, assign, transfer or convey this contract in whole or in part, without prior written consent of The City.

**Venue**

This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Collin County.

**Documentation**

Offeror shall provide all documentation required by this invitation to proposal. Failure to provide this information may result in rejection of proposal.

**Knowledge Of Conditions**

The Offeror shall satisfy himself as to the nature of the work and general and local conditions. He or she shall gain full knowledge of working conditions and other facilities in the area, which will have a bearing on the performance of his or her work. Any failure by the Offeror to acquaint himself/herself with all of the available information shall not relieve the Offeror from any responsibility for performing all work properly. NO ADDITIONAL COMPENSATION SHALL BE ALLOWED FOR CONDITIONS INCREASING THE OFFEROR'S COST, WHICH WERE NOT KNOWN, OR SHOULD HAVE BEEN KNOWN, OR ANTICIPATED BY, THAT OFFEROR WHEN SUBMITTING THEIR PROPOSAL.

The City may consider non-responsive any proposal not prepared and submitted in accordance with the provisions hereof. Offerors shall understand that The City will not be responsible for any errors or omissions by the Offeror in their response.

All materials submitted become the property of The City, and may be returned only at The City's option. The City has the right to use any or all ideas presented in any reply to the request for proposal. Selection or rejection of the proposal does not affect this right.

#### **Minimum Standards For Responsible Prospective Offerors**

A prospective must affirmatively demonstrate Offeror's responsibility. A prospective Offeror must meet the following requirements.

1. Have adequate financial resources, or the ability to obtain such resources as required.
2. Be able to comply with the required or proposed delivery schedule.
3. Have a satisfactory record of performance.
4. Have a satisfactory insurance/bonding for the project.
5. Be otherwise qualified and eligible to receive an award.

The City may request information sufficient to determine Offeror's ability to meet the minimum standards listed above.

#### **Termination For Default**

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

1. Meet schedules;
2. Pay any required fees; or,
3. Otherwise perform in accordance with the proposal specifications.

In the event the successful Offeror shall fail to perform, keep or observe terms and conditions of this proposal, The City shall provide written notice of such default; and in the event said default is not remedied to the satisfaction and approval of The City within two (2) working days of receipt of such notice by the successful Offeror, default may be declared and all the successful Offeror's rights shall terminate.

#### **Silence Of Specifications**

The apparent silence of these specifications, terms, and conditions to any detail, or to the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

#### **Proposal Bond**

A bid/proposal bond equal to 5.0% of the proposal amount shall be required by The City. The proposal/bid bond shall be submitted with the proposal.

#### **Payment/Performance Bonds**

Payment and Performance bonds shall be required for this project.

#### **Award**

The City will award the proposal to either the lowest responsible Offeror or the Offeror who provides the goods or services at the best value for The City. In awarding the proposal, the following criteria will be used:

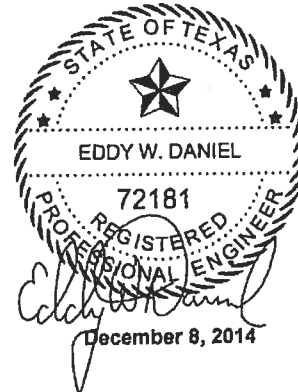
1. The proposal price; and
2. The reputation of the Offeror and the quality of the Offeror's goods or services; and
3. The extent to which the goods or services meet The City's needs;





**DANIEL & BROWN INC.**  
ENGINEERS/CONSULTANTS/PLANNERS

**DATE:** December 8, 2014  
**TO:** Prospective Bidders  
**FROM:** Eddy Daniel, P.E.  
**SUBJECT:** Addendum #1  
Asphalt Overlay Project  
Phase II  
City of Farmersville



**PROPOSAL DUE DATE:**

Friday, December 12, 2014, 4:00 P.M., at the Office of Daniel & Brown Inc., 118 McKinney St., Farmersville, Texas 75442

Enclosed please find the following changes/additions/clarifications to the plans, contract documents and specifications for the City of Farmersville, Asphalt Overlay Project, Phase II.

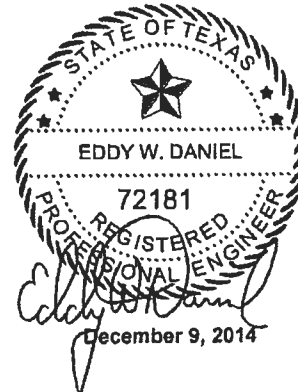
1. Contract time is not specified, however, contract length will be negotiated with contractor prior to awarding contract.
2. Projected start date is January 2015.
3. Lime series test is only necessary when the base material changes. Gradation and Density tests are required every 300'.
4. Use revised proposal attached.

If you should have any questions please feel free to contact me at 972-784-7777.



**DANIEL & BROWN INC.**  
ENGINEERS/CONSULTANTS/PLANNERS

**DATE:** December 9, 2014  
**TO:** Prospective Bidders  
**FROM:** Eddy Daniel, P.E.  
**SUBJECT:** Addendum #2  
Asphalt Overlay Project  
Phase II  
City of Farmersville



**PROPOSAL DUE DATE:**

Friday, December 12, 2014, 4:00 P.M., at the Office of Daniel & Brown Inc., 118 McKinney St., Farmersville, Texas 75442

Enclosed please find the following changes/additions/clarifications to the plans, contract documents and specifications for the City of Farmersville, Asphalt Overlay Project, Phase II.

1. Existing street height with existing curbs will remain the same, so some haul off of base material being replaced is expected. It is subsidiary to the project. Expect that for every 2" of new flex base added, 2" of existing base will need to be removed.
2. Lime will be added into the flex base and asphalt mix after pulverized. Lime series test will be necessary to be performed after pulverization and mixing to determine the correct PI.
3. The City has construction hydrant meters available for a deposit of \$500.00, however, the contractor will not be charged for water used.
4. A prime coat will be required on the base as directed in specification ""Prime Coat - Asphaltic." Specification is attached with Addendum #2.
5. Tack coat shall be applied after the prime coat has sufficiently cured. See attached specification, "Tack Coat (Asphaltic)."

If you should have any questions please feel free to contact me at 972-784-7777.

SECTION 32 12 13.23  
PRIME COAT - ASPHALTIC

**PART 1 - GENERAL**

**1.1 DESCRIPTION**

- A. This item shall consist of the application of asphaltic material on the completed base course in accordance with these Specifications.

**1.2 MEASUREMENT AND PAYMENT**

- A. This item will not be considered a separate cost item. Cost for work herein specified, including the furnishing of all materials, equipment, tools, labor and incidentals necessary to complete the work shall be included in the unit price bid for Hot Mix Asphaltic Concrete.

**1.3 SUBMITTALS**

- A. Supplier and Material Safety Data Sheet.

**PART 2 – PRODUCTS**

**2.1 MATERIALS**

- A. The asphaltic material used for the prime coat shall be MC-30 or RC-250. It shall meet the requirements of Texas Department of Transportation Specification 2004 Item 300 "Asphalts, Oils, and Emulsions".

**2.2 TESTING REQUIREMENTS**

- A. If requested by the Engineer, the Contractor shall produce the calibration papers and certifications for the distributor being used on the project.

**PART 3 – EXECUTION**

**3.1 GENERAL**

- A. The following construction methods shall be used when applying asphaltic material:
  - 1. SURFACE PREPARATION: The surface shall be cleaned by sweeping, brooming or other approved methods when the base is satisfactory to receive the prime coat in the opinion of the Engineer.
  - 2. PRIME COAT: Prime coat shall not be applied when the atmospheric temperature is below 60 °F and falling. However, it may be applied when the temperature is above 50 °F and rising. The temperature determination shall be made by taking the temperature in the shade and away from artificial heat. Asphaltic material shall not be placed when general weather conditions are not suitable in the opinion of the Engineer.

3. APPLICATION: The surface shall be lightly sprinkled with water just prior to application of the asphaltic material if found necessary by the Engineer. The asphaltic material shall be applied to the cleaned base by an approved self-propelled pressure distributor. The distributor shall distribute the material evenly and smoothly under an adequate pressure for proper distribution. Uniform coverage is desired without pooling of excess material. The Contractor shall provide all necessary facilities for determining the temperature of the asphaltic material in all heating equipment and distributor. This information is to be used for determining the application rate and for securing uniformity at the junction of successive distributor loads. Asphaltic material shall be applied at a temperature consistent with and the range recommended in Texas Department of Transportation Specification 2004 Item 300 "Asphalts, Oils, and Emulsions." The Engineer shall select the temperature of application and the Contractor shall apply the material at a temperature within 15° F of the selected temperature.
4. EQUIPMENT: All storage tanks, piping, retorts, booster tanks, and distribution equipment used in handling asphaltic material shall be kept clean and in good operating condition at all times. The equipment shall be operated in a manner which prevents contamination of the asphaltic material (with any foreign substance). It shall be the responsibility of the Contractor to provide and maintain in good working order at all times, a recording thermometer at the storage heating unit. The distributor shall have been recently calibrated and the Engineer shall be furnished an accurate and satisfactory record of the calibration. Should the yield on the applied asphaltic material appear to be in error after beginning the work, the distributor shall be recalibrated in a manner satisfactory to the Engineer before proceeding with the work.
5. SURFACE MAINTENANCE: The Contractor shall be responsible for the maintenance of the surface until the work is accepted by the Engineer. No traffic, hauling or placement of final surface material will be permitted over the freshly applied prime coat until authorized by the Engineer.

**END OF SECTION**

## **TACK COAT (ASPHALTIC)**

### **PART 1 - GENERAL**

#### **1.1 DESCRIPTION**

- A. This item shall consist of an application of asphaltic material on a completed base course, after the prime coat has sufficiently cured; or on an existing pavement; bituminous surface and/or other approved area in accordance with these Specifications.

#### **1.2 MEASUREMENT AND PAYMENT**

- A. The asphaltic material for tack coat will be measured at point of delivery on the project in gallons at the applied temperature. The quantity to be paid for shall be the number of gallons used, as directed by the Engineer.
- B. The work performed and materials furnished as prescribed by this item will be paid for at the unit price bid per gallon for "Tack Coat". This price shall be full compensation for cleaning the surface, for furnishing, heating, hauling and distributing the tack coat as specified; for all freight involved; and for all manipulations, labor, tools, equipment and incidentals necessary to complete the work. Where no pay item is provided for in the Contract Documents the work performed and materials furnished as specified by this item shall be considered as subsidiary to the appropriate bid items.

### **PART 2 - PRODUCTS**

#### **2.1 MATERIALS**

- A. The asphaltic material used for tack coat shall meet the requirements for cut-back asphalt or emulsified asphalt as defined in SECTION 32 05 17 - ASPHALTS, OILS, AND EMULSIONS, and as approved by the Engineer. Cut-back asphalt can be made by combining 50% - 70% by volume of the asphaltic materials as specified for the type of paving mixture, with 30% -50% by volume of either gasoline and/or kerosene.
- B. The asphaltic material used for the tack coat may be further cut back by the addition of an approved grade of gasoline and/or kerosene not to exceed 15%, by volume, upon approval by the Engineer.

### **PART 3 - EXECUTION**

#### **3.1 GENERAL**

- A. Before the tack coat is applied, the surface shall be cleaned thoroughly to the satisfaction of the Engineer. The asphaltic material shall be applied on the clean surface by an approved type of self-propelled pressure distributor so operated to distribute the tack coat at a rate not to exceed 0.10 gallon per square yard of surface. Proper distribution shall be considered as applying the tack coat evenly and smoothly while under pressure as well as other specified requirements. Where the pavement mixture will adhere to the surface on which it is to be placed without the use of a tack coat, the tack coat may be eliminated by the Engineer. All contact surfaces of curbs and structures and all joints shall be painted with a thin uniform

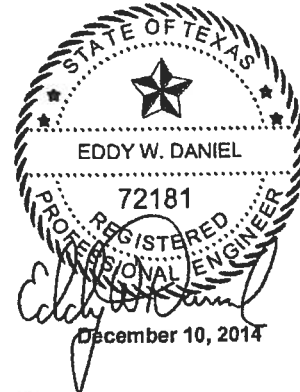
coat of the asphaltic material used for tack coat. The tack coat shall be applied only when the atmospheric temperature in the shade is 50° F or above and when the temperature has not been below 35° F for 12 hours immediately prior to application. The tack coat shall be rolled with a pneumatic tire roller as directed by the Engineer. During the application of tack coat, care shall be taken to prevent splattering of adjacent pavement, curb and gutters or structures. The Contractor shall be responsible for cleaning splattered areas as determined and directed by the Engineer.

**END OF SECTION**



**DANIEL & BROWN INC.**  
ENGINEERS/CONSULTANTS/PLANNERS

**DATE:** December 10, 2014  
**TO:** Prospective Bidders  
**FROM:** Eddy Daniel, P.E.  
**SUBJECT:** Addendum #3  
Asphalt Overlay Project  
Phase II  
City of Farmersville



**PROPOSAL DUE DATE:**

Friday, December 12, 2014, 4:00 P.M., at the Office of Daniel & Brown Inc., 118 McKinney St., Farmersville, Texas 75442

Enclosed please find the following changes/additions/clarifications to the plans, contract documents and specifications for the City of Farmersville, Asphalt Overlay Project, Phase II.

1. The asphaltic material used for the tack coat and the prime coat shall be the same and shall be CSS-1 cationic asphalt emulsion or approved equal.
2. The application of the tack coat shall be 0.050 gallon per square yard of surface.
3. The application of the prime coat shall be 0.025 gallon per square yard of surface.
4. The asphalt for this project shall be grade PG 70-22.

If you should have any questions please feel free to contact me at 972-784-7777.

# PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):****Business:**

Vessels Construction, a Division of VESCOR, Inc.  
P.O. Box 28, Sherman, TX

**SURETY (Name and Address of Principal Place of**

Business):  
Merchants National Bonding, Inc.  
2100 Fleur Drive, Des Moines, IA 50321

**OWNER (Name and Address):**

City of Farmersville  
205 S. Main Street, Farmersville, TX 75442

**CONTRACT****Date:**

**Amount:** Seven Hundred Sixty Four Thousand Eight Hundred Forty and 47/100--- (\$764,840.47---)

**Description (Name and Location):**

Asphalt Overlay Project Phase II for the City of Farmersville  
Collin County, Texas

**BOND**

**Bond Number:** NTX 4259

**Date (Not earlier than Contract Date):**

**Amount:** Seven Hundred Sixty Four Thousand Eight Hundred Forty and 47/100--- (\$764,840.47---)

**Modifications to this Bond Form:** N/A

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL****Company:**

Vessels Construction, a Division of VESCOR, Inc.

**Signature:** [Signature] (Seal)

**Name and Title:**

Bill G. Vessels, Pres.

(Space is provided below for signatures of additional parties, if required.)

**SURETY**

**Merchants National Bonding, Inc. (Seal)**

**Surety's Name and Corporate Seal**

**By:** [Signature]

**Signature and Title** Trenae Donovan, Attorney-in-Fact  
(Attach Power of Attorney)

**Attest:** [Signature]

**Signature and Title** Lisa Borhaug, Witness

**CONTRACTOR AS PRINCIPAL****Company:**

**Signature:** \_\_\_\_\_ (Seal)

**Name and Title:**

**SURETY**

**N/A (Seal)**

**Surety's Name and Corporate Seal**

**By:** \_\_\_\_\_

**Signature and Title**  
(Attach Power of Attorney)

**Attest**

**Signature and Title:** \_\_\_\_\_



1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.

3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:

3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and

3.2. Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 3.1; and

3.3. Owner has agreed to pay the Balance of the Contract Price to:

1. Surety in accordance with the terms of the Contract;
2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.

4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:

4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or

4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or

2. Deny liability in whole or in part and notify Owner citing reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 4.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To a limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

8. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1. Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.

12.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3. Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

<b>FOR INFORMATION ONLY – Name, Address and Telephone</b>	PCL Contract Bonding Agency (972) 459-4749
<b>Surety Agency or Broker</b>	3010 LBJ Freeway, Suite 920, Dallas, TX 75234
<b>Owner's Representative (engineer or other party)</b>	Daniel & Brown Inc., Engineers/Consultants/Planners
	P.O. Box 606, Farmersville, Texas 75442
	(972) 784-7777

## PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Vessels Construction, a Division of VESCOR, Inc.  
P.O. Box 28, Sherman, TX 75090

**SURETY (Name and Address of Principal Place of Business):**

Merchants National Bonding, Inc.  
2100 Fleur Drive, Des Moines, IA 50321

**OWNER (Name and Address):**

City of Farmersville  
205 S. Main Street, Farmersville, TX 75442

**CONTRACT**

**Date:**

**Amount:** Seven Hundred Sixty Four Thousand Eight Hundred Forty and 47/100--- (\$764,840.47---)

**Description (Name and Location):**

Asphalt Overlay Project Phase II for the City of Farmersville  
Collin County, Texas

**BOND**

**Bond Number:** NTX 4259

**Date (Not earlier than Contract Date):**

**Amount:** Seven Hundred Sixty Four Thousand Eight Hundred Forty and 47/100--- (\$764,840.47---)

**Modifications to this Bond Form:** N/A

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**Company:**  
Vessels Construction, a Division of VESCOR, Inc.

**Signature:** [Signature] (Seal)

**Name and Title:**

Bill E. Vessels, Pres.

**SURETY**

**Merchants National Bonding, Inc. (Seal)**

**Surety's Name and Corporate Seal**

**By:** [Signature]  
**Signature and Title** Trenae Donovan, Attorney-in-Fact  
**(Attach Power of Attorney)**

(Space is provided below for signatures of additional parties, if required.)

**Attest:** [Signature]  
**Signature and Title** Lisa Borhaug, Witness

**CONTRACTOR AS PRINCIPAL**

**Company:**

**Signature:** \_\_\_\_\_ (Seal)

**Name and Title:**

**SURETY**

**N/A** (Seal)

**Surety's Name and Corporate Seal**

**By:** \_\_\_\_\_  
**Signature and Title**  
**(Attach Power of Attorney)**

**Attest:** \_\_\_\_\_  
**Signature and Title:**

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to Owner, this obligation shall be null and void if Contractor:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.

4. Surety shall have no obligation to Claimants under this Bond until:

4.1. Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with Contractor:

1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.

5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.

6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:

6.1. Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2. Pay or arrange for payment of any undisputed amounts.

7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.

8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### 15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

**FOR INFORMATION ONLY - Name, Address and Telephone**

**Surety Agency or Broker:**

**Owner's Representative (engineer or other party):** Daniel & Brown Inc., Engineers/Consultants/Planners

PCL Contract Bonding Agency

(972) 459-4749

3010 LBJ Freeway, Suite 920, Dallas, TX 75234

P.O. Box 606, Farmersville, Texas 75442

(972) 784-7777

**00611 MAINTENANCE BOND**STATE OF TEXAS §  
COUNTY OF COLLIN §**KNOW ALL MEN BY THESE PRESENTS:**

That Vessels Construction, a Division of VESCOR, Inc., a corporation organized and existing under the laws of the State of Texas, and fully authorized to transact business in the State of Texas, whose address is P.O. Box 28 of the City of Sherman County of Grayson, and State of Texas (hereinafter referred to as "Principal"), and Merchants National Bonding, Inc. (hereinafter referred to as "Surety"), a corporation organized under the laws of the State of Iowa and authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto City of Farmersville (hereinafter referred to as "Owner") and unto all persons, firms and corporations who may furnish materials for or perform labor upon the buildings, structures or improvements referred to in the attached Contract, in the penal sum of Seven Hundred Sixty Four Thousand Eight Hundred Forty and 47/100 Dollars (\$ 764,840.47---) in lawful money of the United States, for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, to which said Contract is hereby referred to and made a part hereof and as fully and to the same extent as if copied at length herein for the construction of IFB 04179-11, Construction, Myers Park Pump Station and Ground Storage Tank Project.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that the bond guarantees the full and proper maintenance and repair of the work herein contracted to be done and performed for a period of Two (2) year(s) from the date of acceptance and Principal will do all necessary backfilling that may arise on account of sunken conditions in ditches, or otherwise, and do and perform all necessary work and repair any defective condition growing out of or arising from the improper laying or construction of same, or on account of any breaking of same caused by said CONTRACTOR in construction of same, or on account of any defect arising in any of said work laid or constructed by said CONTRACTOR or on account of improper excavation or backfilling, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by said CONTRACTOR, then this obligation shall be void; otherwise, to remain in full force and effect; and in case said CONTRACTOR shall fail to do so, it is agreed that the OWNER may do said work and supply such materials and charge the same against said CONTRACTOR and Surety on this obligation. Provided further, that if any legal action be filed on this Bond, venue shall lie in Collin County, Texas.

"PROVIDED, HOWEVER, that said Surety, for value received, stipulates and agrees the bond shall automatically be increased by the amount of any Change Order or supplemental agreement which increases the Contract price with or without notice to the Surety and that no change, extension of time, alteration or addition to the terms of the Contract, or to the work performed thereunder, or the plans specifications, or drawings accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder.

The undersigned and designated agent is hereby designated by Surety herein as the agent resident to whom any requisite notice may be delivered and on whom service of process may be had in matters arising out of such suretyship.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

WITNESS

Bill Vessels, Vice Pres.

PRINCIPAL

Printed/Typed Name Bill G. Vessels  
Title: Pres.

Company: Vessels Construction, a Division of VESCOR, Inc.

Address: P.O. Box 28  
Sherman, TX 75090

SURETY

Printed/Typed Name Trenae Donovan  
Title: Attorney-in-Fact  
Company: Merchants National Bonding, Inc.

Address: 2100 Fleur Drive  
Des Moines, IA 50321

WITNESS

Lisa Borhaug  
Lisa Borhaug, Witness

The Resident Agent of the Surety for delivery of notice and service of process is:

Name: PCL Contract Bonding Agency

Address: 3010 LBJ Freeway, Suite 920, Dallas, TX 75234

Phone Number: (972) 459-4749

Note: Date of Bond must NOT be prior to date of contract.

Revised 11/2008



## IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact your insurance agent at the telephone number provided by your insurance agent.

You may call Merchants Bonding Company's toll-free telephone number for information or to make a complaint at:

**1-800-678-8171**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

**1-800-252-3439**

You may write the Texas Department of Insurance at:

P. O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

**PREMIUM AND CLAIM DISPUTES:** Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**ATTACH THIS NOTICE TO YOUR POLICY:** This notice is for information only and does not become a part or condition of the attached document.

**MERCHANTS**  
**BONDING COMPANY™**  
**POWER OF ATTORNEY**

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations duly organized under the laws of the State of Iowa (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint, individually,

**Clem F Lesch; Eric Lesch; Jennifer Picchi; Lisa Borhaug; Roger Bales; Steven W  
Lewis; Trenae Donovan**

of **Dallas** and State of **Texas** their true and lawful Attorney-in-Fact, with full power and authority hereby conferred in their name, place and stead, to sign, execute, acknowledge and deliver in their behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

**FIVE MILLION (\$5,000,000.00) DOLLARS**

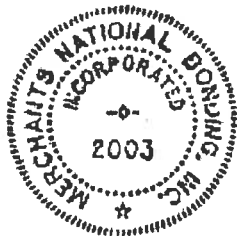
and to bind the Companies thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the Companies, and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following By-Laws adopted by the Board of Directors of the Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 13th day of August, 2014.



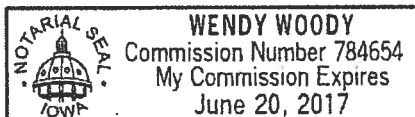
MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF POLK ss.

On this 13th day of August, 2014, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument is the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



*Wendy Woody*

Notary Public, Polk County, Iowa

STATE OF IOWA  
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this day of



*William Warner Jr.*  
Secretary

POA 0014 (7/14)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/6/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Sidney Reid
K&S Insurance Agency	PHONE (A/C No. Ext): (972) 771-4071
2255 Ridge Road, Ste. 333	FAX (A/C No.): (972) 771-4695
P. O. Box 277	E-MAIL ADDRESS: sreid@kandsins.com
Rockwall TX 75087	INSURER(S) AFFORDING COVERAGE
	INSURER A: United Fire & Casualty Company
	INSURER B: Texas Mutual Insurance Co.
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY					EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		85319196	1/1/2015	1/1/2016	MED EXP (Any one person) \$ 10,000
			Addl Ins-Ongoing & Comp Prim & NonContributory			PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:		Waiver of Subrogation			GENERAL AGGREGATE \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		CG7208 0913			PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS	85319196	1/1/2015	1/1/2016	BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS	Addl Ins & WOS			PROPERTY DAMAGE (Per accident) \$
			CA7109			Underinsured motorist \$ 1,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR				EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 5,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		85319196	1/1/2015	1/1/2016	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	TSF0001280407	1/1/2015	1/1/2016	E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	Y	WC420304B			E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
		N/A	Waiver of Subrogation			E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Contractors Equipment		85319196	1/1/2015	1/1/2016	Rented/Leased 100,000
A	Installation Floater		85319196			Per Loc/Transit/Temp Loc 150,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: City of Farmersville - Asphalt Overlay Project Phase II

See above listing of additional insured and waiver of subrogation endorsement forms.

## CERTIFICATE HOLDER

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Gary Thompson/SIDNEY

*Gary W. Thompson*



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/6/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> K&S Insurance Agency 2255 Ridge Road, Ste. 333 P. O. Box 277 Rockwall TX 75087		<b>CONTACT NAME:</b> Sidney Reid <b>PHONE (A/C No. Ext):</b> (972) 771-4071 <b>E-MAIL ADDRESS:</b> sreid@kandsins.com <b>FAX (A/C No.):</b> (972) 771-4695	
<b>INSURED</b> Vessels Construction P.O. Box 28 Sherman TX 75091		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> United Fire & Casualty Company <b>INSURER B:</b> Texas Mutual Insurance Co. <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
		<b>NAIC #</b> 13021 22945	

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			85319196 Addl Ins-Ongoing & Comp Prim & NonContributory Waiver of Subrogation CG7208 0913	1/1/2015	1/1/2016	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000				
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		MED EXP (Any one person) \$ 10,000				
	GEN'L AGGREGATE LIMIT APPLIES PER		PERSONAL & ADV INJURY \$ 1,000,000				
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
A	AUTOMOBILE LIABILITY			85319196 Addl Ins & WOS CA7109	1/1/2015	1/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO		BODILY INJURY (Per person) \$				
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS	BODILY INJURY (Per accident) \$				
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS	PROPERTY DAMAGE (Per accident) \$				
							Underinsured motorist \$ 1,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		85319196	1/1/2015	1/1/2016	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE	AGGREGATE \$ 5,000,000				
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		\$				
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			TSF0001280407 WC420304B Waiver of Subrogation	1/1/2015	1/1/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N		E.L. EACH ACCIDENT \$ 1,000,000				
If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> Y	N/A	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000				
			E.L. DISEASE - POLICY LIMIT \$ 1,000,000				
A	Contractors Equipment			85319196	1/1/2015	1/1/2016	Rented/Leased 100,000
A	Installation Floater			85319196			Per Loc/Transit/Temp Loc 150,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
City of Farmersville - Asphalt Overlay Project Phase II  
See above listing of additional insured and waiver of subrogation endorsement forms.

**CERTIFICATE HOLDER****CANCELLATION**

Stacey@dbiconsultants.com  Daniel & Brown Inc. PO Box 606 Farmersville, TX 75442	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  Gary Thompson/SIDNEY <i>Gary W. Thompson</i>



**TEXAS - EXTENDED ULTRA LIABILITY PLUS ENDORSEMENT****COMMERCIAL GENERAL LIABILITY EXTENSION ENDORSEMENT SUMMARY OF COVERAGES**

**This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary.**

- \* Coverage for non-owned watercraft is extended to 51 feet in length
- \* Voluntary Property Damage Coverage  
\$5,000 Occurrence with a \$10,000 Aggregate
- \* Care, Custody and Control Property Damage Coverage  
\$25,000 Occurrence with a \$100,000 Aggregate - \$500 Deductible
- \* Product Recall Expense  
\$25,000 Each Recall Limit with a \$50,000 Aggregate - \$1,000 Deductible
- \* Water Damage Legal Liability - \$25,000
- \* Increase in Supplementary Payments: Bail Bonds to \$1,000 and Loss of Earnings to \$500
- \* For newly formed or acquired organizations - extend the reporting requirement to 180 days
- \* Automatic Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You
- \* Automatic Additional Insured - Vendors
- \* Automatic Additional Insured - Lessor of Leased Equipment Automatic Status When Required in Lease Agreement With You
- \* Automatic Additional Insured - Managers or Lessor of Premises
- \* Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured
- \* Additional Insured - State or Governmental Agency or Subdivision or Political Subdivision - Permits or Authorizations
- \* Additional Insured - Consolidated Insurance Program (Wrap -Up) Off-Premises Operations Only; Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You
- \* Additional Insured - Employee Injury to Another Employee
- \* Primary and Non-Contributory Additional Insured - Limited Parties
- \* Contractors Blanket Additional Insured - Limited Products - Completed Operations Coverage
- \* Expanded Fire Legal Liability to include Explosion, Lightning and Sprinkler Leakage
- \* Automatically included - Aggregate Limits of Insurance (per location)
- \* Automatically included - Aggregate Limits of Insurance (per project)
- \* Knowledge of occurrence - Knowledge of an "occurrence", "claim or suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee.
- \* Unintentional failure to disclose all hazards. If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.
- \* Liberalization Condition
- \* Mobile equipment to include snow removal, road maintenance and street cleaning equipment less than 1,000 lbs GVW
- \* Blanket Waiver of Subrogation
- \* Property Damage - Borrowed Equipment
- \* Property Damage Liability - Elevators
- \* Bodily Injury Redefined
- \* Extended Property Damage
- \* Damage to Media Legal Liability - \$50,000
- \* Designated Operations Covered by a Consolidated (Wrap -Up) Insurance Program - Limited Coverage
- \* "Insured Contract" redefined for Limited Railroad Contractual Liability

**REFER TO THE ACTUAL ENDORSEMENT FOLLOWING ON PAGES 2 THROUGH 17 FOR CHANGES  
AFFECTING YOUR INSURANCE PROTECTION**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXTENDED ULTRA LIABILITY PLUS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SECTION I - COVERAGES**

**COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

The Following changes are made to 2. Exclusions:

**Extended Property Damage**

Exclusion 2.a.: Expected or Intended Injury is replaced with the following:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**Extended Watercraft Coverage**

Exclusion g.(2) is deleted and replaced by the following:

g.(2) A watercraft you do not own that is:

- (a) Less than 51 feet long;
- (b) Not being used to carry persons or property for a charge;

**Property Damage Liability - Borrowed Equipment**

The following is added to Exclusion j.:

Paragraph (4) of this exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and while not being used to perform operations. The most we will pay for "property damage" to any one borrowed equipment item under this coverage is \$25,000 per occurrence. The insurance afforded under this provision is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

**Property Damage Liability - Elevators**

The following is added to Exclusion j.:

Under Paragraph 2. Exclusions of Coverage A. "Bodily Injury" and "Property Damage" Liability Paragraphs 3, 4 & 6 of this exclusion do not apply to "property damage" resulting from the use of elevators. However, any insurance provided for such "property damage" is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

The last paragraph of Item 2. Exclusions is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of this owner. A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

**THE FOLLOWING COVERAGES ARE ADDED:**

**Voluntary Property Damage Coverage**

The insurance provided under Coverage A (Section I) is amended to include "property damage" to property of others caused by the insured:

- a. While in your possession; or
- b. Arising out of "your work".

Coverage applies at the request of the insured, whether or not the insured is legally obligated to pay.

For the purposes of this Voluntary Property Damage Coverage only:

1. Exclusion j. Damage to Property under Coverage A (Section I) is deleted and replaced by the following:

j. Damage to Property

"Property damage" to:

- (1) Property held by the insured for servicing, repair, storage or sale at premises you own, rent, lease, operate or use;
- (2) Property transported by or damage caused by any "automobile", "watercraft" or "aircraft" you own, hire or lease;
- (3) Property you own, rent, lease, borrow or use.

**Care, Custody and Control Property Damage Coverage**

For the purpose of this Care, Custody and Control Property Damage Coverage only:

1. Item (4) of Exclusion j. of Coverage A (Section I) does not apply.

**COVERAGE M. DAMAGE TO MEDIA LEGAL LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of damage to "electronic data" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "electronic data" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited to \$50,000.
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under this coverage or any other applicable coverage or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to damages to "electronic data" only if:

- (1) The damage to "electronic data" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The damage to "electronic data" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the damage to "electronic data" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the damage to "electronic data" occurred, then any continuation, change or resumption of such damage to "electronic data" during or after the policy period will deemed to have been known prior to the policy period.

c. Damage to "electronic data" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that damage to "electronic data" after the end of the policy period.

d. Damage to "electronic data" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1 of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all or any part, of the damage to "electronic data" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the damage to "electronic data"; or
- (3) Becomes aware by any other means that damage to "electronic data" has occurred or has begun to occur.

2. Exclusions

This insurance does not apply to:

a. **Expected Or Intended Injury**

Damage to "electronic data" expected or intended from the standpoint of the insured.

b. **Contractual Liability**

Damage to "electronic data" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract of agreement.

**c. Pollution**

Damage to "electronic data" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".

**d. Aircraft, Auto, Watercraft or Mobile Equipment**

Damage to "electronic data" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.

**e. War**

Damage to "electronic data" however caused, arising directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, evolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

**f. Damage To Property**

Damage to "electronic data" that is:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Property loaned to you;
- (3) Personal property in the care, custody or control of the insured;
- (4) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (5) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

**g. Damage To Your Product**

Damage to "electronic data" in "your product" or arising out of it or any part of it.

**h. Damage To Your Work**

Damage to "electronic data" in "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

**i. Damage To Impaired Property Or Property Not Physically Injured**

Damage to "electronic data" in "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

**j. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**k. Personal And Advertising Injury**

Damage to "electronic data" arising out of "personal and advertising injury".

**COVERAGE R. PRODUCT RECALL EXPENSE****1. Insuring Agreement**

- a. We will pay 90% of "product recall expense" you incur as a result of a "product recall" you initiate during the coverage period.
- b. We will only pay for "product recall expense" arising out of "your products" which have been physically relinquished to others.

The most we will pay is \$25,000 for Each Recall Limit subject to a \$50,000 Aggregate.

- a. The Aggregate Limit shown above is the most we will pay for the sum of all "product recall expense" you incur as a result of all "product recalls" you initiate during the endorsement period.
- b. The Each Product Recall Limit shown above is the most we will pay, subject to the Aggregate and \$1,000 deductible, for "product recall expense" you incur for any one "product recall" you initiate during the endorsement period.

**2. Exclusions**

This insurance does not apply to "product recall expense" arising out of:

- a. Any fact, circumstance or situation which existed at the inception date of the policy and which you were aware of, or could reasonably have foreseen that would have resulted in a "product recall".
- b. Deterioration, decomposition or transformation of a chemical nature, except if caused by an error in the manufacture, design, processing, storage, or transportation of "your product".
- c. The withdrawal of similar products or batches that are not defective, when a defect in another product or batch has been found.
- d. Act, errors or omissions of any of your employees, done with prior knowledge of any of your officers or directors.
- e. Inherent vice, meaning a natural condition of property that causes it to deteriorate or become damaged.
- f. "Bodily injury" or "property damage".
- g. Failure of "your product" to accomplish its intended purpose, including any breach of warranty of fitness, quality, efficacy or efficiency, whether written or implied.

- h. Loss of reputation, customer faith of approval, or any costs incurred to regain customer market, or any other consequential damages.
  - i. Legal fees or expenses.
  - j. Damages claimed for any loss, cost or expense incurred by you or others for the loss of use of "your product".
  - k. "Product recall expense" arising from the "product recall" of any of "your products" for which coverage is excluded by endorsement.
  - l. "Product recall expense" arising from the "product recall" of any of "your products" on or after the designated shelf life has expired.
- 3. Loss Payment**

With respect to Coverage R, the following conditions apply:

**a. Claims Handling**

(1) Within 15 days after we receive written notice of claim, we will:

- (a) Acknowledge receipt of the claim. If we do not acknowledge receipt of the claim in writing, we will keep a record of the date, method and content of the acknowledgment;
- (b) Begin any investigation of the claim; and
- (c) Request a signed, sworn proof of loss, specify the information you must provide and supply you with the necessary forms. We may request more information at a later date, if during the investigation of the claim such additional information is necessary.

(2) We will notify you in writing as to whether:

- (a) The claim or part of the claim will be paid;
- (b) The claim or part of the claim has been denied, and inform you of the reasons for denial;
- (c) More information is necessary; or
- (d) We need additional time to reach a decision. If we need additional time, we will inform you of the reasons for such need.

We will provide notification, as described in (2)(a) through (2)(d) above, within:

- (i) 15 business days after we receive the signed, sworn proof of loss and all information we requested; or
- (ii) 30 days after we receive the signed, sworn proof of loss and all information we requested, if we have reason to believe the loss resulted from arson.

If we have notified you that we need additional time to reach a decision, we must then either approve or deny the claim within 45 days of such notice.

**b. We will pay for covered loss or damage within 5 business days after:**

- (1) We have notified you that payment of the claim or part of the claim will be made and have reached agreement with you on the amount of loss; or
- (2) An appraisal award has been made.

However, if payment of the claim or part of the claim is conditioned on your compliance with any of the terms of this policy, we will make payment within 5 business days after the date you have complied with such terms.

**c. Catastrophic Claims**

If a claim results from a weather related catastrophe or a major natural disaster, the claim handling and claim payment deadlines described in a. and b. above are extended for an additional 15 days.

Catastrophe or Major Natural Disaster means a weather related event which is:

- (1) Declared a disaster under the Texas Disaster Act of 1975; or
- (2) Determined to be a catastrophe by the State Board of Insurance.

**d. The term "business day", as used in this endorsement, means a day other than Saturday, Sunday or a holiday recognized by the state of Texas.**

**e. We will issue loss payment to the first Named Insured shown in the Declarations and any mortgagee or loss payee as designated.**

**COVERAGE W - WATER DAMAGE LEGAL LIABILITY**

The Insurance provided under Coverage W (Section I) applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

The Limit under this coverage shall not be in addition to the Damage To Premises Rented To You Limit.

**COVERAGE X - DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM**

The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to "bodily injury" or "property damage" arising out either your ongoing operations or operations included within the "products-completed operations hazard" for any "consolidated (Wrap-up) insurance program" which has been provided by the prime contractor / project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not a consolidated (Wrap-up) insurance program:

- a. Provides coverage identical to that provided by this Coverage Part; or
- b. Has limits adequate to cover all claims

This exclusion does not apply if a "consolidated (Wrap-up) insurance program" covering your operations has been cancelled, non-renewed or otherwise no longer applies for reasons other than exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

For purposes of this exclusion a "consolidated insurance program" is a program providing insurance coverage to all parties for exposures involved with a particular (typically major) construction project.

**SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is amended to read **SUPPLEMENTARY PAYMENTS;** and

Items 1.b. and 1.d are amended as follows:

- b. Up to \$1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

**SECTION II - BROAD FORM NAMED INSURED**

1. Section II - Who Is An Insured is amended to include as an insured any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period.
2. For the purpose of the coverage provided by this provision only, the following is added to Condition 4.b. Excess Insurance, under Section IV - Commercial General Liability Conditions: This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to an insured solely by reason of ownership by you of more than 50 percent of the voting stock.
3. This provision does not apply to a policy written to apply specifically in excess of this policy.



**Item 4.a. is deleted and replaced by the following:**

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

**The following are added:**

**5. Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction or Service Agreement With You**

- a. Any person or organization for whom you are performing operations when you have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to your liability which may be imputed to that person or organization directly arising out of "your work" at the location designated and described in the written contract or written agreement performed for that person or organization for your ongoing operations and liability included in the "products-completed operations hazard". A person's or organization's status as an insured for your ongoing operations under this endorsement ends when your operations for that insured are completed.
- b. When coverage provided under this endorsement applies to "bodily injury" or "property damage" arising out of the "products-completed operations hazard":
  - (1). Such coverage will not apply subsequent to the first to occur of the following:
    - (i) The expiration of the period of time required by the written contract or written agreement;
    - (ii) Five years from the completion of "your work" on the project that is the subject of the written contract or written agreement.
    - (iii) The expiration of any applicable statute of limitations or statute of repose with respect to claims arising out of "your work"
  - (2). Such coverage will not exceed the limits of liability required by the written contract or written agreement even if the limits of liability stated in the policy exceed those limits. This endorsement shall not increase the limits stated in **Section III – LIMITS OF INSURANCE.**
- c. With respect to the insurance afforded these additional insureds, the following additional exclusion applies: This insurance does not apply to:
 

"Bodily injury", "property damage", or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

  - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
  - (2) Supervisory, inspection, architectural or engineering activities.

**6. Additional Insured - Vendors**

Any person or organization (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products", which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

a. The insurance afforded the vendor does not apply to:

- (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (2) Any express warranty unauthorized by you;
- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part of container, entering into, accompanying or containing such products.

**7. Additional Insured - Lessor of Leased Equipment - Automatic Status When Required in Lease Agreement With You**

- a. Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured, but only with respect to your liability arising out of the maintenance, operation or use of such leased equipment which may be imputed to that person or organization as the lessor of equipment. A person's or organization's status as an insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.
- b. With respect to the insurance afforded these additional insureds, the following additional exclusion apply:
  - (1) To any "occurrence" which takes place;
  - (2) To "bodily injury" or "property damage" arising out of the sole negligence of such person or organization.

**8. Additional Insured - Managers or Lessors of Premises**

Any person or organization, but only with respect to the liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to any:

- a. Any "occurrence" which takes place after you cease to be a tenant in that premises.
- b. Structural alterations, new construction or demolition operations performed by or on behalf of any person or organization.

**9. Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured**

Coverage is provided only when the insured is contractually required to add the engineer, architect or surveyor. Coverage is provided with respect to your liability for "bodily injury" or "property damage" or "personal and advertising injury" directly arising out of:

- a. Your acts or omissions; or
- b. Your acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for that additional insured(s).

**10. Additional Insured – State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations**

Any state or governmental agency or subdivision or political subdivision when you have agreed in writing in a contract or agreement that such entities be added as an additional insured on your policy subject to the following provisions:

- a. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.
- b. This insurance does not apply to:
  - (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
  - (2) "Bodily injury" or "property damage" included within the "projects-completed operations hazard".

**11. Additional Insured Consolidated Insurance Program (Wrap-Up) Off-Premises Operations Only: Owners, Lessees or Contractors**

- a. Any persons or organizations for whom you are performing operations, for which you have elected to seek coverage under a Consolidated Insurance Program, when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to your liability which may be imputed to that person or organization directly arising out of your ongoing operations performed for that person or organization at a premises other than any project or location that is designated as covered under a Consolidated Insurance Program. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies. This insurance does not apply to:
  - "Bodily injury", "property damage", or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
    - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
    - (2) Supervisory, inspection.

## 12. Additional Insured - Employee Injury to Another Employee

With respect to your "employees" who occupy positions which are supervisory in nature:

Paragraph 2.a.(1) of this section is amended to read:

**(1) "Bodily injury" or "personal and advertising injury"**

- a. To you, to your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);
- b. For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph (1)(a) above; or
- c. Arising out of his or her providing or failing to provide professional health care services. Paragraph 3.a. is deleted.

For the purpose of this Item 12 only, a position is deemed to be supervisory in nature if that person performs principal work which is substantially different from that of his or her subordinates and has authority to hire, direct, discipline or discharge.

## 13. Applicability of Additional Insured Coverage

A. Commercial General Liability Conditions (Section IV), Paragraph 4. (Other Insurance) is deleted and replaced by the following:

**4. Other Insurance**

If valid and collectible "other insurance" is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary and non-contributory for those parties listed below:

- (1) Owners, Lessors or Contractors when required in written construction agreement with you.
- (2) Manager or Lessors of Premises when required in written lease agreement with you.
- (3) Engineers, Architects or Surveyors not engaged by the named insured when required in written construction agreement with you.
- (4) State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations

For all other insureds this insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the "other insurance" is also primary. Then, we will share with all that "other insurance" by the method described in c. below.

**b. Excess Insurance**

This insurance is excess over any of the "other insurance", whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk, or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

- (3) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (4) If the loss arises out of the maintenance or use of aircraft, "autos", or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury and Property Damage Liability; or
- (5) That is available to the insured when the insured is an additional insured under any other policy, including any umbrella or excess policy.
- (6) That is provided to any person or organization who qualifies as an additional insured herein, except when you and that person or organization have agreed in writing that this insurance shall be primary.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any provider of "other insurance" has a duty to defend the insured against that "suit". If no provider of "other insurance" defends, we will undertake to do so, but we will be entitled to the insured's rights against all those providers of "other insurance".

When this insurance is excess over "other insurance", we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such "other insurance" would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under that "other insurance".

We will share the remaining loss, if any, with any "other insurance" that is not described in this Excess Insurance provision.

#### c. Method of Sharing

If all of the "other insurance" permits contribution by equal shares, we will follow this method also. Under this approach each provider of insurance contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the "other insurance" does not permit contribution by equal shares, we will contribute by limits. Under this method, the share of each provider of insurance is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all providers of insurance.

#### B. As a condition of coverage under this endorsement, each additional insured must:

- a. Give us prompt written notice of any "occurrence" which may result in a claim and prompt written notice of "suit".
- b. Immediately forward all legal papers to us, cooperate in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with policy conditions.
- c. Tender the defense and indemnity of any claim or "suit" to any other insurer which also insures against a loss we cover under this endorsement. This includes, but is not limited to, any insurer which has issued a policy of insurance in which the additional insured qualifies as an insured. For the purpose of this requirement, the term "insures against" refers to any self-insurance and to any insurer which issued a policy of insurance that may provide coverage for the loss, regardless of whether the additional insured has actually requested that the insurer provide the additional insured with a defense and/or indemnity under that policy of insurance.
- d. Agree to make available any other insurance that the additional insured has for a loss we cover under this endorsement.

- C. For the purposes of this insurance coverage provided by this Item 13 only, the following definition is added to DEFINITIONS (Section V):

"Other Insurance":

- a. Means insurance, or the funding of losses, that is provided by, through or on behalf of:
  - (1) Another insurance company;
  - (2) Us or any of our affiliated insurance companies, except when the Non-cumulation of Each Occurrence Limit section of Paragraph 5 LIMITS OF INSURANCE (Section III) or the Non-cumulation of Personal and Advertising Injury limits sections of Paragraph 4 of LIMITS OF INSURANCE (Section III) applies;
  - (3) Any risk retention group;
  - (4) Any self-insurance method or program, other than any funded by you and over which the Coverage Part applies; or
  - (5) Any similar risk transfer or risk management method.
- b. Does not include umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the Limits of Insurance shown on the Declarations of this Coverage Part.

### **SECTION III - LIMITS OF INSURANCE**

Items 2, 3, and 6 are deleted and replaced by the following:

2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard",
  - c. Damages under Coverage B; and
  - d. Damages under Coverage W.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, explosion, lightning, smoke resulting from each fire, explosion, or lightning or sprinkler leakage while rented to you or temporarily occupied by you with permission of the owner.

The following are added:

8. Subject to 5. above, \$25,000 is the most we will pay for Under Coverage W for Water Damage Legal Liability.

#### **9. Aggregate Limits of Insurance (Per Location)**

The General Aggregate Limit applies separately to each of your "locations" owned by or rented to you or temporarily occupied by you with the permission of the owner.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

#### **10. Aggregate Limits of Insurance (Per Project)**

The General Aggregate Limit applies separately to each of your projects away from premises owned by or rented to you.

11. Subject to 5. above, a \$5,000 "occurrence" limit and a \$10,000 "aggregate" limit is the most we will pay under Coverage A for damages because of "property damage" covered under Voluntary Property Damage Coverage.
12. Subject to 5. above, a \$25,000 "occurrence" limit and a \$100,000 "aggregate" limit is the most we will pay under Care, Custody and Control Coverage regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".

Deductible - Our obligation to pay damages on your behalf applies only to the amount of damages in excess of \$500.

This deductible applies to all damages because of "property damage" as the result of any one "occurrence" regardless of the number of persons or organizations who sustain damages because of that "occurrence".

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

As respects this coverage "Aggregate" is the maximum amount we will pay for all covered "occurrences" during one policy period.

#### **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**

**Condition 2., Items a. and b. are deleted and replaced by the following:**

##### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. Knowledge of an "occurrence" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" took place;
  - (2) The names and addresses of any injured persons and witnesses, and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable. Knowledge of a claim or "suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee.

**Condition 2.c.(5) is added:**

- (5) Upon our request, replace or repair the property covered under Voluntary Property Damage Coverage at your actual cost, excluding profit or overhead.

**Conditions 10., 11. and 12. are added:**

**10. Blanket Waiver Of Subrogation**

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of: premises owned or occupied by or rented or loaned to you, ongoing operations performed by you or on your behalf, done under a contract with that person or organization, "your work", or "your products". We waive this right where you have agreed to do so as part of a written contract, executed by you before the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

11. If a revision to this Coverage Part, which would provide more coverage with no additional premium becomes effective during the policy period in the state designated for the first Named Insured shown in the Declarations, your policy will automatically provide this additional coverage on the effective date of the revision.
12. Based on our reliance on your representations as to existing hazards, if you unintentionally should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**The following conditions are added in regard to Coverage R - Product Recall Expense**

In event of a "product recall", you must

1. See to it that we are notified as soon as practicable of a "product recall". To the extent possible, notice should include how, when and where the "product recall" took place and estimated "product recall expense".
2. Take all reasonable steps to minimize "product recall expense". This will not increase the limits of insurance.
3. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. Your answers must be signed.
4. Permit us to inspect and obtain other information proving the loss. You must send us a signed, sworn statement of loss containing the information we request to investigate the claim. You must do this within 60 days after our request.
5. Cooperate with us in the investigation or settlement of any claim.
6. Assist us upon our request, in the enforcement of any rights against any person or organization which may be liable to you because of loss to which this insurance applies.

**The following conditions are applicable only to coverage afforded by reason of the redefining of an "insured contract":**

1. Railroad Protective Liability coverage provided by ISO form CG 0035 with minimum limits of \$2,000,000 per occurrence and a \$6,000,000 general aggregate limit must be in place for the entire duration of any project.
2. Any amendment to the Other Insurance condition of form CG 0035 alters the primacy of the coverage or which impairs our right to contribution will void any coverage afforded by the redefined "insured contract" language.
3. For the purposes of the Other Insurance condition of form CG 0035 you, the named insured, will be deemed to be the designated contractor.

**SECTION V - DEFINITIONS**

**The following is added to Item 12 Mobile Equipment**

- e. Vehicles with equipment for snow removal, road maintenance and street cleaning less than 1,000 lbs GVW.



The following definitions are added for this endorsement only:

**3. Bodily Injury Redefined**

Under V-Definitions, definition 3. is deleted and replaced with the following:

3. "bodily injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

**9. "Insured Contract" Redefined**

Under V-Definitions, 9.c. is deleted and replaced with the following:

c. Any easement of license agreement;

AND

f(1). is deleted

23. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tape drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
24. "Product recall" means a withdrawal or removal from the market of "your product" based on the determination by you or any regulatory or governmental agency that:
- (1) The use or consumption of "your product" has caused or will cause actual or alleged "bodily injury" or "property damage"; and
  - (2) Such determination requires you to recover possession or control of "your product" from any distributor, purchaser or user, to repair or replace "your product", but only if "your product" is unfit for use or consumption, or is hazardous as a result of:
    - (a) An error or omission by an insured in the design, manufacturing, processing, labeling, storage, or transportation of "your product"; or
    - (b) Actual or alleged intentional, malicious or wrongful alteration or contamination of "your product" by someone other than you.
25. "Product recall expense" means reasonable and necessary expenses for:
- (1) Telephone, radio and television communication and printed advertisements, including stationery, envelopes and postage.
  - (2) Transporting recalled products from any purchaser, distributor or user, to locations designated by you.
  - (3) Remuneration paid to your employees for overtime, as well as remuneration paid to additional employees or independent contractors you hire.
  - (4) Transportation and accommodation expense incurred by your employees.
  - (5) Rental expense incurred for temporary locations used to store recalled products.
  - (6) Expense incurred to properly dispose of recalled products, including packaging that cannot be reused.
  - (7) Transportation expenses incurred to replace recalled products.
  - (8) Repairing, redistributing or replacing covered recalled products with like products or substitutes, not to exceed your original cost of manufacturing, processing, acquisition and/or distribution.

These expenses must be incurred as a result of a "product recall".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BUSINESS AUTO ULTRA ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

#### COVERAGE INDEX

Description	Page
TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE	1
BROAD FORM INSURED	1
EMPLOYEES AS INSURED	2
ADDITIONAL INSURED STATUS BY CONTRACT, AGREEMENT OR PERMIT	2
AMENDED FELLOW EMPLOYEE EXCLUSION	2
TOWING AND LABOR	2
PHYSICAL DAMAGE ADDITIONAL TRANSPORTATION EXPENSE COVERAGE	3
EXTRA EXPENSE - THEFT	3
RENTAL REIMBURSEMENT AND ADDITIONAL TRANSPORTATION EXPENSE	3
PERSONAL EFFECTS COVERAGE	4
AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE	4
AIRBAG ACCIDENTAL DISCHARGE	4
AUTO LOAN/LEASE TOTAL LOSS PROTECTION ENDORSEMENT	4
GLASS REPAIR - DEDUCTIBLE AMENDMENT	5
AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS	5
WAIVER OF SUBROGATION REQUIRED BY CONTRACT	5
UNINTENTIONAL FAILURE TO DISCLOSE	5
HIRED, LEASED, RENTED OR BORROWED AUTO PHYSICAL DAMAGE	5
EXTENDED CANCELLATION CONDITION	6

The COVERAGE INDEX set forth above is informational only and grants no coverage.

Terms set forth in *(Bold Italics)* are likewise for information only and by themselves shall be deemed to grant no coverage.

#### A. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE

**SECTION I – COVERED AUTOS**, paragraph C. Certain Trailers, Mobile Equipment and Temporary Substitute Autos is amended by adding the following at the end of the existing language:

If Physical Damage Coverage is provided under this Coverage form for an "auto" you own, the Physical Damage coverages provided for that owned "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of its breakdown, repair, servicing, "loss", or destruction.

#### B. BROADENED LIABILITY COVERAGES

**SECTION II – LIABILITY COVERAGE** in Paragraph A. Coverage at 1. Who Is An Insured is amended to include the following:

##### *(Broad Form Insured)*

- d. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "Insured" under any other automobile policy or would be an "Insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.

- e. Any organization that is acquired or formed by you, during the term of this policy and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:

- (1) That is a joint venture or partnership,
- (2) That is an "insured" under any other policy,
- (3) That has exhausted its Limit of Insurance under any other policy, or
- (4) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an accident that occurred before you formed or acquired the organization.

**(Employee as Insureds)**

- f. Any employee of yours while acting in the course of your business or your personal affairs while using a covered "auto" you do not own, hire or borrow.

**(Additional Insured Status by Contract, Agreement or Permit)**

- g. Any person or organization whom you are required to add as an additional insured on this policy under a written contract or agreement; but the written contract or agreement must be:

- (1) Currently in effect or becoming effective during the term of this policy; and
- (2) Executed prior to the "bodily injury" or "property damage".

The additional insured status will apply only with respect to your liability for "bodily injury" or "property damage" which may be imputed to that person(s) or organization(s) directly arising out of the ownership, maintenance or use of the covered "autos" at the location(s) designated, if any.

Coverage provided by this endorsement will not exceed the limits of liability required by the written contract or written agreement even if the limits of liability stated in the policy exceed those limits. This endorsement shall not increase the limits stated in Section II, C. Limits of Insurance.

For any covered "auto" you own this Coverage Form provides primary coverage.

**G. AMENDED FELLOW EMPLOYEE EXCLUSION**

Only with respect to your "employees" who occupy positions which are supervisory in nature, SECTION II, LIABILITY B. Exclusion 5. Fellow Employee is replaced by:

**5. Fellow Employee**

"Bodily Injury":

- (a) To you, or your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);
- (b) To your "executive officers" and directors (if you are an organization other than a partnership, joint venture, or limited liability company) but only with respect to performance of their duties as your officers or directors;
- (c) For which there is an obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph a and b above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

For purposes of this endorsement, a position is deemed to be supervisory in nature if that person performs principle work which is substantially different from that of his or her subordinates and has authority to hire, transfer, direct, discipline or discharge.

**D. BROADENED PHYSICAL DAMAGE COVERAGES**

**SECTION III - PHYSICAL DAMAGE COVERAGE**  
Coverage is amended as follows:

**(TOWING AND LABOR)**

**2. Towing and Labor**

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

- (a) For private passenger type vehicles or "light trucks" we will pay up to \$75 per disablement. "Light trucks" have a gross vehicle weight (GVW) of 10,000 pounds or less.



- (b) For "medium trucks" we will pay up to \$150 per disablement. "Medium trucks" have a gross vehicle weight (GVW) of 10,001 lbs. to 20,000 pounds.

However, the labor must be performed at the place of disablement.

**(PHYSICAL DAMAGE ADDITIONAL  
TRANSPORTATION EXPENSE COVERAGE)**

**4. Coverage Extensions**

- a. Transportation Expense is amended to provide the following limits:

We will pay up to \$50 per day to a maximum of \$1,000. All other terms and provisions of this section remain applicable.

**(EXTRA EXPENSE - THEFT)**

The following language is added to 4. Coverage Extensions:

**c. Theft Recovery Expense**

If you have purchased Comprehensive Coverage on an "auto" that is stolen, we will pay the expense of returning that stolen auto to you. The limit for this coverage extension is \$5,000.

**(RENTAL REIMBURSEMENT AND ADDITIONAL  
TRANSPORTATION EXPENSE)**

**d. Rental Reimbursement**

We will provide Rental Reimbursement and Additional Expense coverage only for those Physical Damage coverages for which a premium is shown in the Declarations or schedule pages. Coverage applies only to a covered "auto" of the private passenger or light truck (10,000 lbs. or less gross vehicle weight) type for which Physical Damage coverages apply.

- (1) We will pay for auto-rental expense and the expense incurred by you because of "loss" to remove and transfer your materials and equipment from a covered "auto" to a covered "auto." Payment applies in addition to the otherwise applicable coverage you have on a covered "auto." No deductible applies to this coverage.

- (2) We will pay only for expenses incurred during the policy period and beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

- (a) The number of days reasonably required to repair or replace the covered "auto." If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you, or

- (b) 30 days.

- (3) Our payment is limited to the lesser of the following amounts:

- (a) Necessary and actual expenses incurred; or

- (b) \$35 per day.

- (c) This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

- (d) If "loss" results from the total theft of a covered "auto" of the private passenger or light truck type, we will pay under this coverage only that amount of your rental reimbursement expense which is not already provided for under the SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions, a. Transportation Expenses.

**(PERSONAL EFFECTS COVERAGE)**

**e. Personal Effects**

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$500 for Personal Effects stolen with the "auto". The insurance provided under this provision is excess over any other collectible insurance. For this coverage extension, Personal Effects means tangible property that is worn or carried by an "insured". Personal Effects does not include tools, jewelry, guns, musical instruments, money, or securities.

**(AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE)****(Deletion of Audio Visual Equipment Exclusion)****f. Audio, Visual and Data Electronic Equipment Coverage.**

We will pay for "loss" to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in a covered "auto" at the time of the "loss" or the equipment is removable from a housing unit which is permanently installed in a covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto."

- (1) We will pay with respect to a covered "auto" for "loss" to any accessories used with the electronic equipment described above. However, this does not include tapes, records or discs.
- (2) In addition to the exclusions that apply to Physical Damage Coverage with exception of the exclusion relating to audio, visual and data electronic equipment, the following exclusions also apply:
- (3) We will not pay for any electronic equipment or accessories used with such electronic equipment that are:
  - (a) Necessary for the normal operation of the covered "auto" for the monitoring of the covered "auto's" operating system; or
  - (b) Both:
 

An integral part of the same unit housing any sound reproducing equipment designed solely for the reproducing of sound if the sound reproducing equipment is permanently installed in the covered "auto"; and

Permanently installed in the opening of the dash or console normally used by the manufacturer for the installation of a radio.

- (4) With respect to this coverage, the most we will pay for all "loss" of audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:

- (a) The actual cash value of the damaged or stolen property as of the time of the "loss";
- (b) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or \$1,000;

minus a deductible of \$100.

An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of loss. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

If there is other coverage provided for audio, visual and data electronic equipment, the coverage provided herein is excess over any other collectible insurance.

**(AIRBAG ACCIDENTAL DISCHARGE)****D. SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions is amended as follows:**

The following language is added to Exclusion 3,:

If you have purchased Comprehensive or Collision Coverage under this policy, this exclusion does not apply to mechanical breakdown relating to the accidental discharge of an air bag. This coverage applies only to a covered auto you own and is excess of any other collectible insurance or warranty. No deductible applies to this coverage.

**E. AUTO LOAN/LEASE TOTAL LOSS PROTECTION**

**SECTION III - PHYSICAL DAMAGE COVERAGE - C. Limit of Insurance** is amended by adding the following language:

4. In the event of a total "loss" to a covered "auto" shown in the Schedule pages, subject at the time of the "loss" to a loan or lease, we will pay any unpaid amount due on the lease or loan for a covered "auto" less:



- a. The amount paid under the Physical Damage Coverage Section of the policy; and
- b. Any:
  - (1) Overdue lease / loan payments at the time of the "loss";
  - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (3) Security deposits not returned by the lessor;
  - (4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - (5) Carry-over balances from previous loans or leases.

#### **(GLASS REPAIR – DEDUCTIBLE AMENDMENT)**

Under D., Deductible is amended by adding the following:

Any deductible shown in the Declarations as applicable to the covered "auto" will not apply to glass breakage if the damaged glass is repaired, rather than replaced.

#### **F. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

Under SECTION IV – BUSINESS AUTO CONDITIONS, Subsection A., Loss Conditions, the following is added to paragraph 2. Duties In The Event of Accident, Suit or Loss:

- d. Knowledge of any "accident," "claim," "suit" or "loss" will be deemed knowledge by you when notice of such "accident," "claim," "suit" or "loss" has been received by:
  - (1) You, if you are an individual;
  - (2) Any partner or insurance manager if you are a partnership;
  - (3) An executive officer or insurance manager, if you are a corporation;

(4) Your members, managers or insurance manager, if you are a limited liability company; or

(5) Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization.

#### **G. WAIVER OF SUBROGATION REQUIRED BY CONTRACT**

Under SECTION IV, BUSINESS AUTO CONDITIONS, A. Loss Conditions 5. Transfer of Rights of Recovery Against Others to Us the following language is added:

However, we waive any rights of recovery we may have against the person or organization with whom you have agreed in writing in a contract, agreement or permit, to provide insurance such as is afforded under the policy to which this endorsement is attached. This provision does not apply unless the written contract or written agreement has been executed, or permit has been issued, prior to the "bodily injury" or "property damage."

#### **H. UNINTENTIONAL FAILURE TO DISCLOSE**

Under SECTION IV – BUSINESS AUTO CONDITIONS, Subsection B. General Conditions, the following is added to 2. Concealment, Misrepresentation Or Fraud:

Your unintentional error in disclosing, or failing to disclose, any material fact existing at the effective date of this Coverage Form, or during the policy period in connection with any additional hazards, will not prejudice your rights under this Coverage Form.

#### **I. HIRED, LEASED, RENTED OR BORROWED AUTO PHYSICAL DAMAGE**

Under SECTION IV – BUSINESS AUTO CONDITIONS B. General Conditions 5. Other Insurance

Paragraph 5.b. is replaced by the following:

- b. (1) For "Comprehensive" and "Collision" Auto Physical Damage provided by this endorsement, the following are deemed to be covered "autos" you own:

(a) Any Covered "auto" you lease, hire, rent or borrow; and

- (b) Any Covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto"

**(2) Limit of Insurance For This Section**

The most we will pay for any one "loss" is the lesser of the following:

- (a) \$50,000 per accident, or
- (b) actual cash value at the time of loss, or
- (c) cost of repair.

minus a \$500 deductible. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss. No deductible applies to "loss" caused by fire or lightning.

- (3) This Hired Auto Physical Damage coverage is excess over any other collectible insurance.

**(4) Definitions For This Section**

- (a) Comprehensive Coverage: from any cause except the covered "auto's" collision with another object or the covered "auto's" overturn. We will pay glass breakage, "loss" caused by hitting a bird or animal and, "loss" caused by falling objects or missiles.
- (b) Collision Coverage: caused by the covered "auto's" collision with another object or by the covered "auto's" overturn.

**J. EXTENDED CANCELLATION CONDITION**

- A. Under CANCELLATION, of the COMMON POLICY CONDITIONS form, Item 2.b. is replaced by the following:

- b. 60 days before the effective date of cancellation if we cancel for any other reason



**WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY  
TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

**Schedule**

**1. ( ) Specific Waiver**

Name of person or organization:

**(X) Blanket Waiver**

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

**2. Operations: SEWER CONSTRUCTION**

**3. Premium**

The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

**4. Advanced Premium**

Endorsement Effective: 1/1/2014

Policy No. SRZE25342

End. No. 06

Insured: VESSELS CONSTRUCTION

Insurance Company: Service Lloyds Ins. Co.

Countersigned by

Dandra L. Kelle

WC 42 03 04 A



# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

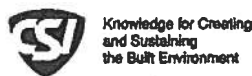
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These General Conditions have been prepared for use with the Suggested Form of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS AND TERMINOLOGY .....	6
1.01 <i>Defined Terms</i> .....	6
1.02 <i>Terminology</i> .....	8
ARTICLE 2 - PRELIMINARY MATTERS .....	9
2.01 <i>Delivery of Bonds and Evidence of Insurance</i> .....	9
2.02 <i>Copies of Documents</i> .....	9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i> .....	9
2.04 <i>Starting the Work</i> .....	9
2.05 <i>Before Starting Construction</i> .....	9
2.06 <i>Preconstruction Conference</i> .....	9
2.07 <i>Initial Acceptance of Schedules</i> .....	9
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE .....	10
3.01 <i>Intent</i> .....	10
3.02 <i>Reference Standards</i> .....	10
3.03 <i>Reporting and Resolving Discrepancies</i> .....	10
3.04 <i>Amending and Supplementing Contract Documents</i> .....	11
3.05 <i>Reuse of Documents</i> .....	11
3.06 <i>Electronic Data</i> .....	11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS.....	11
4.01 <i>Availability of Lands</i> .....	11
4.02 <i>Subsurface and Physical Conditions</i> .....	12
4.03 <i>Differing Subsurface or Physical Conditions</i> .....	12
4.04 <i>Underground Facilities</i> .....	13
4.05 <i>Reference Points</i> .....	13
4.06 <i>Hazardous Environmental Condition at Site</i> .....	13
ARTICLE 5 - BONDS AND INSURANCE .....	14
5.01 <i>Performance, Payment, and Other Bonds</i> .....	14
5.02 <i>Licensed Sureties and Insurers</i> .....	15
5.03 <i>Certificates of Insurance</i> .....	15
5.04 <i>Contractor's Liability Insurance</i> .....	15
5.05 <i>Owner's Liability Insurance</i> .....	16
5.06 <i>Property Insurance</i> .....	16
5.07 <i>Waiver of Rights</i> .....	17
5.08 <i>Receipt and Application of Insurance Proceeds</i> .....	17
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i> .....	17
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i> .....	18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES.....	18
6.01 <i>Supervision and Superintendence</i> .....	18
6.02 <i>Labor; Working Hours</i> .....	18
6.03 <i>Services, Materials, and Equipment</i> .....	18
6.04 <i>Progress Schedule</i> .....	18
6.05 <i>Substitutes and "Or-Equals"</i> .....	19
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i> .....	20
6.07 <i>Patent Fees and Royalties</i> .....	21
6.08 <i>Permits</i> .....	21
6.09 <i>Laws and Regulations</i> .....	21
6.10 <i>Taxes</i> .....	22
6.11 <i>Use of Site and Other Areas</i> .....	22
6.12 <i>Record Documents</i> .....	22
6.13 <i>Safety and Protection</i> .....	22
6.14 <i>Safety Representative</i> .....	23

6.15	<i>Hazard Communication Programs</i> .....	23
6.16	<i>Emergencies</i> .....	23
6.17	<i>Shop Drawings and Samples</i> .....	23
6.18	<i>Continuing the Work</i> .....	24
6.19	<i>Contractor's General Warranty and Guarantee</i> .....	24
6.20	<i>Indemnification</i> .....	24
6.21	<i>Delegation of Professional Design Services</i> .....	25
ARTICLE 7 - OTHER WORK AT THE SITE .....		25
7.01	<i>Related Work at Site</i> .....	25
7.02	<i>Coordination</i> .....	26
7.03	<i>Legal Relationships</i> .....	26
ARTICLE 8 - OWNER'S RESPONSIBILITIES .....		26
8.01	<i>Communications to Contractor</i> .....	26
8.02	<i>Replacement of Engineer</i> .....	26
8.03	<i>Furnish Data</i> .....	26
8.04	<i>Pay When Due</i> .....	26
8.05	<i>Lands and Easements; Reports and Tests</i> .....	26
8.06	<i>Insurance</i> .....	26
8.07	<i>Change Orders</i> .....	26
8.08	<i>Inspections, Tests, and Approvals</i> .....	26
8.09	<i>Limitations on Owner's Responsibilities</i> .....	27
8.10	<i>Undisclosed Hazardous Environmental Condition</i> .....	27
8.11	<i>Evidence of Financial Arrangements</i> .....	27
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION .....		27
9.01	<i>Owner's Representative</i> .....	27
9.02	<i>Visits to Site</i> .....	27
9.03	<i>Project Representative</i> .....	27
9.04	<i>Authorized Variations in Work</i> .....	27
9.05	<i>Rejecting Defective Work</i> .....	27
9.06	<i>Shop Drawings, Change Orders and Payments</i> .....	28
9.07	<i>Determinations for Unit Price Work</i> .....	28
9.08	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i> .....	28
9.09	<i>Limitations on Engineer's Authority and Responsibilities</i> .....	28
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS .....		28
10.01	<i>Authorized Changes in the Work</i> .....	28
10.02	<i>Unauthorized Changes in the Work</i> .....	29
10.03	<i>Execution of Change Orders</i> .....	29
10.04	<i>Notification to Surety</i> .....	29
10.05	<i>Claims</i> .....	29
ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK .....		30
11.01	<i>Cost of the Work</i> .....	30
11.02	<i>Allowances</i> .....	31
11.03	<i>Unit Price Work</i> .....	31
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES .....		32
12.01	<i>Change of Contract Price</i> .....	32
12.02	<i>Change of Contract Times</i> .....	33
12.03	<i>Delays</i> .....	33
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK .....		33
13.01	<i>Notice of Defects</i> .....	33
13.02	<i>Access to Work</i> .....	33
13.03	<i>Tests and Inspections</i> .....	33
13.04	<i>Uncovering Work</i> .....	34
13.05	<i>Owner May Stop the Work</i> .....	34
13.06	<i>Correction or Removal of Defective Work</i> .....	34
13.07	<i>Correction Period</i> .....	34
13.08	<i>Acceptance of Defective Work</i> .....	35
13.09	<i>Owner May Correct Defective Work</i> .....	35
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION .....		36
14.01	<i>Schedule of Values</i> .....	36
14.02	<i>Progress Payments</i> .....	36

14.03	<i>Contractor's Warranty of Title</i> .....	37
14.04	<i>Substantial Completion</i> .....	37
14.05	<i>Partial Utilization</i> .....	38
14.06	<i>Final Inspection</i> .....	38
14.07	<i>Final Payment</i> .....	38
14.08	<i>Final Completion Delayed</i> .....	39
14.09	<i>Waiver of Claims</i> .....	39
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION .....		39
15.01	<i>Owner May Suspend Work</i> .....	39
15.02	<i>Owner May Terminate for Cause</i> .....	39
15.03	<i>Owner May Terminate For Convenience</i> .....	40
15.04	<i>Contractor May Stop Work or Terminate</i> .....	40
ARTICLE 16 - DISPUTE RESOLUTION.....		41
16.01	<i>Methods and Procedures</i> .....	41
ARTICLE 17 - MISCELLANEOUS .....		41
17.01	<i>Giving Notice</i> .....	41
17.02	<i>Computation of Times</i> .....	41
17.03	<i>Cumulative Remedies</i> .....	41
17.04	<i>Survival of Obligations</i> .....	41
17.05	<i>Controlling Law</i> .....	41
17.06	<i>Headings</i> .....	41

## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

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#### 1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract

Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but

which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and

workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be

performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

### B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

### C. Day

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

### D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents, or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or

c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been



assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

*E. Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 - PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### 2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### 2.03 *Commencement of Contract Times; Notice to*

### *Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### 2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

### 2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

### 2.06 *Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

### 2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with

Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

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#### 3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### 3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids),

except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

#### 3.03 *Reporting and Resolving Discrepancies*

##### A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

##### B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

### 3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

### 4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

#### C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for

Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

*A. Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

#### *B. Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any

Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

*A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.*

#### 4.06 *Hazardous Environmental Condition at Site*

*A. Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

*B. Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified

in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 - BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

### 5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

- b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and

any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### 5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

#### 5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and



subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities

identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

#### 5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary

shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### *5.09 Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### *5.10 Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

### **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

#### *6.01 Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with

the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

#### *6.02 Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

#### *6.03 Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used,

cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 6.04 Progress Schedule

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. "Or-Equal" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

#### 2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

**B. Substitute Construction Methods or Procedures:** If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

**C. Engineer's Evaluation:** Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

**D. Special Guarantee:** Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

**E. Engineer's Cost Reimbursement:** Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

**F. Contractor's Expense:** Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 Concerning Subcontractors, Suppliers, and Others

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed

by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or

Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 6.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 6.11 Use of Site and Other Areas

##### A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable,

brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

#### 6.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities

not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 6.15 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent

threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

##### 1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

##### C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria,

installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

#### *D. Engineer's Review*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

#### *E. Resubmittal Procedures*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

#### *6.18 Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

#### *6.19 Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;



2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

#### 6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners,

employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 Delegation of Professional Design Services

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## ARTICLE 7 - OTHER WORK AT THE SITE

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### 7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### 7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### 7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

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### 8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### 8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

### 8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### 8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

## 8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

## 8.06 *Insurance*

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

## 8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

## 8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

## 8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

## 8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

## 8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

# ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

## 9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

## 9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

## 9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of

such other individual or entity will be as provided in the Supplementary Conditions.

#### 9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

#### 9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

#### 9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be

final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

#### 9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

#### 9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be respon-

sible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

## ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

### 10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

### 10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

### 10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

### 10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### 10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such

Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

### 11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim.

Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

**B. Costs Excluded:** The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

**C. Contractor's Fee:** When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

**D. Documentation:** Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

**B. Cash Allowances**

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

**C. Contingency Allowance**

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

**11.03 Unit Price Work**

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

**ARTICLE 12 - CHANGE OF CONTRACT PRICE;  
CHANGE OF CONTRACT TIMES**

**12.01 Change of Contract Price**

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:



1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

## 12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

## 12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract

Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

## ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

### 13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to

Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### 13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

### 13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor

without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

### 13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### 13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of

Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

### 13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals

and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

### 13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

### 13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply

with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payments*

#### A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### B. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the

results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may

be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

#### *C. Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

#### *D. Reduction in Payment*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

#### 14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to

Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with

Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 *Final Payment*

##### A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### B. *Engineer's Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment

and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

##### C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and, will be paid by Owner to Contractor.

#### 14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### 14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's

continuing obligations under the Contract Documents;  
and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

## ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

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### 15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

### 15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

### 15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;



2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

### ARTICLE 16 - DISPUTE RESOLUTION

#### 16.01 Methods and Procedures

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision

becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

### ARTICLE 17 - MISCELLANEOUS

#### 17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

#### 17.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### 17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in

accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### 17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

### 17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

## SECTION 108 SUPPLEMENTAL GENERAL CONDITIONS

### **Changes in the Work:**

Article 10 of the General Conditions shall be amended by the addition of the following:  
The **Owner** may add or delete items of the work specified by these Contract Documents. Changes in the contract amount caused by such additions or deletions shall be computed based upon the unit prices or lump sum prices specified by the Bid Schedule for such items of work. If the **Owner** adds or deletes items of work specified by these Contract Documents, the Contractor shall not assert a claim for extra compensation based upon any item of cost, such as overhead, bonds, insurance, and other direct and indirect costs, if such items are not listed in the Bid Schedule.

### **Subsurface Conditions:**

Article 4.2 of the General Conditions shall be amended by the addition of the following paragraph:  
The foregoing notwithstanding, trench excavation and structural excavation shall include removal of all types of materials encountered, without exception. All excavations shall be made to the lines and grades indicated on the drawings and/or specified herein. The Contractor shall not assert a claim for extra compensation based upon the character of material excavated.

### **Insurance:**

Applicable sections of the Standard General Conditions shall be amended by the following:  
Contractor shall provide insurance coverage and limits for this project as indicated below.  
(Note: **Owner** and **Engineer** shall be named as certificate holders):

- |    |                                 |  |
|----|---------------------------------|--|
| A. | Workmen's Compensation          | State Statutory Requirements                           |
| B. | Comprehensive General Liability | \$1,000,000 each occurrence bodily injury              |
|    |                                 | \$1,000,000 each occurrence on property damage         |
| C. | Automobile                      | \$500,000 Combined Single Limit                        |
| D. | Builders Risk / All Risk        | Contract Price Totaled in the Bid                      |
| E. | Other                           | Other coverage as required or for specific provisions. |

### **Engineer's Authority:**

Article 9 of the General Conditions shall be amended to add the following clarification:  
Contractor shall not assert a claim of delay or additional compensation based upon Engineer's response or lack of response to Contractor's requests for clarifications or interpretations about requirements of the Contract Documents that are clearly stated or that can reasonably be inferred.

### **General:**

The provisions of this Section of the Supplemental General Conditions shall govern in the event of any conflicts between them and the "Standard General Conditions" or the specifications.

### **Abbreviations:**

Whenever any of the following abbreviations appear in these Specifications, their meanings shall be as follows:

*AWWA	American Water Works Association
*ASTM	American Society for Testing Materials
AASHTO	American Assn. of State Highway Officials, The Standard Specifications for Road and Bridge Construction adopted by the Texas State Department of Highways, January, 1972, with subsequent revisions
C.S.	Commercial Standards
NSF	National Sanitation Foundation
C.I.	Cast Iron
PVC	Polyvinyl Chloride
C.E.	Ductile Iron
*Latest revision	

**As-Built Information:**

The Contractor will be responsible for recording and providing to the Owner and Engineer all information concerning changes from the original Plans as to water line location for transfer to the "As-Built" Plans.

**Barricades, Warning and Detour Signs:**

Street and highway closures and traffic control shall be accomplished according to the instructions of the City Street Department and the Texas Department of Highways and Public Transportation, as applicable. When any street or high way is closed or traffic flow is restricted, the Contractor shall furnish and maintain adequate barricades, warning and directing signs, lights, and red flags at each end of the street and at all intersections along the street within the limits of the work. All lights shall be kept burning between sunset and sunrise.

**Clean Up:**

The Contractor shall at all times keep the site and structures or facilities thereon, free from accumulation of waste material, debris, or rubbish caused by his employees or work. At the completion of the work, he shall remove from the site all his tools, surplus materials, debris, and shall leave the site and his work "broom clean," or its equivalent, unless otherwise noted on the drawings or specified herein. Final acceptance of the complete project work shall be given by the Owner.

**Contractor's Use of Premises:**

The Contractor shall restrict his operations and employees to the designated rights-of-way, routes, and areas of construction.

**Coordination of Work:**

The Contractor shall closely coordinate all construction work with the Owner and/or the Engineer. Field changes from the Plans and Specifications will only be allowed upon approval of the Owner and/or the Engineer.

**Copies of Plans and Specifications:**

Three (3) copies of the plans and specifications will be furnished the Contractor. Additional copies can be furnished at the cost of reproduction.

**Correction of Work:**

If the work completed under this contract is found to be subject to faulty materials, improper workmanship, or injury due to proper and usual wear during the period of the Contractor's guarantee, then the Contractor shall replace, correct, or re-execute such work within five (5) days of receipt by him of notice from the Owner that unacceptable materials, workmanship, or injury has been discovered. If the Contractor fails to repair such defects in the work, the Owner may make the necessary repairs and charge the Contractor the cost thereby incurred.

**Cutting, Patching, and Fitting:**

The Contractor shall perform all cutting, patching, or fitting of his work that may be required to make its several parts come together properly and fit it to existing facilities or the work of others as shown or reasonably implied by the drawings and/or specifications for the completed project.

**Damage to Public or Private Property:**

Any damage to sidewalks, street pavements, curb and gutter, driveways, drainage structures, street signs, or other public or private property caused by the Contractor's operations shall be repaired at the Contractor's expense, unless otherwise provided.

**Deductions from Wages:**

The Contractor shall deduct from all workmen's wages Social Security, Withholding Tax, and other deductions required by law. He shall not make any deductions other than those required or authorized by law.

**Disposal of Surplus Material:**

Surplus material not required for other parts of the work and not otherwise specifically covered by the drawings or specifications shall become the property of the Contractor for disposal by him by a safe and legal method.

**Engineer:**

The word "Engineer" shall refer to:

Daniel & Brown Inc.  
P.O. Box 606  
Farmersville, Texas 75442  
972-784-7777

**Fences and Fence Gaps:**

The Contractor shall construct and maintain fence and fence gaps required to control livestock during the construction of this project. Fence gaps shall be constructed so that they will be equal to or better than the fence in which they are built. It shall be the Contractor's responsibility to prevent unauthorized persons from using the fence gaps constructed by him. When requested to do so by the property owner, the Contractor shall maintain locks on the fence gaps. Prior to building the fence gaps the Contractor shall brace the fence on both sides of the gap to be cut in a manner to prevent the adjoining fence from becoming slack or sagging. After final cleanup has been completed, the contractor shall remove fence gaps he built and rebuild the fence to its original condition or better.

**Guarantee:**

The Contractor shall deliver to the Engineer upon completion of all work under the Contract his written guarantee, made out to the Owner and in a form satisfactory to the Engineer, guaranteeing (and he does hereby guarantee) all the work under the Contract to be free from faulty materials in every particular and free from improper workmanship, and against injury from proper and usual wear, and agreeing (and he does hereby agree) to replace or to re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to the other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover (and does cover) a period of one (1) year from the date of completion of all work under the Contract as evidenced by the Engineer's final certificate, or for a longer period where so stipulated in the Contract Documents.

This guarantee must be furnished to the Engineer and approved by him before acceptance and final payment is made.

Neither the final certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

**Inconvenience to the Public:**

It is the declared and acknowledged intent of these specifications that all work and cleanup or other such operations shall be conducted in such manner that the public is not unnecessarily inconvenienced nor a hazard to public safety created.

**Inspection:**

The Contractor shall at all times provide adequate access to the **Owner** and Engineer for inspection of all improvements. Work will be subject to final inspection by the Engineer after completion, and this inspection shall take precedence over all other inspections. The Contractor shall inspect his materials and works in progress and assure conformance to the plans and specifications.

**Inspector Duties:**

The resident inspector will provide periodic on-site inspection of the construction projects. The inspections will be in addition to the general engineering oversight provided by the Engineer. Duties of the resident inspector will include general oversight and monitoring of the projects to insure general conformance with the plans and specifications. The inspector will record project status, construction delays, weather conditions, contractor personnel and equipment on-site for each project. The information gathered will be recorded on an inspection report. The resident inspector will be a resource for the Engineer and Owner to help identify potential construction related problems and evaluate potential change orders. The resident inspector's undertaking hereunder shall not relieve the contractor of contractor's obligation to perform the work in conformity with the drawings and specifications and in a workmanlike manner; shall not make the Resident Inspector or the Engineer an insurer of the contractor's performance; and shall not impose upon the Resident Inspector or the Engineer any obligation to see that the work is performed in a safe manner.

**Intent of Plans and Specifications:**

The intent of the plans and specifications is to prescribe a complete work which the Contractor understands to do in full compliance with the Contract Documents. The Contractor shall do all work as provided by the Contract Documents and shall do such additional work as may be necessary to complete the work in a satisfactory and acceptable manner. The Contractor shall furnish all labor, tools, materials, machinery, equipment, and incidentals necessary to the satisfactory prosecution and completion of the work. The prices bid in the proposal shall be full compensation for all material, labor, equipment, and incidental items required to complete the project according to the Contract Documents ready for use. Items of work specified by the plans and/or specifications, but not identified by the Bid Proposal, shall be accomplished according to the plans and/or specifications and there shall be no separate payment for such items of work.

**"Kickback" Prohibition:**

The Contractor shall comply with the Copeland "Anti Kickback" Act (18 U.S.C.874) as supplemented in The Department of Labor regulations (29 CFR Part 3).

**Lines and Grades:**

Lines and grades for construction shall be established by the Engineer for this project.

**Materials and Workmanship:**

No materials which have been used by the Contractor for any temporary purpose whatever are to be incorporated in the permanent structure. All materials to be used shall be new. All materials and workmanship shall be first-class according to the standards of the trade. Unless otherwise specified, all materials shall be the best of their respective kinds and shall be in all cases fully equal to samples conforming to the specifications.

**Minimum Wage Rates:**

Wage rates for the workmen engaged on the project shall not be less than the minimum amounts specified by applicable local, state, or federal statutes.

**Owner:**

The word "Owner" shall be identified on the Notice to Bidders

**Payment for Work:**

The contractor shall submit monthly invoices to the Engineer for work completed and/or materials stored during the previous month. Upon verification and approval, the Engineer shall submit the pay request to the Owner for consideration and payment. A five percent (5%) retainage will be withheld from all pay estimates until completion of the project.

**Permits:**

Permits and licenses of a temporary nature necessary for completion of the work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent changes shall be secured and paid for by the Owner, unless otherwise specified.

**Prevention of Accident:**

The Contractor shall at all times during the course of construction of this project exercise such precautions as are necessary for the prevention of accidents. The safety provisions, as outlined in the "Manual of Accident Prevention in Construction," published by the Associated General Contractors of America, shall be observed to such extent that such provisions do not conflict with existing Federal, State and City laws.

**Project Conferences:**

The following meetings and conferences shall be conducted and shall be attended by the Contractor:

- Pre-construction Conference
- Substantial Completion Inspection
- Pre-final Inspection
- Final Inspection

**Property Corners and Monuments:**

Contractor shall protect all property line and property corner markers and monuments encountered

during the work. If the work shall require that any property line or property corner markers or monuments be disturbed then the Contractor shall provide licensed surveyors to reference the marker(s) or monuments(s) and reset them following completion of the work.

**Protection of Existing Utilities and Improvements:**

The Contractor shall take adequate measures to protect all existing structures, improvements and utilities which may be encountered.

The utility lines and conduits shown on the plans are for information only and are not guaranteed by the Owner or the Engineer to be accurate as to location and depth. They are shown on the plans as the best information available from the owners of the utilities involved and from evidences found on the ground.

The Contractor shall determine the exact location of all existing utilities and conduct his work so as to prevent interruption of service or damage to them. The Contractor shall be responsible for the replacement of any utility damaged by him and shall likewise be responsible for losses to the utility owner due to any disruption to the service of the utility caused by the Contractor.

All work necessary for the relocation or adjustment of any existing utilities will be the responsibility of the Owner of the particular utility involved except where indicated in the plans and specifications of this contract and such work is not a part of this contract.

**Protection of Trees, Plants, and Shrubs:**

The Contractor shall exercise all reasonable precautions to protect trees, plants, and shrubs during construction of this project. The Owner may require the contractor to replace to the satisfaction of the Engineer any trees, plants, or shrubs which in the judgment of the Engineer were unjustifiably damaged. Trees, plants, and shrubs in landscaped areas shall be restored to their original condition. Lawns shall be re-sodded.

**Requirements for Road Crossings:**

The Contractor shall conform to all requirements of the Owner, State Department of Highways and Public Transportation and railroad companies pertaining to the road crossings in this project, including licensing, insurance, construction procedures, and such other items as may be specified. No extra charge to the Owner for conformance to City, Department, and railroad company requirements will be allowed.

**Rights-of-way and Easements:**

The Owner will furnish the necessary rights-of-way and easements for the permanent project. Unless otherwise specified or set forth in the Contract Documents, the site is to be ready for occupancy by the Contractor upon signing of the Contract.

**Safety Restrictions - Work near High Voltage Lines:**

The following procedures will be followed regarding the subject item on this contract:

- A. A warning sign not less than five inches by seven inches, painted yellow with black letters that are legible at twelve feet, shall be laced inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows: "Warning - Unlawful to Operate this Equipment within Six Feet of High Voltage Lines."
- B. Equipment that may be operated within ten feet of high voltage lines shall have an insulating cage type of guard about the boom or arm, except backhoes or dippers, and insulator lines on the lift hook connections.
- C. When necessary to work within six feet of high voltage electric lines, notify the power company, who will erect temporary mechanical barrier, de-energize the line, or raise or lower the line. The work done by the power company shall not be at the expense of the Owner. The notifying department shall maintain an accurate log of all such calls to the power company and shall record action taken in each case.
- D. If the Contractor is required to make arrangements with the power company for the temporary relocation or raising of high voltage lines, that relocation will be at the Contractor's sole cost and expense.
- E. No person shall work within six feet of a high voltage line without protection having been taken as outlined in Paragraph C.

**Sanitary Facilities:**

Contractor shall provide sanitary facilities at or near the site for the duration of the regular work. The Contractor shall establish and enforce among his employees acceptable sanitary regulation. All sanitary facilities will be subject to the approval of the Engineer or local health authority.

**Scope of Work:**

This project shall be identified in the Plans and Specifications. In the event of a conflict between this specification and project plans (drawings) then the plans will take precedence.

**Shop Drawings:**

The Contractor shall furnish drawings, schematics, data, etc., on materials and equipment for approval by the Engineers prior to purchase, fabrication or shipment. Sufficient sets shall be furnished to provide four (4) sets for the Engineer, one (1) set for the Owner and one (1) set for approval for a total of six (6) sets. Additional sets shall be furnished as required by the Contractor.

**Site Investigation:**

The information contained in these Contract Documents in regard to original topography, subsurface soils, subsurface structures, subsurface utilities, and any quantities based thereon, is furnished solely for the convenience of the Contractor. The completeness and accuracy of this information is not guaranteed and its use in no way relieves the Contractor or others of any responsibility for loss due to inaccuracies or deviations there from which may be encountered.

For the purposes of this project, it is stipulated, and Contractor agrees to stipulate, that Contractor shall discover and shall be aware of all water utility facilities, all sanitary sewer facilities, all storm sewer facilities, all gas utility facilities, all telephone utility facilities, all electric utility facilities, and all other subsurface pipelines and utilities that may impede Contractor's work whether shown or indicated or not shown or not indicated by these Contract Documents, that the Contractor has considered the presence of such utilities in preparing his bid and negotiating the contract amount, and that the discovery of such utilities shall not be cause for additional compensation to the Contractor.

**Specifications:**

Titles to divisions and paragraphs in these Contract Documents are introduced for convenience and are not to be taken as a correct or complete segregation of the several units of material and labor. No responsibility, either direct or implied, is assumed by the Engineer for omissions or duplications by the Contractor or his subcontractors, due to real or alleged error in arrangement of matter in these Contract Documents.

**Spoil:**

All excavated material unfit for backfill, waste material accumulated on the job, and any material surplus to that needed in the prosecution of the work shall be removed from the site by the Contractor and disposed of at his expense. Upon specific approval by the Owner, any or all of the material may be disposed of on site in an approved manner.

**Submittals:**

Submittals required of the Contractor or successful Bidder by the Contract Documents are listed as follows:

- Executed Contract and Bonds
- Certificates of Insurance
- Materials Submittals
- Shop Drawings
- Proposals for Alternatives
- Application for Progress Payment
- Notice of Substantial Completion
- Notice of Final Completion
- Application for Final Payment
- Contractor's Certification and Guarantee
- Consent of Surety

A. Measurement and Payment

Separate measurement or payment will not be made for work required under this Section. All



costs in connection with the work specified herein will be considered to be included with the item of work in the bid Schedule of the Bid Form, or incidental to the Work.

**B. List of Materials Sources**

The Contractor shall submit to the Engineer a list of the Contractor's sources of materials. The list shall be submitted in sufficient time to permit proper inspections and testing of materials to be furnished from such listed sources in advance of their use.

**C. Submittal Requirements**

1. **Professional Seal Required:** Submittals involving engineering design services when specified or required by governing codes and regulations shall be sealed and signed by a professional engineer, currently registered in the State of Texas for the discipline involved.
2. **Review Period**
  - a. Prepare submittals sufficiently in advance so that approval may be given before commencement of related work.
  - b. Allow 30 calendar days after receipt by the Engineer for review of each submittal, including resubmittals.
3. **Submittal Delivery:** Ship submittals prepaid or deliver by hand directly to the Engineer.
4. **Changes in Approved Submittals:** Changes in approved submittals will not be allowed unless those approved submittals with changes have been resubmitted and approved, in the same manner as the original submittal.
5. **Supplemental Submittals:** Supplemental submittals initiated by the Contractor for consideration of corrective procedures shall contain sufficient data for review. Make supplemental submittals in the same manner as initial submittals.

**D. Contractor's Responsibilities**

**1. Contractor's Review and Approval:**

- a. Each submittal shall be reviewed, stamped, and signed as reviewed and approved by the Contractor prior to submission. The Contractor's approval shall indicate review and approval with respect to the following responsibilities:
- b. The Contractor shall be responsible for:
  - i. The correctness of the drawings, for shop fits and field connections, and for the results obtained by the use of such drawings.
  - ii. Verification of catalog numbers, and similar data.
  - iii. Determination and verification of field measurements and field construction criteria.
  - iv. Checking and coordinating information in the submittal with requirements of the Work and of the Contract Documents.
  - v. Determination of accuracy and completeness of dimensions and quantities.
  - vi. Confirmation and coordination of dimensions and field conditions at the site.
  - vii. Safety precautions.
  - viii. Errors or omissions on submittals.
  - ix. Coordination and performance of work of all trades.
  - x. Identification of deviation(s) from Contract requirements.
- c. The Contractor shall coordinate each submittal with the requirements of the Work, placing particular emphasis upon assuring that each submittal of one trade is compatible with other submittals of related work. Ensure submittal is complete with all

relevant data required for review.

- d. The Contractor shall stamp, initial or sign the submittal, certifying:
    - i. Dimensional compatibility of the product with the space in which it is intended to be used.
    - ii. Review of submittals for compliance with Contract requirements.
  - e. Do not start work for that requires approval by the Engineer until submittals have been returned to the Contractor with official indication that approval has been granted by the Engineer.
  - f. If the submittal is designated to be sent to the Engineer for information, approval by the designated approval authority shall take place before submission to the Engineer.
  - g. Approval of drawings and associated calculations by the Engineer shall not relieve the Contractor from the responsibility for errors or omissions in the drawings and associated calculations, or from deviations from the Contract Documents, unless submittals containing such deviations were submitted to the Engineer and the deviations were specifically called to the attention of the Engineer in the letter of transmittal and within the submittal, and approved specifically by the Engineer as a Contract change.
  - h. Approval of the Contractor's submittal by the Engineer shall not relieve the Contractor of any responsibility, including responsibility for accuracy and agreement of dimensions and details.
2. Distribution of Submittals after Review: Distribute prints or copies of approved submittals, bearing the Engineer's or designated approval authority's stamp and signature, to the Contractor's field office; to affected and concerned Subcontractors, Suppliers, and fabricators; and to affected and concerned members of the Contractor's workforce.

#### E. Engineer's Review

1. Submittals will be reviewed for conformance with requirements of the Contract Documents. Review of a separate item will not constitute review of an assembly in which the item functions. Review will not relieve the Contractor from Contractor's responsibility for accuracy of submittals, for conformity of submittals to requirements of Contract Documents, for compatibility of described product with other provided products and the rest of the system, or for prosecution and completion of the Contract in accordance with the Contract Documents.
2. The Engineer will indicate its reviews of submittals and the action taken (approvals and nonapprovals) by means of its review stamp. The review stamp/label will be affixed by the Engineer, the action block will be marked, and the stamp/label will be signed and dated.
3. The review-stamp/label action-block marks will have the following meanings:
  - a. The mark APPROVED is an acceptance, and means that the submittal appears to conform to the respective requirements of the Contract Documents; that fabrication, assembly, manufacture, installation, application, and erection of the illustrated and described product may proceed; and that the submittal need not be resubmitted.
  - b. The mark APPROVED AS CORRECTED is an acceptance, and means that the submittal appears to conform to the respective requirements of the Contract Documents upon incorporation of the reviewer's corrections, and that fabrication, assembly, manufacture, installation, application, and erection of the illustrated and described product may proceed. Submittals so marked need not be resubmitted unless the Contractor challenges the reviewer's exception.
  - c. The mark NOT APPROVED is a disapproval, and means that the submittals is

deficient to the degree that the reviewer cannot correct the submittal with a reasonable degree of effort, has not made a thorough review of the submittal, and that the submittal needs revision and is to be corrected and resubmitted.

**Subsidiary Items:**

Subsidiary items including, but not limited to grading, backfill, blocking, testing, and cleanup, which are not pay items in the proposal shall be considered subsidiary to the job and no extra pay shall be allowed.

**Substitutions:**

In these specifications are specified certain equipment and/or materials deemed most suitable for the service anticipated. This is not done, however, to eliminate others equally as good and efficient. The Contractor shall prepare his bid on the basis of the particular equipment and/or materials specified for the purpose of determining the low bid. The awarding of the contract shall constitute a contractual obligation to furnish the specified equipment and/or materials unless the Contractor desires to follow the following procedure:

After the execution of the contract, substitution of equipment and/or materials of makes other than those named in the contract will be considered for one reason only; that the equipment and/or materials proposed for substitution is superior or equal in construction quality and/or efficiency to that named in the contract.

In the event the Contractor obtains the Engineer's approval on equipment other than that for which the plant was originally laid out, the contractor shall, at his own expense, make any changes in the structures, piping, or electrical equipment necessary to accommodate the equipment.

To receive consideration on any alternate, full descriptive material must be submitted to the Engineer at least seven (7) days before the scheduled letting to allow sufficient time for issuance of addenda.

**Taxes:**

The Contractor shall be held to have studied all tax laws for the jurisdiction in which the work is being done, and shall pay all the taxes for which he may be held liable as a consumer or user of goods, or otherwise, without addition to the Contract price.

**Testing:**

Testing and inspection of materials required by these specifications shall be performed by a commercial testing laboratory selected by the **Owner**. Except as otherwise noted, the cost of laboratory tests will be paid by the **Owner**. The Contractor shall pay the cost of all tests where the tested material fails and the cost of re-testing the material. This payment will be made direct to the testing laboratory by the Contractor. The Contractor shall furnish, at his own expense, all materials or specimens for testing.

Tests of the performance of equipment and constructed works such as leakage tests, bacteriological tests, deflection tests, tests of electrical circuitry, pumping tests, equipment tests, etc., shall be performed as required by these specifications at the expense of the Contractor.

**Tie-in:**

The cost for making the tie-in with associated appurtenances to the new water main shall be included in the price bid for the project unless otherwise noted on the plans. Note: Cost of tie-in also will include removal of any blocking required by the water line.

**Time of Completion:**

The time of completion for the project is stipulated by Contract Agreement. Time commences to run on a date specified by a "Notice to Proceed". "Substantial Completion" shall be interpreted according to the General Conditions and the project will be considered completed and ready for final payment upon final completion of all work including correction of all deficiencies identified by Engineer and final cleanup of all work areas.

**Topsoil:**

In all agricultural areas, whether grazing or crop land, and in all landscaped areas, topsoil shall be stripped to a depth of 12" for the total width of the excavation. Topsoil that is stripped shall be stockpiled near the project site in a manner that will preserve the character and quantity of the material. After the work is completed, the topsoil shall be replaced and dressed to a uniform finish.

**Trade Names:**

Except as specified otherwise, whenever in the plans or specifications an article or class of material is designated by a trade name, or by the name or catalogue number of any maker, patentee, manufacturer, or dealer, such designation shall be taken to mean and specify the articles described or another equal thereto in quality, finish, and serviceability, for the purpose intended.

**Traffic Control:**

The Contractor will be required to plan and execute the construction work in such a manner that the residents in the area of the improvement will have access to their property with a minimum of interruption. The Contractor shall maintain all traffic lanes and/or detours to the satisfaction of the Engineer.

**Water and Utilities for Construction:**

The Contractor shall make his own arrangements for water and other utilities necessary for the construction. Securement of water and utilities for use in this project shall respect all rights of ownership, rights of way, and all laws, rules and regulations, which may be applicable to such securement.

## **REWORKING BASE MATERIAL**

### **PART 1 - GENERAL**

#### **1.1 DESCRIPTION**

- A. This item consists of reworking existing base material (with or without an asphaltic surface). This item also consists of the blending of new base material when specified in the Contract Documents.

#### **1.2 MEASUREMENT AND PAYMENT**

- A. Reworking Base Material by scarifying and reshaping or by scarifying, salvaging and replacing will be measured by the square yard of existing base or pavement in the original position. This is a plans quantity measurement and the quantity to be paid will be that shown in the proposal. No payment will be made for thickness or width exceeding that shown on the typical sections or provided by the Contract Documents.
- B. The bid price includes full compensation for scarifying, salvaging, mixing, spreading, blading, shaping, wetting, compacting, and finishing of new and/or existing base material, lime stabilization of materials in place, and for all labor, material, tools, equipment and incidentals necessary to complete the work including warranty work performed to satisfy the guarantee. Payment will not be made for unauthorized work.
- C. When new base material is mixed with the existing base material, furnishing and delivery of the new base will be paid for in accordance with FLEXIBLE BASE CRUSHED STONE LIMESTONE.

### **PART 2 - PRODUCTS**

#### **2.1 TESTING REQUIREMENTS**

- A. A compaction curve (ASTM D 1557) shall be developed on the mixed or blended material.
- B. In-place field density shall be determined by Nuclear Methods (ASTM D 2922) or by Sand Cone Methods (ASTM D 1556) at locations selected by the Engineer. The frequency of tests shall be at least one every 300 lineal feet or a minimum of three (3) tests, whichever is greater.
- C. The base course shall be proof rolled as directed if, in the opinion of the Engineer, the blended material is non-uniform and a representative sample cannot be obtained for developing a compaction curve.

### **PART 3 - EXECUTION**

#### **3.1 GENERAL**

- A. The work shall be performed to the width and depth specified in the Contract Documents.
- B. Reworking base material shall consist of either scarifying and reshaping or scarifying, salvaging and replacing existing base material as defined below;

1. Scarifying consists of loosening and breaking the existing base material.
2. Reshaping consists of reworking the scarified in-place base material with or without additional new base material.
3. Salvaging consists of removing, saving and temporarily stockpiling, if necessary, the existing scarified base material.
4. Replacing consists of returning and reworking the salvaged base material, with or without additional new base material, on the prepared roadbed.

New base material, when required, shall meet the requirements of SECTION FLEXIBLE BASE CRUSHED STONE LIMESTONE.

### **3.2 SCARIFYING AND RESHAPING**

- A. The existing base, with or without existing asphaltic concrete pavement, shall be cleaned of all objectionable materials by blading, brooming or other approved methods, prior to scarifying. After cleaning, the existing material shall be scarified for its full width and depth, unless otherwise shown on the plans. The underlying sub-grade shall not be disturbed. The material shall be broken into pieces not more than two-and-one-half (2 1/2) inches in size.
- B. After completion of scarifying, the existing base shall be mixed and shaped to conform to the lines, grades, and typical sections shown on the Plans.
- C. New base material shall be placed on the existing scarified material and uniformly mixed when required by the Contract Documents.

### **3.3 SCARIFYING, SALVAGING AND REPLACING**

- A. The existing base, with or without existing asphaltic concrete pavement, shall be cleaned of all objectionable materials by blading, brooming or other approved methods, prior to scarifying. After cleaning, the existing material shall be scarified for its full width and depth, unless otherwise shown on the plans. The underlying sub-grade shall not be disturbed. The material shall be broken into pieces not more than two-and-one-half (2 1/2) inches in size.
- B. The scarified material shall be removed from the roadbed. The scarified material may be salvaged by placing in temporary stockpiles or windrows until preparation of the sub-grade is complete.
- C. All salvaging operations shall not interfere with traffic, proper drainage or the general requirements of the work. All material to be salvaged shall be kept reasonably free of soil from the sub-grade or roadbed.
- D. Prior to replacing the salvaged material, the sub-grade shall be constructed and shaped to conform to the requirements of the Contract Documents. This work shall be done in accordance with the provisions of applicable bid items.
- E. The salvaged material shall be deposited on the prepared sub-grade, wetted if needed, bladed and shaped to conform to the lines, grades, and typical sections shown on the Plans or as directed by the Engineer. New base material shall be placed and uniformly mixed with the salvaged material when required by the Contract Documents.

- F. All areas of segregated material shall be corrected or removed and replaced with well graded material. All salvaged material shall be kept reasonably free of objectionable materials during the replacing operations.

### **3.4 COMPACTION**

- A. The reshaped or replaced material shall be wetted as required and compacted to a uniform density of not less than 95 percent of the modified density (ASTM D 1557) The allowable deviation from optimum moisture content is to +4%.
- B. The Contractor shall rework the base material at his expense if the material fails to meet the required density or, for any reason, loses stability and finish before the next course is placed. The method of reworking shall be by loosening, adding or removing material, and reshaping and recompacting by wetting and rolling. All irregularities, depressions or weak spots which develop shall be corrected immediately by scarifying the affected areas, adding suitable material as required, reshaping and recompacting.
- C. The shape of the course shall be maintained by blading throughout the entire compacting operation. The completed surface shall be smooth and in conformance with the lines, grades, and typical sections shown on Plans. Any deviation more than one-fourth (1/4) inch from the established section and grade shall be corrected by loosening, adding or removing material, reshaping and compacting.
- D. The base shall be cured to the approval of the Engineer prior to placing the final surface on the completed base. The base course may be opened to traffic if allowed by the Engineer.

**END OF SECTION**

## **LIME STABILIZATION**

### **PART 1 - GENERAL**

#### **1.1 DESCRIPTION**

- A. This item shall consist of admixing commercial lime and/or lime slurry with the existing material, and mixing and compacting the mixed material to the required density. All work performed in this item shall be constructed as specified herein and in conformity with the typical cross-sections, lines and grades as shown on the Plans and as directed by the Engineer.

#### **1.2 MEASUREMENT AND PAYMENT**

- A. Lime stabilized material as described in this section will be paid for at the unit price bid in the Proposal for the lime stabilized treatment, which price shall be full compensation for scarifying, preparation below secondary grade, furnishing, distributing, and mixing the lime and for all labor, supplies, water, fuel, tools, equipment and incidentals necessary to mix and compact the stabilized soil to the density specified in these Specifications. Payment will not be made for unauthorized work.

#### **1.3 SUBMITTALS**

Lime series Atterburg Limits

Lime series pH test (ASTM C977-83a-Annex Test Method)

Lime type

% Lime

### **PART 2 - PRODUCTS**

#### **2.1 MATERIALS**

- A. The lime to be used for stabilization shall meet with requirements of TX DOT DMS-6350: "Lime and Lime Slurry" and DMS-6330, "Lime Sources Prequalification of Hydrated Lime and Quicklime". Use hydrated lime, commercial lime slurry, or pebble grade quicklime.
- B. The amount of lime required for stabilization will be the amount which provides for a Plasticity Index less than 15. Optimum lime shall be applied. Optimum lime content shall be determined during the excavation by the use of a lime series test. Lime series test shall be taken along the excavation at all changes in soil and a minimum of 300 feet. Lime series shall be completed by an independent laboratory approved by the City.

#### **2.2 TESTING REQUIREMENTS**

- A. After final mixing, a pH test, Atterberg Limit test and sieve analysis shall be performed in accordance with Tex-101-E, Part III.



- B. Moisture and Density tests shall be taken at each construction station to ensure a density of at least 98% of maximum dry density at a moisture content between optimum and 4% wet of optimum in accordance with Standard Proctor (ASTM D698). All tests meeting these requirements shall be paid by the Contractor. The City will not pay for failing tests.
- C. When requested by the Engineers Inspector, the contractor will proof roll areas in question with a 25 ton pneumatic tired roller or approved equal after lime stabilization is complete.

### **PART 3 – EXECUTION**

#### **3.1. GENERAL:**

- A. It is the primary requirement of this specification to produce a completed course of treated material containing a uniform line mixture, free from loose or segregated areas, of uniform density and moisture content, well bound for its full depth as shown on the detail sheet or specified in the Special Provisions and with a smooth surface suitable for placing subsequent courses. It shall be the responsibility of the Contractor to regulate the sequence of his work, to use the proper amount of lime, maintain the work and rework the courses as necessary to meet the above requirements.
- B. The Contractor is required to ensure the existing sub-grade or embankment beneath the course to be lime stabilized is of proper density, uniformity and quality. The Contractor may elect to proof roll, replace and/or compact, areas that exhibit instability. If necessary, the Contractor may need to scarify, dry and compact the existing sub-grade prior to addition of lime. All work for the preparation of the existing sub-grade will not be paid directly, but will be considered a part of "Lime Stabilization".

#### **3.2. APPLICATION:**

- A. Lime shall be spread only on that area where the first mixing operations can be completed during the same working day.
- B. The lime shall be spread by a pre-approved screw type spreader box, bag distribution, or a pre-approved truck spreader, in the manner and at the rates directed by the Engineer. The lime shall be distributed at a uniform rate and in such a manner as to reduce the scattering of the lime by wind to a minimum. Lime shall not be applied when wind conditions, in the opinion of the Engineer, are such that blowing lime becomes objectionable. A motor grader shall not be used to spread the lime.
- C. When pebble grade quicklime is placed dry, mix the material and lime thoroughly at the time of lime application.

#### **3.3. MIXING:**

- A. The material shall be dried or wetted as directed by the Engineer, until the proper moisture content has been secured. All lime shall be mixed with the material to be treated immediately after application of lime. During the interval of time between application and mixing, hydrated lime that has been exposed to the open air for a period of six (6) hours or more or had excessive loss due to washing or blowing will not be accepted until totally reprocessed, refinished and retested. This will be done at the sole expense of the Contractor.
- B. The soil-lime mixture shall be sprinkled during the mixing process as directed by the Engineer, to provide optimum moisture plus four (4) percent in the mixing immediately prior to starting the compaction operation.
- C. The stabilized soil shall then be lightly sealed to allow for the mixture to mellow for 1 to 4 days.

When pebble grade quicklime is used, allow the mixture to mellow for 2 to 4 days. The mixed material shall be kept moist during this period and traffic shall not be allowed on the treated portion. The moisture content of the mixture should be within, optimum and four percent of optimum for the compactive effort specified.

- D. After mellowing, resume mixing until a homogeneous friable mixture of material and lime is obtained, such that when all nonslaking aggregates retained on the 3/4" sieve are removed, the remainder of the material shall meet the following requirements when tested from the roadway in the roadway conditions by standard laboratory sieves:

<u>Sieve</u>	<u>Percent Passing</u>
1-3/4"	100%
3/4"	85%
#4	60%

After final mixing, the stabilized soil shall be bladed and compacted as specified below.

### **3.4. COMPACTION:**

- A. Compaction of the mixture shall begin immediately after final mixing. The material shall be aerated or sprinkled as necessary to provide the proper moisture. Compaction shall begin at the bottom and shall continue until the entire depth of mixture is uniformly compacted.
- B. The course shall be sprinkled as required and compacted to the extent necessary to provide no less than ninety-eight (98) percent of the density measured by ASTM D698 at a moisture content between optimum and +4% wet of optimum moisture content. Grades shall be "blue-topped" during the compaction effort and the lime soil mixture shall be compacted to within 0.1 ft in cross-section and 0.1 ft in 16 ft measured longitudinally. In addition to the requirements specified for density, the full depth of the material shown on the plans shall be compacted to the extent necessary to remain firm and stable under construction equipment. Depth tests shall occur every 200 lf and shall be performed after compliance with density requirements.
- C. If the material fails to meet the density requirements, it shall be reworked as necessary to meet these requirements. Throughout this entire operation the shape of the course shall be maintained by blading, and the surface upon completion shall be smooth and in conformity with the typical section shown on the plans and to the established lines and grades. Should the material due to any reason or cause, lose the required stability, density and finish it shall be re-compacted, refinished and retested at the sole expense of the Contractor.

### **3.5 EQUIPMENT**

- A. The machine, tools and equipment necessary for the proper prosecution of the work shall be on the project and pre-approved by the Engineer prior to the beginning of construction operations.
- B. All machinery, tools and equipment used shall be maintained in a satisfactory and workmanlike manner.
- C. To insure thorough mixing of the lime into the material to be stabilized, equipment shall be a pulverizer mixer equivalent to a Seaman Mixer, or soil stabilizing machine shall be used.
- D. Hydrated lime shall be stored and handled in closed weatherproof containers until immediately before distribution on the road. If storage bins are used they shall be completely enclosed. Hydrated lime in bags shall be stored in weatherproof buildings with adequate protection from ground dampness.

- E. If lime is furnished in trucks, each truck shall have the weight of lime certified on public scales or the Contractor shall place a set of standard platform truck scales or hopper scales at a location pre-approved by the Engineer. Scales shall be certified as to accuracy by an independent pre-approved testing laboratory.

### **3.6 FINISHING AND CURING OF LIME-STABILIZED MATERIAL:**

- A. After the lime treated material has been compacted and brought to the required lines and grades in accordance with the typical sections, the completed section shall then be finished by rolling as directed with a pneumatic or other suitable roller sufficiently light to prevent hair cracking. The completed section shall be moist-cured for a minimum of five (5) days before further courses are added or any traffic is permitted, unless otherwise directed by the Engineer. If the sub-grade sets up sufficiently to prevent objectionable damage from traffic, the layer may be opened to traffic the day following compaction, unless otherwise directed by the Engineer.
- B. Apply seals or additional courses within fourteen (14) calendar days after final compaction, unless otherwise directed by the Engineer.

**END OF SECTION**

## HOT MIX ASPHALTIC CONCRETE PAVEMENT

### PART 1 - GENERAL

#### 1.1 DESCRIPTION

- A. This item covers Hot Mixed Asphaltic Concrete Paving and consists of any combinations of base, level up, and finish courses.

#### 1.2 MEASUREMENT AND PAYMENT

- A. Unless otherwise modified by the design engineer, Hot Mix Asphaltic Concrete Paving shall be measured by the square yard of each HMA CP course in conformity with the requirements, and meeting all requirements of the plans and special provisions (if any) with regards to line, grade, compacted thickness, air voids, and final cross section.
- B. Sliding scale pay factors or alternative remedies may be applied for City capital projects at the City's discretion. Sliding scale factors will be applied for the unit price bid for Hot-Mix Asphaltic Concrete, which fail to meet the density requirements. The sliding scale pay factors are shown in the table below. They shall be applied to each day's production.

The table below applies to both development and capital projects. In the case of a development project the column titled "Percent Payment" does not apply.

Average Percent Air Voids*	Alternate Remedies	Percent Payment
8.0 or Less	Do Nothing	100
8.1 to 10.0	1" HMA Overlay w/ Wedge Grind	85
10.1 to 12.0	1" HMA Overlay w/ Wedge Grind	75
Above 12.0	Remove and Replace	Reject **

\* Average of 4 samples

\*\*If the Engineer agrees to accept densities below 88.0%, the pay factor shall be 50%.

- C. Unless otherwise modified by the design engineer, all labor, equipment and materials necessary to provide Hot Mix Asphaltic Concrete Paving in place in accordance with the plans, special provisions and these specifications will be paid for at the unit price designated in the proposal and included in the construction contract. Any tack and/or prime coat shall be considered subsidiary to the bid item "Hot Mix Asphaltic Concrete".

#### 1.3 SUBMITTALS

- A. Mix Design
- B. Aggregate Properties

## **PART 2 - PRODUCTS**

### **2.1 MATERIALS**

HMAC shall be composed only of the following materials:

- A. **MINERAL AGGREGATE:** Mineral aggregates shall consist of sound, durable stone particles of limestone, slag, or a mixture thereof of uniform quality throughout and free from dirt, organic or other deleterious material occurring either freely in the material or as a coating on the aggregate. Abrasion loss of aggregate material shall not exceed 40% (unless lightweight) when tested in accordance with the Los Angeles Abrasion Test (ASTM C-131).
- B. **MINERAL FILLER:** Mineral filler shall consist of thoroughly dry stone dust of uniform quality throughout and free from dirt, organic or other deleterious material occurring either freely in the material or as a coating on the material. The plasticity index of any mineral filler shall be less than 6.
- C. **ASPHALT:** Asphalt shall be grade PG64-22, PG 70-22 or PG76-22 as designated by the design engineer and the same shall be used on all HMAC provided for any one project.
- D. The paving mixture shall consist of a uniform mixture of aggregates, fillers and asphaltic material as required to meet the following requirements:
  1. **Coarse Aggregate:** Coarse aggregate (retained on the No. 10 sieve) shall be so crushed as to have a minimum of 85% of the particles retained on the No. 4 sieve with two or more mechanically induced crushed farces as determined by Tex-460-A (Part 1). Field sand, if used, shall not exceed fifteen (15%) percent of the total aggregate mix.

**GRADATION AND ASPHALT CONTENT**

Column 1	Column 2						Column 3
AGGREGATE GRADATION (ASTM C-136)	TOLERANCE FOR JOB-MIX  FORMULA * PERCENT BY WEIGHT						TOLERANCE FOR COMPANY FIELD SAMPLE LAB RESULTS TO JOB MIX FORMULA **
PASSING	TYPE 'D'		TYPE 'C'		TYPE 'B'		TOLERANCE
	Low %	High %	Low %	High %	Low %	High %	
1-1/2" sieve							+/- 5%
1" sieve					98	100	+/- 5%
3/4" sieve			95	100	<u>84</u>	<u>98</u>	+/- 5%
1/2" sieve	98	100					+/- 5%
3/8" sieve	85	100	70	85	60	80	+/- 5%
No. 4 sieve	50	70	43	63	40	60	+/- 5%
No. 8 sieve	<u>35</u>	<u>46</u>	<u>32</u>	<u>42</u>	<u>29</u>	<u>43</u>	+/- 3%
No. 30 sieve	<u>15</u>	<u>29</u>	<u>14</u>	<u>28</u>	<u>13</u>	<u>28</u>	+/- 3%
No. 50 sieve	<u>7</u>	<u>20</u>	<u>7</u>	<u>21</u>	<u>6</u>	<u>20</u>	+/- 3%
No. 200 sieve	<u>2</u>	<u>7</u>	<u>2</u>	<u>7</u>	<u>2</u>	<u>7</u>	+/- 3%
VMA % Min	14		13		12		
Asphalt Content	4	8	4	8	3.5	7	+/- 0.5%

\* Column 2 above is the tolerance to be used when creating the job-mix formula

**\*\*** Column 3 above is the tolerance to be used when comparing the field sample lab results to the job-mix formula. The lab results must fall within the given tolerance when compared to the job-mix formula.

**\*\*\*** A copy of the job-mix formula must be given to the city inspector or representative prior to the placement of asphalt on the job site.

The City, at any time, may require a test be performed to determine if anti-stripping agents are needed for a particular mix. Samples not meeting the specifications listed above will be rejected or may be negotiated for a reduced payment if allowed by the City Engineer.

2. Laboratory Stability: When the proposed mix is prepared in accordance with TxDOT Item 340 (HVEEM Method) the stability shall be at least 35 percent. The tolerance for the density shall be  $\pm 1\%$  based on the density provided on the job mix formula.
3. Laboratory Density: When the proposed mix is prepared in accordance with ASTM D-1559 the air voids of the material as determined by ASTM D-3203 shall be between two percent (2%) and five percent (5%).

## 2.2 TESTING REQUIREMENTS

The following processes shall be undertaken to assure the desired quality in the constructed product:

A. MIX VERIFICATION: The testing laboratory representative in accordance with both of the following guidelines shall take HMAC samples from the delivering trucks:

1. One sample for each day of delivery and placement.
2. For larger jobs, the City may require two samples be taken, one in the morning and one in the afternoon.

The testing laboratory shall:

1. Note the location where the HMAC being sampled is to be placed.
2. Determine the temperature of the mix at the time the sample is taken. If the temperature is outside of the allowable range as specified in Section 3.1 of this specification, the laboratory representative shall immediately inform the paving contractor's superintendent and the City Inspector.
3. Transport the sample to the laboratory and perform the necessary tests and operations to verify the compliance with the mix design set forth by the design engineer within the tolerances given in Section 1.3 of this specification.
4. Provide written results to the tests and operations as described above to both the paving contractor's superintendent and the City Inspector within 5 working days.

B. COMPACTION VERIFICATION: Compaction tests shall be made following the same schedule of testing as the sampling operations listed above with the City Representative determining the exact location for testing.

The testing laboratory representative shall:

1. Note the location of the compaction test performed
2. Obtain core samples of the paving via ASTM D-5361
3. Transport the cores to the laboratory and perform the necessary operation per ASTM D-3203 to determine the resulting pavement air void percentage.

4. Provide written results of the tests and operations as described above to both the paving contractor's superintendent and the City Inspector within 5 working days.

Compacted HMAC pavement meeting this specification shall have between two percent (2%) and eight percent (8%) air voids.

COMPACTED LIFT THICKNESS AND REQUIRED CORE HEIGHT

Mixture Type	Compacted Lift Thickness	
	Minimum (in.)	Maximum (in.)
A	3.00	6.00
B	2.50	5.00
C	2.00	4.00
D	1.50	3.00
E	1.25	2.50

- C. **THICKNESS VERIFICATION:** For each core sample taken from the finished paving, the thickness of the HMAC portion of the section shall be measured, noted and provided to the City for review. The thickness shall be as required on the table above.
- D. **FINISH SURFACE TOLERANCES:** The finish surface of the compacted pavement shall be sealed, smooth and true to the line, grade and cross section as established in the contract documents. There shall be no deviation in excess of 1/8 inch per foot of distance from the nearest point of contact when tested with a 10-foot straight edge placed parallel to the centerline of the roadway. There shall be no deviation from the straight edge in excess of 1/4 inch at any point.
- E. The hot-mix asphaltic concrete will be accepted for density based on one day's production. Each day's production will be divided into four sections and one cored or sawed sample will be taken for each section. Each day's production will be accepted, with respect to density, when the average field density determined from the cores is equal to or greater than 92 percent of the maximum theoretical density as determined in accordance with ASTM D2041, and when no individual core density is less than 88.0 percent of the maximum theoretical density. If the Contractor elects to have the density testing rechecked, another group of four cores per each day's production will be obtained. The recheck group will not be averaged with any previous tests.

### **PART 3 - EXECUTION**

#### **3.1 GENERAL**

- A. The Contractor shall retain full control of all materials, labor methods and equipment used in the placement and compaction of HMAC paving with the following exceptions:
1. Temperature - HMAC and/or tack coat materials shall not be placed when the air temperature is 50° F or lower and falling. Placement may be allowed if roadway surface temperature is 60 degrees or higher. Measure roadway surface temperature with a handheld IR thermometer.
  2. Tack Coat - Tack coat shall be applied to clean, dry asphalt surfaces and between asphalt lifts only and shall be applied just prior to placement of HMAC materials. The Contractor shall neatly tack all gutter edges before placing any HMAC. The tack coat material shall be SS-1 applied at a rate of 0.04 to 0.10 gal/sy.

3. **HMAC Temperature** - HMAC materials shall be placed between 250 F and 340 F. Compaction is not allowed on HMAC that has cooled below 210F at the pavement surface.
4. **Rolling Water** - Small amounts of water may be used to keep the HMAC from adhering to the placement and compaction equipment. Excessive water and/or any use of petroleum products for this purpose are not allowable.
5. **Compaction Roller Traffic** - Compaction rollers shall be kept at a slow enough speed to prevent any displacement of material. Rollers shall not be allowed to stand or park on the finished and compacted paving until after 12 hours has passed after final compaction.

**END OF SECTION**



# **FLEXIBLE BASE CRUSHED LIMESTONE**

## **PART 1 - GENERAL**

### **1.1 DESCRIPTION**

- A. This item shall consist of a base course composed of crusher-run broken limestone. The base shall be constructed as specified in one or more courses in conformity with the typical section shown on the Plans, and to the line and grades established by the Engineer.

### **1.2 MEASUREMENT AND PAYMENT**

- A. Payment for flexible base will be made at the unit price bid in the Proposal. The price shall include preparing and rolling the sub-grade, furnishing and placing the base material, all royalty and freight, hauling and delivery on the street, spreading, shaping, dragging, sprinkling or drying, compacting and finishing; for all manipulation, labor, tools and incidentals necessary to complete the work. Payment will not be made for unauthorized work.

### **1.3 SUBMITTALS**

- A. The Contractor shall furnish the Engineer with two copies of all test results performed by a pre-approved independent testing laboratory. The documentation shall be specifically for the material that is to be used on the project.

## **PART 2 - PRODUCTS**

### **2.1 MATERIALS**

- A. The material shall meet the material requirements of TX DOT 247, Type A, Grade 1. The Contractor shall be responsible for insuring that all materials delivered at the job site meet the specifications. The Engineer may require testing or retesting by an acceptable independent testing laboratory of any materials submitted. If this testing indicates the material to be unsatisfactory, the Contractor shall be required to pay for those tests, as well as supply materials which comply with said specifications. The material shall be obtained from pre-approved sources at the time of submittal, shall be crushed, and shall consist of durable particles of stone mixed with pre-approved binding materials. Unless otherwise specified on the Plans the processed material shall meet the following requirements:

- 1. Test Requirements: The processed material shall meet the following requirements when tested in accordance with procedures as outlined in TX DOT Item 247.

Retained on 1 3/4" sieve	0%
Retained on 7/8" sieve	10% - 35%
Retained on 3/8" sieve	30% - 50%
Retained on 4 mesh sieve	45% - 65%
Retained on 40 mesh sieve	70% - 85%

- a. Liquid Limit: The portion of material passing the 40 mesh sieve shall have a liquid limit of 35 or less, in accordance with TEX-104-E.
- b. Plasticity Index: The portion of material passing the 40 mesh sieve shall have a plasticity index of not less than 4 nor more than 10, in accordance with TEX-106-E.
- c. Abrasion: The crushed stone shall have an abrasion loss of not more than 40% when subjected to the Wet Ball Mill Test, TEX-116-E with a maximum of 20% increase in passing the No. 40 sieve.
- d. Triaxial Test: The crushed stone shall have a minimum compression strength of 45 psi at 0 psi lateral pressure and 175 psi at 15 psi lateral pressure in accordance with TEX-117-E.

## 2.4 EQUIPMENT

- A. All equipment shall be adequate for the purposes intended, meeting the approval of the Engineer prior to the start of work.

## 2.3 TESTING REQUIREMENTS

- A. The Contractor shall have field densities performed on the base for review by the Engineer. These tests shall be taken at points directed by the Engineer with a maximum of one test per construction station. The City will not pay for failing tests.
- B. Testing for required depth will be performed upon completion of the course to the lines and grades specified.

# PART 3 - EXECUTION

## 3.1 PLACING

- A. The flexible base course shall be placed upon a previously approved sub-grade. Immediately before placing the flexible base material, the sub-grade shall be checked for conformance with the Plans and Specifications and any corrections as pre-approved by the Engineer shall be made.
- B. Material deposited upon the sub-grade shall be spread and shaped the same day. The material shall conform to the typical sections as shown on the Plans. All areas and "nests" of segregated coarse or fine materials shall be corrected or removed and replaced with well-graded material. The Contractor shall furnish and apply additional binder to the in-place material, if directed by the Engineer. Such binder material shall be carefully and evenly incorporated with the in-place material by scarifying, harrowing, brooming, or other pre-approved methods.

## 3.2 FINISHING AND COMPACTION

- A. The flexible base course shall be sprinkled as required and rolled until obtaining a uniform compaction and the required density.
- B. Compaction of the flexible base course shall be accomplished with a pneumatic. Rolling shall continue until the base course material has been compacted to ninety five percent (95%)

of the modified density (ASTM D1557). The allowable deviation from optimum moisture content is to +4%.

- C. The shape of the course shall be maintained by blading throughout the entire compacting operation. The completed surface shall be smooth and in conformance with the typical sections shown on Plans and to the established lines and grades. Completed surfaces that deviate in excess of one-fourth (1/4) inch in cross-section and in a length of sixteen (16) feet measured longitudinally shall be connected.
- D. The method of correction shall be by loosening, adding or removing material, and reshaping and recompact by sprinkling and rolling. All irregularities, depressions or weak spots which develop shall be corrected immediately by scarifying the affected areas, adding suitable material as required, and reshaping and recompact by sprinkling and rolling.
- E. When directed by the Engineer the base course may be opened to traffic. The Contractor shall direct and distribute the traffic uniformly over the entire width of the course. During the period traffic is being directed over the course, the surface shall be satisfactorily maintained by the use of blades, drags and other equipment. Maintenance operations shall continue until starting the application of the next course or the surface course.

#### **END OF SECTION**

# LOCATION AND PLAN SHEETS

**ASPHALT OVERLAY PROJECT  
PHASE II  
REQUEST FOR PROPOSALS  
FOR  
CITY OF FARMERSVILLE  
COLLIN COUNTY, TEXAS  
DECEMBER, 2014**



**DANIEL & BROWN INC.**  
ENGINEERS/CONSULTANTS/PLANNERS

118 McKinney St.

P.O. Box 606

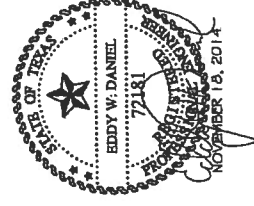
Farmersville, Texas 75442

Phone 972-784-7777

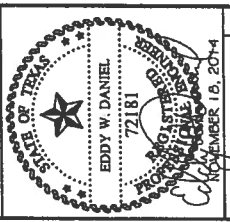
Fax 972-782-7721

[www.DBIConsultants.com](http://www.DBIConsultants.com)

Firm Registration No.: F-002225

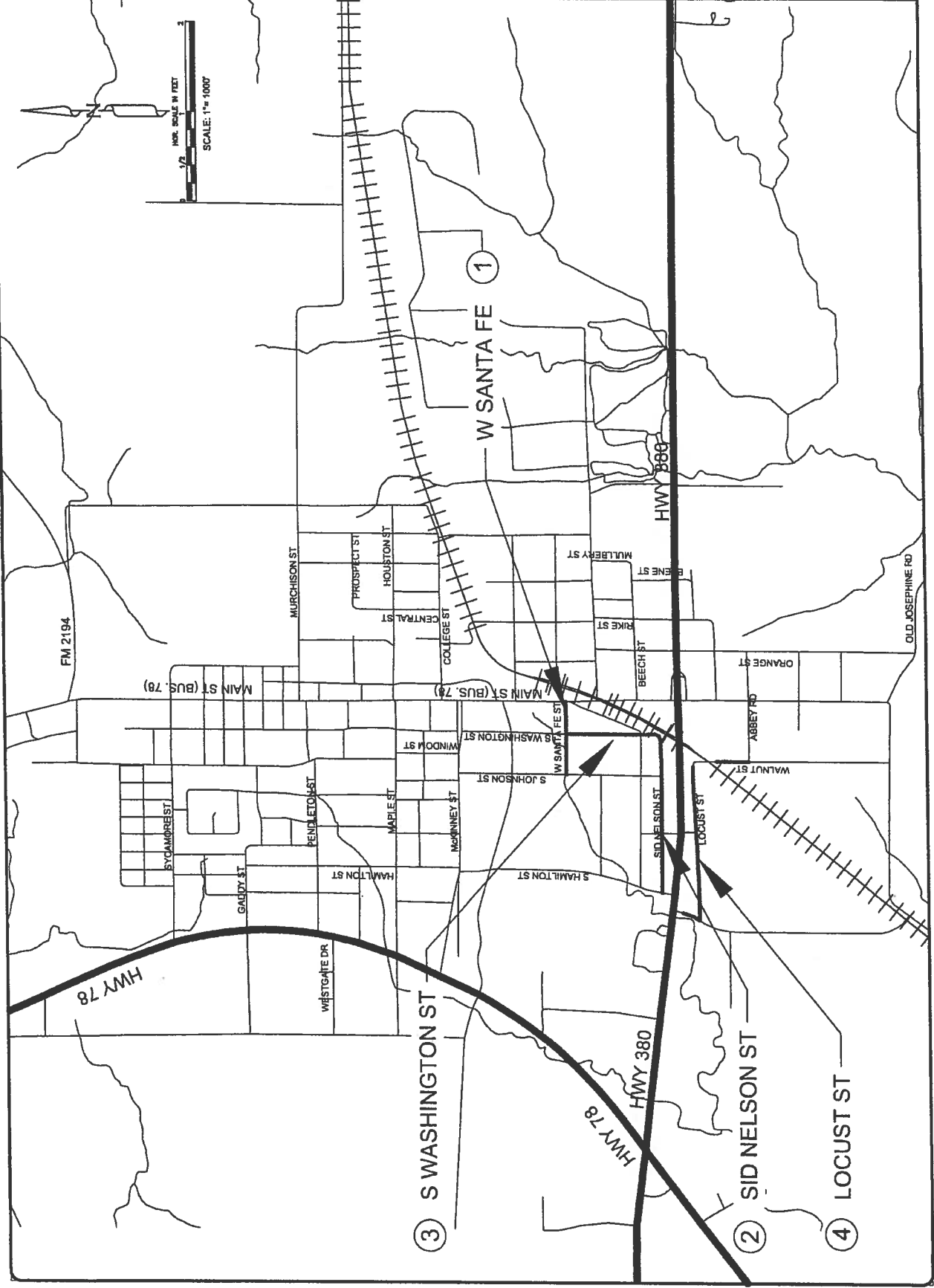


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 FIRM REGISTRATION NO.: F-002225  
 DATE: 6/9/2009  
 REVISION: NC  
 FILE: N:\Farmersville City Overlay Project 2\Overlay Project

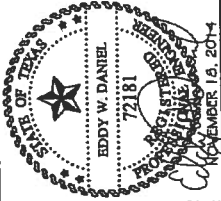


**SITE PLAN**  
 ASPHALT OVERLAY PROJECT  
 FOR  
 CITY OF FARMERSVILLE  
 COLLIN COUNTY, TEXAS  
 PHASE II

SHEET 1 OF 7



**DANIEL & BROWN INC.**  
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DATE: 05/2008  
REVISION: 11/01/15  
DESIGNED: E.W.D.  
DRAWN: M.W.B.  
FILE: N:\Farmersville City Overlay Project 2\Overlay Project



**ASPHALT OVERLAY PROJECT  
PHASE II  
FOR  
CITY OF FARMERSVILLE  
COLLIN COUNTY, TEXAS**

SHEET 2 OF 7

- GENERAL NOTES:**
1. CITY OR DESIGNATED REPRESENTATIVE SHALL CHOOSE ITEMS OF WORK AND QUANTITIES TO BE COMPLETED BY CONTRACTOR.
  2. SAW CUT EXISTING STREET AND/OR DRIVEWAY PAVING AND SIDEWALKS WHERE NECESSARY AND REPLACE TO PROVIDE SMOOTH TRANSITION TO EXISTING AND PROPOSED GRADES. CONCRETE SHALL BE CUT AT EXISTING SCORE LINES OR JOINTS TO PROVIDE NEAT VERTICAL JOINT. PAVING REPAIRS SHALL BE IN ACCORDANCE WITH PLANS AND STANDARD SPECIFICATIONS.
  3. CURB AND GUTTER SHALL BE REMOVED AND REPLACED WHERE SPECIFIED BY CITY AND IN ACCORDANCE WITH PLANS AND SPECIFICATIONS.
  4. SIDEWALK SHALL HAVE A MAXIMUM CROSS SLOPE OF 2% AND A MINIMUM CROSS SLOPE THAT PREVENTS WATER FROM POOLING.
  5. ALL CONCRETE SHALL BE CLASS "A" 3000 PSI CONCRETE UNLESS OTHERWISE SPECIFIED. ALL CONCRETE IN STREETS, INCLUDING VALLEY GUTTERS, SHALL BE CLASS C 3600.
  6. ALL AREAS ADJACENT TO CONSTRUCTION MUST BE CUT/ FILLED AS NECESSARY TO TRANSITION FROM PROPOSED CURB/DRIVEWAY/ROADWAY TO EXISTING GRADE AND TO SMOOTH ANY UNEVEN GRADES OR HOLES CAUSED DURING CONSTRUCTION. MAXIMUM TRANSITION SLOPE IS 4:1.
  7. ANY FILL DIRT USED SHALL BE CLEAN TOPSOIL FREE OF ROCKS AND DEBRIS, EXCEPT WHERE OTHERWISE NOTED.
  8. ALL GRASS DISTURBED DURING CONSTRUCTION AND GRADING SHALL BE REPLACED WITH SOD. SOD SHALL ALSO BE INSTALLED AT LEAST ONE YARD BEYOND EDGE OF PAVEMENT AND/OR CURB.
  9. ALL PAVEMENT MARKINGS DISTURBED DURING CONSTRUCTION SHALL BE REPAINTED TO MATCH EXISTING CONDITIONS, INCLUDING BUT NOT LIMITED TO, FIRE LANE MARKINGS, NO PARKING ZONES, ETC.
  10. CONTRACTOR SHALL PROVIDE TRAFFIC CONTROL AS NECESSARY.
  11. INSTALL SIDEWALK TREATMENT AT ALL DRIVEWAYS AND ALLEYS TO BE REPLACED ACCORDING TO DETAILS. SEE DETAIL "SIDEWALK TREATMENT AT DRIVEWAYS."
  12. SIDEWALKS, CURBS AND GUTTERS, DRIVEWAYS, EARTHWORK AND ROADWAYS MUST BE PROPERLY GRADED TO DRAIN AND PREVENT WATER FROM POOLING.
  13. ALL SIDEWALKS, RAMPS, AND CURB RAMPS SHALL COMPLY WITH ADA AND TAS REQUIREMENTS FOR ACCESSIBLE ROUTES.
  14. ALL CURB REPLACEMENTS SHALL GRADE TO DRAIN. PROPOSED CURB WILL BE ESTABLISHED BY THE CONTRACTOR AND VERIFIED BY THE ENGINEER PRIOR TO CONSTRUCTION.
  15. THE CONTRACTOR SHALL BE RESPONSIBLE FOR STREET REPAIR TO MATCH NEW CURB ELEVATIONS AND TO PROVIDE FOR PROPER DRAINAGE.
  16. CONTRACTOR SHALL BE RESPONSIBLE FOR DISPOSING OF ALL SPOILS AS A RESULT OF THE CONSTRUCTION.
  17. ALL DRIVEWAY APPROACHES MUST BE REPAIRED IN ACCORDANCE WITH DRIVEWAY DETAILS.
  18. MATERIALS NECESSARY FOR DRIVEWAY CULVERT REPLACEMENT, IF REQUIRED, WILL BE PROVIDED BY CITY. INSTALLATION WILL BE SUBSIDIARY TO DRIVEWAY APPROACH INSTALLATION AND PROVIDED BY CONTRACTOR.
  19. CURB DRAINAGE INLETS AND OUTLETS, SUCH AS CONCRETE FLUMES, SHALL BE SUBSIDIARY TO CURB AND GUTTER ITEM.
  20. NO TREE REMOVAL WILL BE REQUIRED FOR THIS PROJECT, HOWEVER, TREE TRIMMING MAY BE NECESSARY FOR SPECIFIC EQUIPMENT TO BE DETERMINED AND PAID BY CONTRACTOR.
  21. CONTRACTOR SHALL INTEGRATE EXISTING VALVES, MANHOLES, METERS, AND FRENCH DRAINS INTO THIS PROJECT. CONTRACTOR WILL BE RESPONSIBLE FOR DAMAGE TO ANY UTILITIES, HOWEVER, CITY WILL PROVIDE MATERIALS FOR VALVE BOXES, METERS, MANHOLES AND FRENCH DRAINS THAT ARE REQUIRED TO BE REPLACED DUE TO NORMAL WEAR.
  22. ALL TESTING SHALL BE PROVIDED AND PAID FOR BY CONTRACTOR.
  23. ALL BASE, SUBGRADE AND LIME STABILIZATION COMPACTION REQUIREMENTS SHALL BE 95%.
  24. ALL DEMOLITION AND REMOVAL OF EXISTING CONCRETE IS SUBSIDIARY TO THIS PROJECT.
  25. ALL DERMATIVE MATERIALS THAT MEET SPECIFICATIONS SHALL BE CONSIDERED FOR APPROVAL.
  26. A SQUARE CONCRETE PAD SHALL BE PROVIDED FOR ALL WATER VALVES AND MANHOLES.
  27. SUBGRADE UNDER PAVEMENTS SHALL BE LIME TREATED SUBGRADE. ONLY HYDRATED LIME SHALL BE UTILIZED. OPTIMUM LIME SHALL BE APPLIED. OPTIMUM LIME CONTENT SHALL BE DETERMINED DURING THE EXCAVATION BY THE USE OF A LIME SERIES TEST. LIME SERIES TEST SHALL BE TAKEN ALONG THE EXCAVATION AT ALL CHANGES IN SOIL AND A MINIMUM OF 300 FEET. LIME SERIES SHALL BE COMPLETED BY AN INDEPENDENT LABORATORY APPROVED BY THE CITY.
  28. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (OCTOBER 2004) - NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS (NCTCOG). PLAN SHEETS SHALL GOVERN WHERE CONFLICT OCCURS.

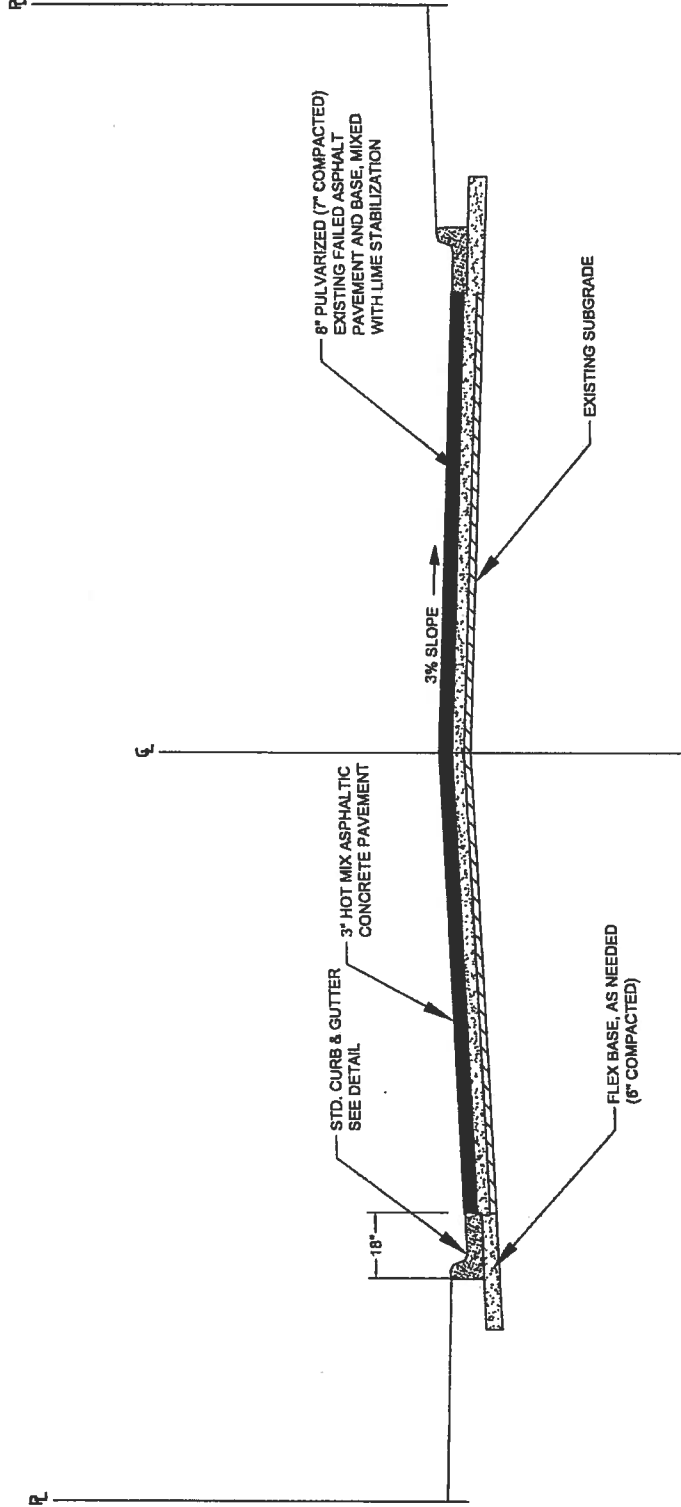
SUMMARY OF ESTIMATED QUANTITIES						
	LOCATION/LIMITS	3" ASPHALT OVERLAY		CURB & GUTTER		DRIVEWAY
		TOTAL QUANTITY	UNIT	TOTAL QUANTITY	UNIT	
(1)	<b>W SANTA FE ST (TOTAL)</b>	<b>1854</b>	<b>S.Y.</b>	<b>1096</b>	<b>L.F.</b>	<b>179 S.Y.</b>
	S JOHNSON-S WASHINGTON	1149	S.Y.	645	L.F.	107 S.Y.
	S WASHINGTON-S MAIN	705	S.Y.	451	L.F.	72 S.Y.
(2)	<b>SID NELSON ST (TOTAL)</b>	<b>5061</b>	<b>S.Y.</b>	<b>3272</b>	<b>L.F.</b>	<b>203 S.Y.</b>
	S HAMILTON-MIMOSA	1731	S.Y.	1131	L.F.	74 S.Y.
	MIMOSA-S JOHNSON	1681	S.Y.	1113	L.F.	55 S.Y.
	S JOHNSON-S WASHINGTON	1650	S.Y.	1028	L.F.	75 S.Y.
(3)	<b>S WASHINGTON ST (TOTAL)</b>	<b>2994</b>	<b>S.Y.</b>	<b>1463</b>	<b>L.F.</b>	<b>351 S.Y.</b>
	FARMERSVILLE-W SANTA FE	792	S.Y.	194	L.F.	68 S.Y.
	W SANTA FE- SID NELSON	2203	S.Y.	1269	L.F.	283 S.Y.
(4)	<b>LOCUST ST (TOTAL)</b>	<b>6475</b>	<b>S.Y.</b>	<b>4304</b>	<b>L.F.</b>	<b>188 S.Y.</b>
	HWY 380-LOCUST	517	S.Y.	321	L.F.	0 S.Y.
	HAMILTON-MIMOSA	2611	S.Y.	1832	L.F.	18 S.Y.
	MIMOSA-WALNUT	2069	S.Y.	1360	L.F.	68 S.Y.
	LOCUST-ABBEEY	1278	S.Y.	791	L.F.	103 S.Y.
	<b>TOTAL</b>	<b>16384</b>	<b>S.Y.</b>	<b>10135</b>	<b>L.F.</b>	<b>921 S.Y.</b>

SUMMARY OF ESTIMATED QUANTITIES						
	LOCATION/LIMITS	3" ASPHALT OVERLAY		CURB & GUTTER		DRIVEWAY
		TOTAL QUANTITY	UNIT	TOTAL QUANTITY	UNIT	
(1)	<b>W SANTA FE ST (TOTAL)</b>	<b>1854</b>	<b>S.Y.</b>	<b>1096</b>	<b>L.F.</b>	<b>179 S.Y.</b>
	S JOHNSON-S WASHINGTON	1149	S.Y.	645	L.F.	107 S.Y.
	S WASHINGTON-S MAIN	705	S.Y.	451	L.F.	72 S.Y.
(2)	<b>SID NELSON ST (TOTAL)</b>	<b>5061</b>	<b>S.Y.</b>	<b>3272</b>	<b>L.F.</b>	<b>203 S.Y.</b>
	S HAMILTON-MIMOSA	1731	S.Y.	1131	L.F.	74 S.Y.
	MIMOSA-S JOHNSON	1681	S.Y.	1113	L.F.	55 S.Y.
	S JOHNSON-S WASHINGTON	1650	S.Y.	1028	L.F.	75 S.Y.
(3)	<b>S WASHINGTON ST (TOTAL)</b>	<b>2994</b>	<b>S.Y.</b>	<b>1463</b>	<b>L.F.</b>	<b>351 S.Y.</b>
	FARMERSVILLE-W SANTA FE	792	S.Y.	194	L.F.	68 S.Y.
	W SANTA FE- SID NELSON	2203	S.Y.	1269	L.F.	283 S.Y.
(4)	<b>LOCUST ST (TOTAL)</b>	<b>6475</b>	<b>S.Y.</b>	<b>4304</b>	<b>L.F.</b>	<b>188 S.Y.</b>
	HWY 380-LOCUST	517	S.Y.	321	L.F.	0 S.Y.
	HAMILTON-MIMOSA	2611	S.Y.	1832	L.F.	18 S.Y.
	MIMOSA-WALNUT	2069	S.Y.	1360	L.F.	68 S.Y.
	LOCUST-ABBEEY	1278	S.Y.	791	L.F.	103 S.Y.
	<b>TOTAL</b>	<b>16384</b>	<b>S.Y.</b>	<b>10135</b>	<b>L.F.</b>	<b>921 S.Y.</b>

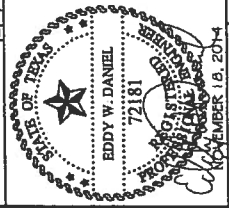
**SHEET 3 OF 7**



- NOTES:
1. MILL (PULVERIZE) EXISTING FAILED ASPHALT PAVEMENT AND BASE TO A DEPTH OF 8 INCHES.
  2. ADD FLEX BASE TO SUBGRADE AS INSTRUCTED BY CITY.
  3. MIX LIME INTO SUBGRADE. ONLY HYDRATED LIME SHALL BE UTILIZED. OPTIMUM LIME SHALL BE APPLIED. OPTIMUM LIME CONTENT SHALL BE DETERMINED DURING THE EXCAVATION BY THE USE OF A LIME SERIES TEST. LIME SERIES TEST SHALL BE TAKEN ALONG THE EXCAVATION AT ALL CHANGES IN SOIL AND A MINIMUM OF 300 FEET. LIME SERIES SHALL BE COMPLETED BY AN INDEPENDENT LABORATORY APPROVED BY THE CITY.
  4. TACK EDGES WITH ASPHALTIC MATERIAL FOR BONDING AND PAVE WITH TYPE "D" HOT MIX ASPHALTIC CONCRETE WEARING COURSE TO ACHIEVE A COMPACTED THICKNESS OF 3".

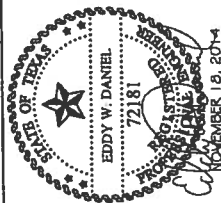


**DANIEL & BROWN INC.**  
ENGINEERS/CONSULTANTS/PLANNERS  
118 McKinney St.  
P.O. Box 606  
Farmersville, Texas 75442  
Phone 972-784-7777  
Fax 972-782-7721  
www.DBIConsultants.com  
FIRM REGISTRATION NO.: F-002225  
DATE: 12/20/2013  
REVISION: 11/07/19  
FILE: NAFarmersville City Overlay Project 2/Overlay Project



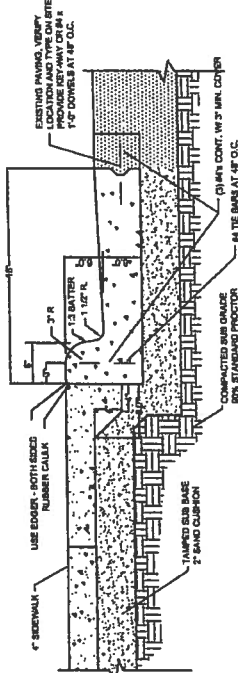
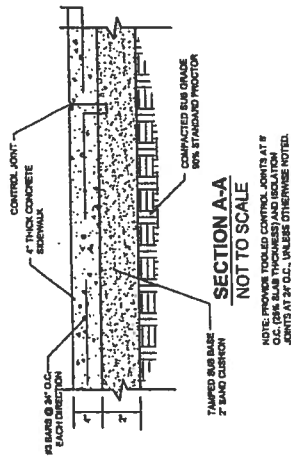
**DETAILS**  
ASPHALT OVERLAY PROJECT  
FOR  
CITY OF FARMERSVILLE  
COLLIN COUNTY, TEXAS  
PHASE II  
SHEET 4 OF 7

DANIEL & BROWN INC.  
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 Farmersville, Texas 75442  
 Phone 972-784-7777  
 Fax 972-782-7721  
 www.DBIconultants.com  
 FIRM REGISTRATION NO.: F-002225  
 DATE: 6/5/2009  
 REVISION: 11/01/13  
 FILE: N:\Farmersville City Overlay Project 2\Overlay Project

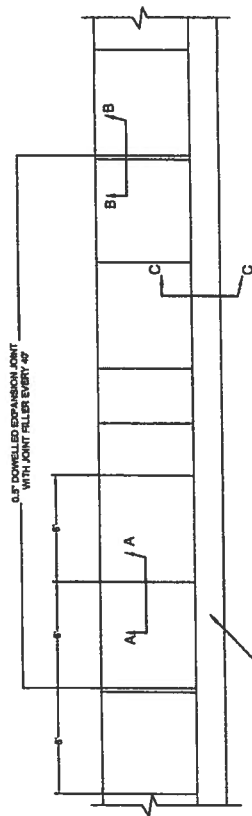


ASPHALT OVERLAY PROJECT  
 FOR  
 PHASE II  
 CITY OF FARMERSVILLE  
 COLLIN COUNTY, TEXAS

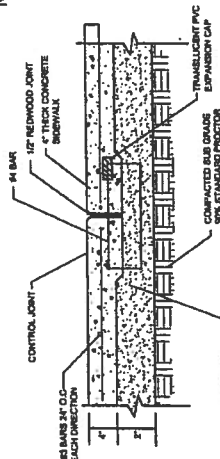
SHEET 5 OF 7



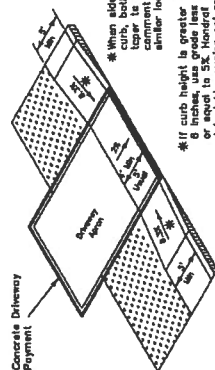
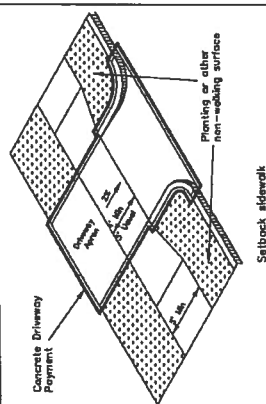
SECTION C-C  
 NOT TO SCALE  
 NOTE: PROVIDE TOoled CONTROL JOINTS AT 12' O.C. (25% SLAB THICKNESS)



CURB AND GUTTER  
 CONCRETE SIDEWALK/CURB & GUTTER PLAN  
 NOT TO SCALE



SECTION B-B  
 NOT TO SCALE



\*When sidewalk is adjacent to a driveway, the curb taper to driveway. This comment applies to all similar location in plan set.  
 \*If curb height is greater than 6 inches, use grade less than required to 5% for drainage and detectable warning not required.

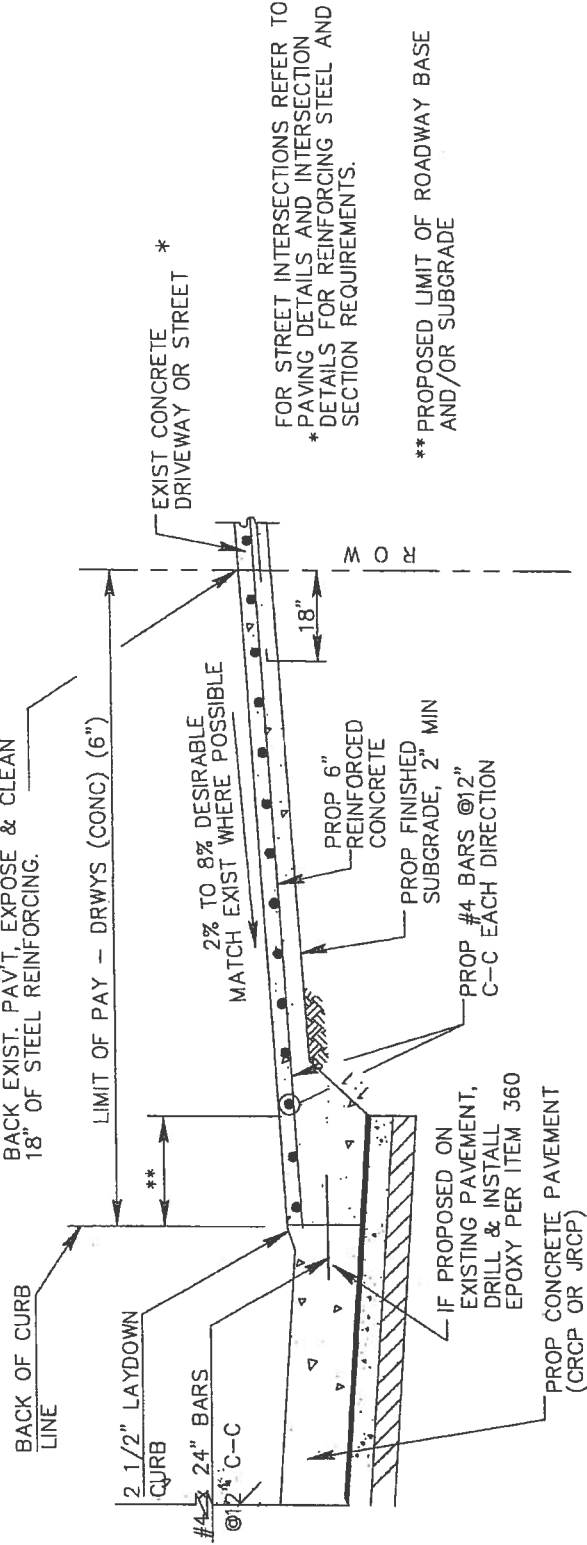
SIDEWALK TREATMENT AT DRIVEWAYS  
 NOT TO SCALE

1x00T DRIVEWAY  
NOT TO SCALE

NOTES:

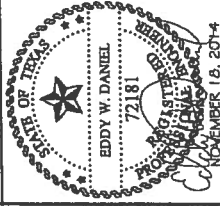
1. SEE NEXT SHEET FOR DRIVEWAY SLOPES WITH PROPOSED SIDEWALKS.
2. FOR INTERSECTIONS BUILT WITH CRCP PAVEMENT SEE CRCP DETAIL.

WHERE CONNECTING INTO EXISTING CONCRETE:  
SAW CUT MIN. 1 1/2" JOINT, BREAK  
BACK EXIST. PAV'T, EXPOSE & CLEAN  
18" OF STEEL REINFORCING.



PROPOSED DRIVEWAY DETAIL  
REINFORCED CONCRETE AT CONCRETE  
CURB AND GUTTER ROADWAY

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Fax 972-782-7721  
www.DBIConsultants.com  
FIRM REGISTRATION NO.: F-002225  
DATE: 05/2008  
REVISION: NC  
DRAWN: M.W.B.  
FILE: N:\Farmersville City Overlay Project 2\Overlay Project



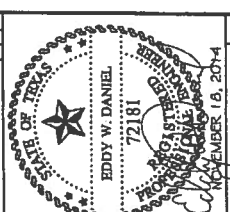
**ASPHALT OVERLAY PROJECT**  
**PHASE II**  
**FOR**  
**CITY OF FARMERSVILLE**  
**COLLIN COUNTY, TEXAS**

**DETAILS**

**DANIEL & BROWN INC.**  
ENGINEERS/CONSULTANTS/PLANNERS  
115 McKinney St.  
P.O. Box 606  
Farmersville, Texas 75442  
Phone 972-784-7777  
Fax 972-782-7721  
www.DBIConsultants.com

DESIGNED: E.W.D.  
DRAWN: M.W.B.  
DATE: 6/9/2009  
REVISION: INC.  
FIRM REGISTRATION NO.: F-002225

FILE: N:\Farmersville City Overlay Project 2009\Project



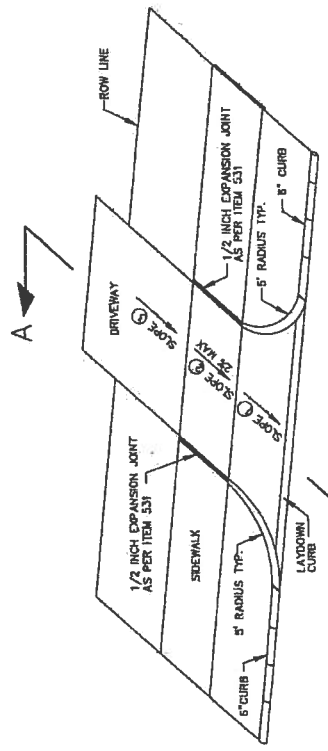
**ASPHALT OVERLAY PROJECT**  
FOR  
CITY OF FARMERSVILLE  
COLLIN COUNTY, TEXAS

**PHASE II**

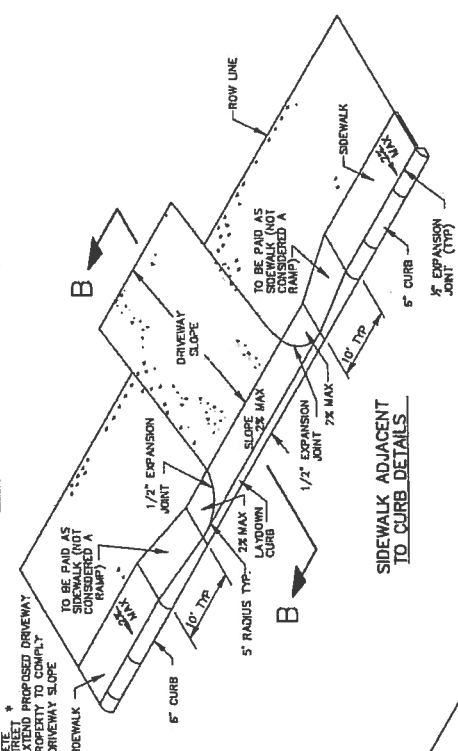
**DETAILS**

SHEET 7 OF 7

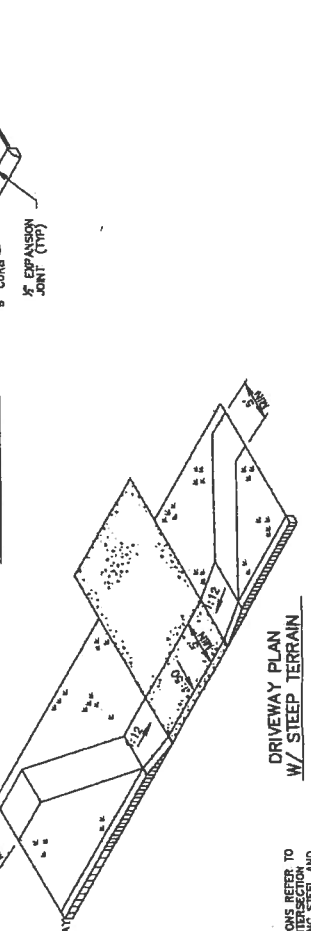
1xDOT DRIVEWAY  
NOT TO SCALE



SIDEWALK OFFSET FROM CURB DETAILS

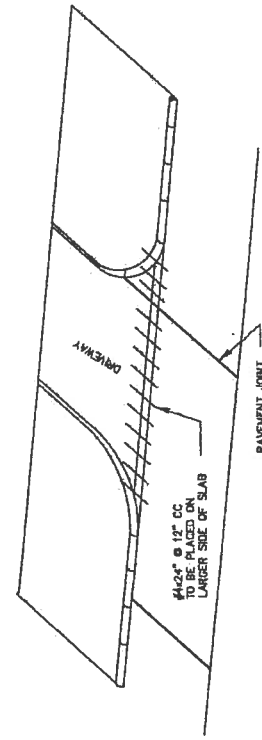


SIDEWALK ADJACENT TO CURB DETAILS

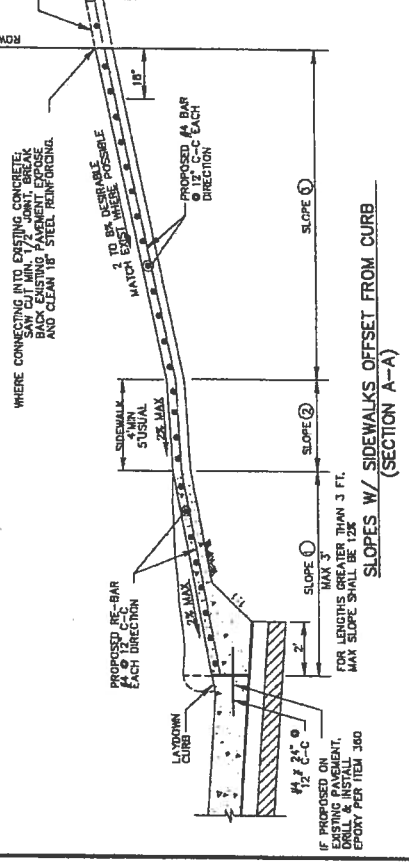


DRIVEWAY PLAN W/ STEEP TERRAIN

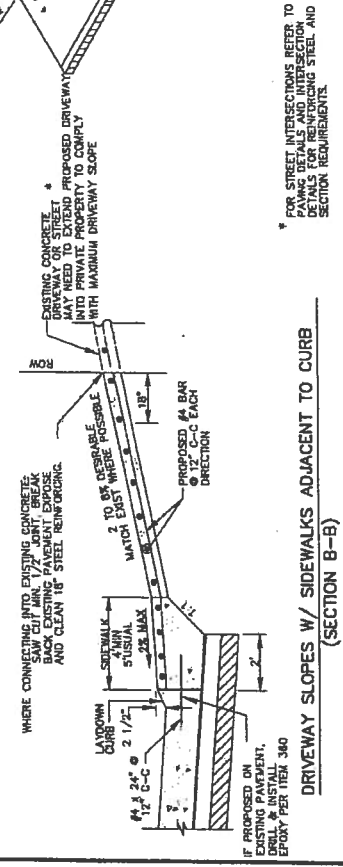
\* FOR STREET INTERSECTIONS REFER TO PAVING DETAILS AND INTERSECTION DETAILS FOR REINFORCING STEEL AND SECTION REQUIREMENTS.



TIE BAR PLACEMENT WITH JCRP



SLOPES W/ SIDEWALKS OFFSET FROM CURB (SECTION A-A)



DRIVEWAY SLOPES W/ SIDEWALKS ADJACENT TO CURB (SECTION B-B)



**TO:** Mayor and Councilmembers

**FROM:** Ben White, City Manager

**DATE:** January 13, 2015

**SUBJECT:** Consider, discuss and act upon a contract with Daniel & Brown, Inc. to supply engineering services for the CDBG Sewer Grant project

- A contract with Daniel & Brown, Inc. is attached for review

**ACTION:** Approve or deny the contract as presented.

# ENGINEERING SERVICES CONTRACT

## PART I AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Farmersville, hereinafter called the "City", acting herein by Joseph Helmberger, P.E., Mayor hereunto duly authorized, and Daniel & Brown Inc. hereinafter called "Firm", acting herein by Eddy Daniel, P.E., procured in conformance with Texas Government Code Chapter 2254, Subchapter A, "Professional Services".

### WITNESSETH THAT:

WHEREAS, the City of Farmersville desires to implement Sewer System Improvements under the general direction of the Texas Community Development Program; and

WHEREAS the City desires to engage Daniel & Brown Inc. to render certain services in connection with its Sewer System Improvements.

NOW THEREFORE, the parties do mutually agree as follows:

#### 1. Scope of Services

Part II, Scope of Services, is hereby incorporated by reference into this Agreement.

2. Time of Performance - The services of Daniel & Brown Inc. shall commence on January 2015. In any event, all of the services required and performed hereunder shall be completed no later than October 14, 2016.

3. Access to Information - It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined above shall be furnished to Daniel & Brown Inc. by the City and its agencies. No charge will be made to Daniel & Brown Inc. for such information and the City and its agencies will cooperate with Daniel & Brown Inc. in every way possible to facilitate the performance of the work described in the contract.

4. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$ 40,500.00. Payment to Daniel & Brown Inc. shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Contract.

5. Indemnification - Daniel & Brown Inc. shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City and its agency members from and against them, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.

#### 6. Miscellaneous Provisions

a. This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas.

b. This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

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

d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.

7. Terms and Conditions - This Agreement is subject to the provisions titled, "Part IV Terms and Conditions" and attached hereto and incorporated by reference herein.

IN WITNESSETH HEREOF, the parties have hereunto set their hands and seals.

CITY OF FARMERSVILLE

FIRM: Daniel & Brown Inc.

BY: \_\_\_\_\_  
Joseph Helmberger, P.E. - Mayor

BY:   
Eddy W. Daniel, P.E. - President

NOTE: This document has important legal consequences. Please consult with your legal counsel with respect to its completion or modification.

## **PART II**

### **PROFESSIONAL ENGINEERING/ARCHITECTURAL SCOPE OF SERVICES**

The Engineering Firm shall render the following services necessary for the development of the project:

#### **SCOPE OF SERVICES**

1. Attend preliminary conferences with the Grant Recipient regarding the requirements of the project.
2. Determine necessity for any acquisition of any additional real property/easements/ROWs for the CDBG project and, if applicable, furnish to the Grant Recipient:
  - Name and address of property owners;
  - Legal description of parcels to be acquired;
  - Map showing entire tract with designation of part to be acquired.
3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the Grant Recipient providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Engineer will review any tests required and act as the Grant Recipient's representative in connection with any such services.
4. Prepare railroad/highway permits.
5. Prepare a preliminary engineering/architectural study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the Grant Recipient, to include preliminary layouts, sketches and cost estimates for the project, and to set forth clearly the Engineer's recommendations; to be completed within 90 days of contract execution.
6. Furnish the Grant Recipient copies of the preliminary report, if applicable (additional copies will be furnished to the Grant Recipient at direct cost of reproduction);
7. Furnish the Grant Recipient a written monthly status report at least seven (7) days prior to the regularly scheduled council/commissioner's court meeting until the project is closed by the Texas Department of Agriculture - Office of Rural Affairs (TDA - ORA). The format for this report is attached to this Agreement as Part IV.
8. Submit detailed drawings and plans/specifications to appropriate regulatory agency (ies) and obtain clearance.
9. Prepare bid packet/contract documents/advertisement for bids. At the time the bid packet is completed, the Engineering Firm shall also furnish to the Grant Recipient an updated written Estimate of Probable Costs for the Project.
10. Ensure 10-day call is submitted to confirm prevailing wage decision issued by TxCDBG.
11. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
12. Conduct bid opening and prepare minutes.
13. Tabulate, analyze, and review bids for completeness and accuracy.
14. Accomplish Construction Contractor eligibility verification.
15. Conduct pre-construction conference and prepare copy of report/minutes.
16. Issue Start of Construction Notice to TCDBG and Notice to Proceed to construction contractor.
17. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
18. Design for access by persons with disabilities to facilities to be used by the public in accordance with Public Law 504.
19. Use forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond that have TxCDBG approval.
20. Make periodic visits, no less than every 30 days during the construction period, to the site to observe the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract.
21. Consult with and advise the Grant Recipient during construction; issue to contractors all instructions requested by the Grant Recipient; and prepare routine change orders if required, at no charge for engineering services to the Grant Recipient when the change order is required to correct errors or omissions by the Engineer; provide price analysis for change orders; process change orders approved by Grant Recipient and the project engineer and submit to TxCDBG for approval prior to execution with the construction contractor.
22. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).
23. Resolve all payment requests within 14 days of receipt of signed pay request from the Construction Contractor.
24. Based on the Engineer's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to

- the Grant Recipient, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.
25. Recommend that a 10% retainage is withheld from all payments on construction contracts until final acceptance by the Grant Recipient and approval by TxCDBG, unless State or local law provides otherwise.
  26. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
  27. Conduct interim/final inspections.
  28. Revise contract drawings to show the work as actually constructed, and furnish the Grant Recipient with a set of "record drawings" plans.
  29. The Engineer will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the owner. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the engineer shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the owner. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the owner in written form.

#### CONSTRUCTION CONTRACTS AND SUBCONTRACTS

1. No work under this Contract shall be subcontracted by Engineer without prior approval, in writing, from the Grant Recipient.
2. The Engineer shall, prior to proceeding with the work, notify Grant Recipient in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If any time during progress of the work, the Grant Recipient determines that any subcontractor is incompetent or undesirable, the Grant Recipient will notify the Engineer who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Contract shall create any contractual relation between any subcontractor and Grant Recipient.
4. The Engineer will include in all contracts and subcontracts of amounts in excess of \$100,000 a provision which requires compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act [42 U.S. 1857 (h)], Section 508 of the Clean Water Act (33 U.S.C. 1368d), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to TxCDBG and to the U.S. Environmental Protection Agency Assistant Administrator for Enforcement.
5. The Engineer will include in all contracts and subcontracts other than for small purchases (less than \$10,000), provisions or conditions which will allow for administrative, contractual or legal remedies in instances which violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
6. The Engineer will include in all contracts and subcontracts in excess of \$10,000 suitable provisions for termination by the Grant Recipient including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Engineer.
7. The Engineer will include in all contracts and subcontracts in excess of \$10,000 provisions requiring compliance with the following:

The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, physical or mental disability, marital status, parenthood, or age.

  - Executive Order 11246 - Equal Employment Opportunity.
  - Copeland Anti-Kickback Act.
  - Davis-Bacon Act – prime contractor contracts in excess of \$2,000.
  - Section 103 and 107 of the Contract Work Hours and Safety Standards Act – contracts in excess of \$2,000.
  - a provision recognizing mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
  - Section 3 of the Housing and Urban Development Act of 1969.
  - Title VI of the Civil Rights Act of 1964
8. The Engineer will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.



9. The Engineer will include in all negotiated contracts and subcontracts a provision to the effect that the Grant Recipient, TxCDBG, the Comptroller General of the State of Texas, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
10. The Engineer will include in all contracts and subcontracts a requirement that the Contractor maintain all relevant project records for three (3) years after the Grant Recipient has made final payment to the Contractor and all other pending matters are closed.

#### STANDARD OF PERFORMANCE AND DEFICIENCIES

1. All services of the Engineer and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Engineer represents that it has the required skills and capacity to perform work and services to be provided under this Contract.
2. The Engineer represents that services provided under this Contract shall be performed within the limits prescribed by the Grant Recipient in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in Engineer's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from Grant Recipient and at the Engineer's expense if the deficiency is due to Engineer's negligence. The Grant Recipient shall notify the Engineer in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the Grant Recipient under applicable state or federal law.
4. The Engineer agrees to and shall hold harmless the Grant Recipient, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Engineer, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Engineer doing the work herein contracted for or by or in consequence of any negligence in the performance of this Contract, or by or on account of any omission in the performance of this Contract.

**PART III -- PAYMENT SCHEDULE  
PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES**

Grant Recipient shall reimburse Daniel & Brown Inc. for basic engineering services provided upon completion of the following project milestones per the following percentages of the maximum contract amount:

Milestone	% of Contract Fee
• Approval of Preliminary Engineering Plans and Specifications by Grant Recipient.	20%
• Approval of plans and specifications by Regulatory Agency (ies).	45%
• Completion of bid advertisement and contract award.	20%
• Completion of construction staking	5%
• Completion of Final Closeout Assessment and submittal of "As Builts" to Grant Recipient.	5%
• Completion of final inspection and acceptance by the Grant Recipient.	5%
<b>Total</b>	<b>100%</b>

**NOTE:** Percentages of payment listed here are general guidelines based on engineering services typically provided. These are negotiable, and should serve only as a guide. Payment schedule should be tied directly to the actual Scope of Work identified in Part II - Engineering/Architectural Scope of Services. **No more than 50% of the engineering budget shall be paid prior to construction.**

**SPECIAL SERVICES**

Special Services shall be reimbursed under the following hourly rate schedule: (List all applicable services to include overhead charge).

Registered Surveyor	\$ 105.00
Survey Crew (3 members)	\$ 150.00
Project Engineer	\$ 125.00
Engineering Technician	\$ 75.00
Project Representative	\$ 55.00
Draftsman	\$ 55.00

The fee for all other Special Services shall not exceed a total of Ten Thousand and No/100 Dollars (\$ 10,000.00). The payment for these Special Services shall be paid as a lump sum, per the following schedule:

1. The Engineer shall be paid upon completion of surveying, necessary field data, and acquisition data, if applicable, the sum of N/A and No/100 Dollars (\$ N/A).
2. The Engineer shall be reimbursed the actual costs of necessary testing based on itemized billing statements from the independent testing laboratory, plus a Five percent (5%) overhead charge. All fees for testing shall not exceed a total of Five Thousand and No/100 Dollars (\$ 5,000.00).
3. The payment requests shall be prepared by the Engineer and be accompanied by such supporting data to substantiate the amounts requested.
4. Any work performed by the Engineer prior to the execution of this contract is at the Engineer's sole risk and expense.

**PART IV  
TERMS AND CONDITIONS**

**PROFESSIONAL MANAGEMENT, ENGINEERING AND/OR ARCHITECTURAL SERVICES**

1. Termination of Contract for Cause. If, through any cause, the Firm shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if the Firm shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Firm of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Firm under this Contract shall, at the option of the City, become its property and the Firm shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Firm shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Firm, and the City may withhold any payments to the Firm for the purpose of set-off until such time as the exact amount of damages due the City from the Firm is determined.

2. Termination for Convenience of the City. The City may terminate this Contract at any time by giving at least ten (10) days' notice in writing to the Firm. If the Contract is terminated by the City as provided herein, the Firm will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Firm, Paragraph 1 hereof relative to termination shall apply.
3. Changes. The City may, from time to time, request changes in the scope of the services of the Firm to be performed hereunder. Such changes, including any increase or decrease in the amount of the Firm's compensation, which are mutually agreed upon by and between the City and the Firm, shall be incorporated in written amendments to this Contract.
4. Personnel.
- a. The Firm represents that he/she has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.
  - b. All of the services required hereunder will be performed by the Firm or under his/her supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
  - c. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.
5. Assignability. The Firm shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto: Provided, however, that claims for money by the Firm from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.
6. Reports and Information. The Firm, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.
7. Records and Audits. The Firm shall insure that the City maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to OMB Circular A-87, Section 570.490 of the Regulations, and this Contract. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Contract. City shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Contract or the period required by other applicable laws and regulations.
8. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
9. Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Firm.

10. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.
11. Equal Employment Opportunity. During the performance of this Contract, the Firm agrees as follows:
  - a. The Firm will not discriminate against any employee or applicant for employment because of race, creed, sex, color, handicap or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, handicap 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. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.
  - b. The Firm will, in all solicitation or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, handicap or national origin.
  - c. The Firm will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
  - d. The Firm will include the provisions a. through c. in every subcontract or purchase order unless exempted.
12. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
13. Section 109 of the Housing and Community Development Act of 1974.
  - a. No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
14. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.
  - a. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Office of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that are located in, or owned in substantial part by persons residing in the area of the project.
  - b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 C.F.R. 235, and all applicable rules and orders of TxCDBG issued there under prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
  - c. The Firm will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 C.F.R. Part 135. The Firm will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
15. Section 503 Handicapped (if \$2,500 or Over) Affirmative Action for Handicapped Workers
  - a. The Firm will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Firm agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - b. The Firm agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
  - c. In the event of the Firm's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to

the Act.

- d. The Firm will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.
16. Interest of Members of a City. No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract. And the Firm shall take appropriate steps to assure compliance.
17. Interest of Other Local Public Officials. No member of the governing body of the Grant Recipient and no other public official of such Grant Recipient, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Firm shall take appropriate steps to assure compliance.
18. Interest of Firm and Employees. The Firm covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The Firm further covenants that in the performance of this Contract, no person having any such interest shall be employed.
19. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Contract, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Contract and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.
20. Primary Contact. The Client's contact person with the Consultant shall be the City Manager.



TO: Mayor and Councilmembers

FROM: Ben White, City Manager

DATE: January 13, 2015

SUBJECT: Consider, discuss and act upon a contract with Grantworks, Inc. to supply administration services for the CDBG Sewer Grant project

- A contract with Grantworks, Inc. is attached for review

**ACTION: Approve or deny the contract as presented.**

# GRANT ADMINISTRATION SERVICES

THIS AGREEMENT, MADE THIS 2ND DAY OF DECEMBER 2014 BY AND BETWEEN THE CITY OF FARMERSVILLE, hereinafter referred to as the Client, and GRANTWORKS, INC., Austin, Texas, hereinafter referred to as the Consultant, procured in conformance with Texas Government Code Chapter 2254, Subchapter A, "Professional Services"

## I. SCOPE OF BASIC SERVICES

Consultant agrees to render Client grant administration services for Client's 2014 Program Year Texas Community Development Block Grant Program Contract Number 7214160 - Community Development Fund (the "Contract"), as administered by the Texas Department of Agriculture - Office of Rural Affairs (the "Department"), as provided in the provisions titled, "Part III, Scope of Basic Services" and attached hereto and incorporated by reference herein (the "Services").

## II. TIME OF PERFORMANCE

The time of services of Consultant shall commence no earlier than upon receipt by the Client of an executed Contract between the Client and the Department. In any event, Consultant shall use commercially reasonable efforts to perform all services required and performed hereunder within either 730 calendar days or the project is administratively closed, as defined by Department, whichever is later.

## III. COMPENSATION AND METHOD OF PAYMENT

For and in consideration of the foregoing, Client agrees to pay Consultant a base fee of Thirty Thousand, Two Hundred and Fifty and no/100 Dollars, (\$30,250.00) in accordance with the following schedule. All payments are conditioned upon submission by Consultant of Invoices and receipt of grant funds by Client. Listing of specific milestones shall not be construed as a representation or warranty, and Consultant makes no representations or warranties, that these milestones measure overall contract progress facilitated by the Consultant's performance of the services, and any particular milestone will be achieved or that any specific Department or other requirements ultimately will be met. The fee schedule shall be based upon identified contract milestones, as follows:

1	Establish files, record keeping system, and accounting system, complete Fair Housing/EEO/Section 504 activities and LSO appointment	\$6,050.00
2	Prepare Environmental Review Record, Coordinate Environmental Notices	\$4,537.50
3	Complete Start of Construction Documents	\$10,587.50
4	25% of Grant funds Requested and Admin. Activities* To Date	\$3,025.00
5	75% of Grant funds Requested and Admin. Activities* To Date	\$3,025.00
6	Submit Project Completion Report and Administrative Closure	\$3,025.00
	<b>Contract Amount</b>	<b>\$30,250.00</b>

\*Administrative Activities include General Administration, Financial Management, Basic Acquisition, and Construction Phase Management services as referenced in the attached Part III—Scope of Grant Administration Services.

## IV. ADDITIONAL SERVICES

- A. If authorized by Client, the Consultant shall furnish Additional Services of the following types which are not considered normal or customary Basic Services; these will be paid for by the Client at an hourly rate of Seventy-five and no/100 Dollars (\$75.00).
1. Services resulting from significant changes in general scope of project necessitating the revision of previously accepted reports, documents, and studies or requiring programmatic amendments to Client's Contract with the Department.
  2. Reassessment of the environmental assessment procedures, republication of environmental notices, and other actions necessary to re-secure clearance from the Department required by an amendment, other Contract modification, or a change in Department policy or practice.

3. Additional door-to-door income survey work required as part of an amendment, other Contract modification, or a change in Department policy or practice.
  4. New and/or additional acquisition activities resulting from unknown needs prior to project initiation, site changes, and/or condemnation proceedings.
  5. Additional services resulting from new or revised program guidelines or regulations as mandated by the state or federal administering agency during the term of this Agreement.
  6. Additional monitoring visits (other than the normal interim and final) which are conducted by the state or federal administering agencies as necessitated by actions or non-actions other than those of the Consultant.
  7. Preparing to serve, or serving, as a consultant or witness for Client in any litigation, other legal or administrative proceeding involving this project.
  8. Preparation of financial statements and records such as audits, check registers, and ledgers that are required for project implementation and are typically generated by the Client in the normal course of business.
  9. Additional or extended services made necessary by: 1) a significant amount of defective work of any construction contractor, consulting engineer and/or architect; 2) prime construction contractor utilizing more than three (3) sub-contractors; 3) more than two (2) prime construction contracts; 4) force account documentation for labor, equipment and materials valued at over \$25,000; 5) default of any construction contractor, consulting engineer and/or architect.
- B. Fees for any professional services required to carry out project-related activities that must be furnished by a third party professional including but not limited to accountant, appraiser, archaeologist, architect, attorney, auditor, biologist or other natural scientist, engineer, historic preservationist, or surveyor, shall be in addition to the base fee payable to Consultant specified in Section III. Expenditures for such services shall require prior approval by Client.

#### **V. CHANGES AND AMENDMENTS**

The Client may, from time to time, request changes in the scope of services of the consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, must be mutually agreed upon by and between the Client and the Consultant and shall be incorporated in written amendments to this Agreement. If a change is requested but the parties cannot agree on the specific terms of such change, the parties may mutually agree to terminate this Agreement. Absent such agreement to terminate, the Agreement will continue without the change.

#### **VI. ASSIGNABILITY**

Neither party shall assign any interest in this Agreement or transfer any interest in the same, without the prior written consent of the other party, not to be unreasonably withheld, provided, however, that claims for money by the Consultant from the Client under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished reasonably promptly to the Client.

#### **VII. RECORDS AND AUDITS**

During the term of this Agreement, the Consultant shall assist the Client in maintaining fiscal records and supporting documentation for all expenditures of funds made under the Contract. Such records must include data on racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under the Contract. Client shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Contract or the period required by other applicable laws and regulations.

#### **VIII. MISCELLANEOUS PROVISIONS**

- A. Governing Law. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in the county in which Client's primary office is located.
- B. Binding Effect; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representative, successors and permitted assigns. This Agreement does not, and is not intended to confer any rights or remedies to any person other than the parties to this Agreement.



- C. Severability. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- D. Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursement in addition to any other relief to which such party may be entitled.
- E. Provision of Information. It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined in this Agreement shall be furnished to the Consultant by the Client and its agencies. No charge will be made to Consultant for such information and the Client and its agencies will cooperate with Consultant in every way possible to facilitate the performance of the work described in this Agreement.
- F. Primary Contact. The Client's contact person with the Consultant shall be the Mayor.
- G. Waiver of Consequential Damages. Neither party will be liable to the other party or any other person or entity for any special, incidental, indirect, consequential, punitive or exemplary damages arising out of or relating to this Agreement, regardless of the form of action and whether or not such party has been informed of or otherwise might have anticipated the possibility of such damages.
- H. Limitation of Liability. Each party agrees that, regardless of the type, nature or number of causes of action or claims by the Client (including without limitation claims for indemnity under this Agreement) or any third party claiming by, through or under the Client, the maximum amount of damages, individually or in the aggregate, that either party will be liable for or can be required to pay to the other or any other claimant is the amount of fees to be paid to the Consultant by the Client under this Agreement. The parties agree that this limitation of damages is reasonable and acknowledge that but for this limitation, neither party would enter into this Agreement.
- I. Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties with regard to contemporaneous understandings or written or oral agreements between the parties respecting the subject matter of this Agreement.
- J. Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against either party by reason of the extent to which such party or its professional advisors participated in the preparation of this Agreement.
- K. Ownership of Work. The parties agree that the Consultant retains all ownership rights to forms, reports, and other documents produced in whole or in part under this Agreement until such documents are completed as contemplated under this Agreement and placed in the official Contract record or submitted as final documents to the Client or the Department. Consultant shall retain all ownership rights to templates, internal tracking systems, and other documents produced by Consultant that have a common use applicable to multiple clients and are not produced specifically for the Client under this Agreement.
- L. Alternative Dispute Resolution. The parties hereto agree to resolve all disputes arising hereunder in accordance with this section. If a dispute arises out of or relates to this Agreement or any alleged breach hereof, the party desiring to resolve such dispute shall deliver a written notice of the dispute, including the specific claim in the dispute to the other party. Following the delivery of such notice, the parties involved in the dispute shall meet at least twice within the thirty (30) day period commencing with the date of the notice and in good faith shall attempt to resolve such dispute through negotiation. If any dispute is not resolved or settled by the parties as a result of such negotiation, the parties in good faith shall submit the dispute to non-binding mediation before a retired judge of a federal district court or

Texas district court or a similarly qualified, mutually agreeable individual in Austin, Texas. The parties shall bear the costs of such mediation equally. If the dispute is not resolved through such mediation, either party may proceed to file suit.

- M. Force Majeure. A "Force Majeure Event" means any event or cause beyond a party's reasonable control (including without limitation, construction delays, fire, flood, rain, weather, casualty, explosions, damage by third parties whether negligently or intentionally caused, strikes, work stoppages, picketing, acts of God or other casualties, or the laws or actions of any governmental authority), as a result of which at any time a party is unable to perform any of its obligations under this Agreement. If a Force Majeure Event occurs during the term of this Agreement that prevents the Consultant from performing its obligations hereunder, the Consultant and the Client will in good faith mutually agree on one of the following alternatives: (1) extend the time for performance, or (2) terminate this Agreement and, as mutually agreed, cause the payment to Consultant of fees not yet paid for services performed prior to the occurrence of the Force Majeure Event or cause the refund to Client of fees previously paid for services that were not performed prior to the occurrence of the Force Majeure Event.

#### IX. TERMS AND CONDITIONS

This Agreement is subject to the provisions titled "Part II Terms and Conditions" and "Part III Scope of Basic Services," which each are attached hereto and hereby are incorporated by reference.

IN WITNESSETH HEREOF, the Client and the Consultant have executed this Agreement as of the date indicated above.

**GrantWorks, Inc.**  
**2201 Northland Drive**  
**Austin, TX 78756**

**City of Farmersville**  
**205 S. Main**  
**Farmersville, Texas 75442**



BY:

\_\_\_\_\_  
**Bruce J. Spitzengel**  
**President**

BY:

\_\_\_\_\_  
**Mayor**

ATTEST:

BY:

\_\_\_\_\_  
**City Secretary**

**AGREEMENT FOR ADMINISTRATIVE MANAGEMENT SERVICES  
PART II - TERMS AND CONDITIONS**

1. **PERSONNEL.** The Consultant represents it has or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Client. The Consultant may subcontract any of the work or services covered by this Agreement, provided that (a) any subcontracted work or services must be the subject of a written approval written contract or agreement, (b) the Consultant shall be responsible to Client for the acts or omissions of any such subcontractor, and (c) such subcontractors shall be subject to the requirements of the program.
2. **REPORTS AND INFORMATION.** The Consultant, at such times and in such forms as the Client may reasonably require, shall furnish the Client periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
3. **FINDINGS CONFIDENTIAL.** All of the reports, information, data, etc., prepared or assembled by the Consultant under this Agreement are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the Client except where required by law or by court order.
4. **COMPLIANCE WITH LOCAL LAWS; INDEMNIFICATION.** Consultant shall comply with the requirements of all applicable laws, rules and regulations, and shall, indemnify, and hold harmless the Client from and against them, and shall indemnify and hold harmless the Client from and against liability for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws associated solely with Consultant's performance of the services required to be performed by Consultant under this Agreement.
5. **TERMINATION OF AGREEMENT FOR CAUSE.** If the Consultant shall fail to fulfill in a timely and proper manner his/her obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the Client shall provide written notice to Consultant reasonably specifying the failure or violation. If Consultant fails to cure such failure or violation within five (5) business days of receiving such notice or, if the failure or violation is incapable of cure within such time frame, to begin to take actions to cure such failure or violation and to diligently pursue them to completion, Client thereupon shall have the right to terminate this Agreement immediately by giving written notice to the Consultant. Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.
6. **TERMINATION OF AGREEMENT FOR CONVENIENCE.** Either the Client or the Consultant may terminate this Agreement at any time by providing at least ten (10) days' notice in writing to the other party to this Agreement. If the Agreement is terminated as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. In such event, all finished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Agreement shall, at the option of the Client, become its property.
7. **INTEREST OF MEMBERS OF CLIENT.** Client agrees that no member of its governing body, no other public official of Client, and no other officer, employee, or agent of the Client who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Agreement, and Client shall take appropriate steps to assure compliance with this requirement.

8. **INTEREST OF CONSULTANT AND EMPLOYEES.** The Consultant covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Consultant to perform services under this Agreement.
9. **FEDERAL COMPLIANCE.** During the term of this Agreement, the parties shall comply with all Federal laws, regulations, and rules including the following:
- A. **CIVIL RIGHTS ACT OF 1964.** Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
  - B. **SECTION a109 OF THE HOUSING & COMMUNITY DEVELOPMENT ACT OF 1974.**  
No person in the United States shall on the ground of race, color, national origin, creed, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Title.
  - C. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Agreement, the Consultant agrees as follows:
    - i. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Client setting forth the provisions of this non-discrimination clause.
    - ii. The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
    - iii. The Consultant will cause the foregoing provisions in this Section to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
    - iv. The Consultant will include the provisions i. through iii. in every subcontract or purchase order unless exempted.
10. **"SECTION 3" COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES.**
- A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business

concerns which are located in, or owned in substantial part by persons residing in the area of the project.

- B. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 C.F.R. 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- C. The Client shall require each contractor to send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The Client shall require that this Section 3 clause is included in every contract or subcontract for work in connection with the project and will, take appropriate action upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 C.F.R. Part 135. The Client shall not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will terminate any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with requirements of the regulations.
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 C.F.R. Part 135.

11. SECTION 503 (IF \$2,500 OR OVER) AFFIRMATIVE ACTION FOR INDIVIDUALS WITH DISABILITIES:

- A. The parties will not discriminate against a qualified individual on the basis of disability. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and for training, including apprenticeship.
- B. The contractor agrees to comply with applicable rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the applicable rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation to take affirmative action

to employ and advance in employment qualified individuals with disabilities for employment, and the rights of applicants and employees.

- E. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment individuals with disabilities and to treat qualified individuals without discrimination on the basis of their physical or mental disability.
- F. The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

**AGREEMENT FOR GRANT ADMINISTRATION SERVICES  
PART III - SCOPE OF BASIC SERVICES**

Note: Listed services may not be required for this Texas CDBG project, particularly those listed in Sections E, F, G and H. Consultant shall furnish only those services appropriate to the project.

**A. General Administration**

1. Provide general advice to the Client and its staff with respect to the implementation of the project and regulatory matters.
2. Furnish forms, policies, and procedures for implementation of the project.
3. Provide technical assistance to Client personnel who will be directly involved in the program for routine tasks, using the Texas Community Development Block Grant Program (Texas CDBG) - Project Implementation Manual (PIM).
4. Assist Client in developing a record keeping system consistent with program guidelines, including the establishment and maintenance of program files.
5. Serve as liaison for the Client during normal monitoring visits by staff representatives from either the Texas Department of Agriculture - Office of Rural Affairs (Department) or the U.S. Department of Housing and Urban Development (HUD).
6. Assist Client in meeting all special condition requirements identified in the Department contract.
7. Prepare and submit to Department Client's required Quarterly Progress Report and Financial Interest Report.
8. Assist Client in meeting citizen participation, personnel, and Section 504 requirements as may be required for participation in the Texas CDBG program.
9. Assist Client in preparing Contract Amendments and Modifications along with related documentation, public hearings, and notices as requested by Client.\*
10. Other general administration tasks not listed here that are requested by Client and agreed to in writing by Consultant.

**B. Financial Management**

1. Assist Client in proving its ability to manage the grant funds to the state's audit division.
2. Assist Client in establishing and maintaining a Direct Deposit account and/or separate local bank account, journals and ledgers.
3. Assist Client in submitting the Direct Deposit Authorization Form and/or Depository/Authorized Signatory form to Department.
4. Assist Client in preparation of drawdown requests from Department and disbursements of funds within the allotted time period.
5. Assist the Client in establishing procedures to handle the use of any Texas CDBG program income.

**C. Environmental Review\***

1. Prepare environmental assessment.
2. Coordinate environmental clearance procedures with other interested parties.
3. Coordinate any third-party professional services required to complete the assessment (third-party professional services are outside the scope of this agreement and their costs shall not be borne by Consultant, see Section IV of this Agreement)
4. Document consideration of any public comments.
5. Assist with compliance with Executive Order 11988 for projects located in flood plain.
6. Prepare and submit related public notices.
7. Prepare Request for Release of Funds and Certifications.

**D. Basic Acquisition Activities\*\***

1. Prepare required acquisition report(s).
2. Advise Client of general procedures required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as they pertain to the project.

**E. Construction Phase Management—Force Account (if required)\***

1. Assist Client in determining whether and/or what Texas CDBG contract activities will be carried out in whole or in part via force account labor.
  2. Assist Client in determining whether or not it will be necessary to hire temporary employees to specifically carry out Texas CDBG contract activities.
  3. Assist Client in maintaining adequate documentation of personnel, equipment and materials expended/used and their costs.
- F. Construction Phase Management—Bid/Contract Type (if required)
1. Assist Client in documenting compliance with all federal and state requirements related to equal employment opportunity.
  2. Assist Client in documenting compliance with all federal and state requirements related to minimum wage and overtime pay requirements.
  3. Provide assistance to or act as local labor standards officer for this project.
  4. Select and verify wage rate with Department.
  5. Request bid packet, bid advertisement, bid tabulation, and contract prepared by engineer to review upon receipt for compliance with Texas CDBG requirements.
  6. Make ten-day call to Department.
  7. Verify construction contractor and any subcontractors for eligibility.
  8. Submit start of construction documents to Department.
  9. Attend (conduct if necessary) pre-construction conference and prepare minutes.
  10. Review weekly payrolls and conduct compliance follow-ups.
  11. Submit any additional classifications to Department.
  12. Coordinate employee interviews to evaluate Davis-Bacon wage compliance.
  13. Request from engineer and upon receipt process and submit change orders to Department.
  14. Obtain Certificate of Construction Completion/Final Wage Compliance Report and submit to Department.
- G. Construction Phase Management—Housing Rehabilitation/On-Site Sewage Facility (if required)
1. Assist Client in documenting compliance with all federal and state requirements related to equal employment opportunity, minimum wage and overtime pay requirements
  2. Develop/edit Housing/OSSF Program Guidelines
  3. Coordinate with client personnel on guidelines, process/procedures
  4. Publicize and conduct program applicant in-take sessions
  5. Review program applications for eligibility
  6. Track then score/rank completed, eligible participant applications for Client approval
  7. Develop/coordinate applicant agreements
  8. Coordinate procurement of third-party experts as needed (lead paint, soil/site evaluator)
  9. Coordinate with local officials as needed (inspection, permitting)
  10. Develop bid packages
  11. Verify construction contractor and any subcontractors for eligibility with Department
  12. Conduct pre-construction conferences
  13. Process and submit change orders to Client and Department
  14. Conduct (Housing) or coordinate (OSSF) required inspections
  15. Obtain final permit/inspection reports and submit to Department
- H. Service Line Replacement on Private Property (if required)
1. Assist Client in establishing local program guidelines.
  2. Prepare proposed guidelines for review by Client and Department.
  3. Prepare resolution for Client adopting local program guidelines.
- I. Equal Opportunity/Fair Housing
1. Maintain documentation of all project beneficiaries by ethnicity and gender.
  2. Prepare Section 3 and Affirmative Action Plan.
  3. Prepare all Section 504 requirements.
  4. Assist the Client in developing, implementing and documenting new activities to affirmatively further fair housing activities during the contract period.



5. Provide all applicable equal opportunity provisions and certifications for inclusion in bid packet

J. Audit/Close-out Procedures

1. Prepare the final Project Completion Report, including Performance Report, Beneficiary Report, Financial Interest Reports,, documentation of fair housing activities and Certificate of Completion.
2. Assist Client in responding to any monitoring findings and resolving any third party claims.
3. Provide auditor with Texas CDBG audit guidelines.

\*Services related to contract amendments or modifications, reassessment of the Environmental Review Record resulting from a contract amendment, or documentation of in-kind contributions or force account labor exceeding \$25,000 may be subject to additional charges payable to GrantWorks (see Section IV of this Agreement).

\*\*Acquisition Activities may not be required in each project other than the submittal of an "acquisition report" documenting no activities. If additional acquisition services are required, including any or all of the following activities, an additional charge may be negotiated with the Client: obtaining documentation of property ownership, correspondence and notifications to property owners, negotiations, securing signatures, filing of records, securing appraisals or surveys, providing market value estimates, coordinating with appraisers, surveyors, or other third parties. These additional charges will be paid using grant funds if available. At its sole discretion, GrantWorks may choose to donate any additional acquisition services in the interest of successful program implementation and enhanced client relationship. However, costs for any third-party acquisition services shall be the Client's responsibility.

**Additional General Terms Regarding Third-Party Services**

Some services will be performed by third-party service providers.

Assistance by Consultant with (1) verification of construction contractors or other service contractors, (2) selection of bid award winners, or (3) any other activity relating to contractors, subcontractors, bid award winners or any other third party not directly engaged through a written agreement with Consultant to provide services required to be provided by Consultant under this Agreement (collectively "Third Party Service Providers") or is not intended to be and shall not be construed as an endorsement, representation or warranty by Consultant of any kind relating to such Third Party Service Providers or of the quality of such Third Party Service Providers' work, and all such endorsements, representations or warranties hereby are expressly disclaimed.

Assistance by Consultant with the fulfillment of any requirements imposed by third parties, governmental or otherwise, shall not be construed as a representation or warranty, and Consultant makes no representations or warranties, that any particular requirement will be achieved or met, and Consultant assumes no responsibility for the achievement or failure to achieve such requirements.

All assistance of Consultant described in this Agreement based on the provision of information to third parties shall be based on information provided by Client, and Consultant shall be entitled to rely on such information without any additional duty of inquiry or investigation.



TO: Mayor and Councilmembers  
FROM: Ben White, City Manager  
DATE: January 13, 2015  
SUBJECT: Consider, discuss and act upon non-conforming signs

- The Sign Ordinance (from the Code of Ordinances – online) is attached for review

**ACTION: Council to act as deemed necessary.**

## Chapter 56 - SIGNS AND ADVERTISING

### FOOTNOTE(S):

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**State Law reference—** Regulation of signs by municipalities generally, V.T.C.A., Local Government Code § 216.001 et seq.; authority for municipal regulation of signs, V.T.C.A., Local Government Code § 216.901; regulation of political signs by municipality, V.T.C.A., Local Government Code § 216.903; municipal boards on sign control, V.T.C.A., Local Government Code § 216.004; regulation of outdoor advertising generally, V.T.C.A., Transportation Code § 391.031 et seq.; licenses and permits for outdoor advertising, V.T.C.A., Transportation Code § 391.061 et seq.; municipal authority to regulate sign placement, V.T.C.A., Transportation Code § 393.0025.

**Secs. 56-111—56-133. - Reserved.**

### ARTICLE I. - IN GENERAL

#### Sec. 56-1. - Penalty.

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court, shall be subject to a fine not to exceed the sum of \$500.00 for each offense, and each and every day any such offense shall continue shall be deemed to constitute a separate offense.

*(Ord. No. 2007-48, § 4, 10-9-2007)*

#### Sec. 56-2. - Purpose.

- (a) The purpose of this chapter is to encourage aesthetically pleasing design, establish uniform standards for the placement of signs, and provide minimum standards to safeguard life, health, property and the public welfare by regulating and controlling the design, quality of materials, construction, location, electrification and maintenance of all sign structures not located within a building.
- (b) The regulations of this chapter are not intended to authorize, nor shall they be deemed to permit, any violation of the provisions of any Code provision, statute, rule or regulation.

*(Ord. No. 2007-48, app. A, § 1-2, 10-9-2007)*

#### Sec. 56-3. - Applicability.

The terms and conditions of this chapter shall apply to signs located within the corporate city limits and its extraterritorial jurisdiction to the full extent permitted by and not otherwise prohibited by V.T.C.A., Local Government Code ch. 216.

*(Ord. No. 2007-48, app. A, § 1-1, 10-9-2007)*

#### Sec. 56-4. - Sign permits.

- (a) *Permit required.* No sign, other than those signs allowed without a permit by sections 56-31 and 56-54, shall be erected, placed, attached, secured, altered or displayed on the ground, or to any building, or any structure, until a permit for such sign has been issued by the building official. An application for a sign permit may be obtained from the city.
- (b) *Application.* The city shall approve or deny an application for a sign permit within 30 days of the building inspection division's receipt of the application. A sign permit will be issued if a proposed sign conforms to all Code provisions.
- (c) *Diagram of sign location.* Upon request by the city, a diagram shall be provided showing the location of all signs on the property or adjacent properties. Incorrect information on an application shall be grounds for denial or revocation of a sign permit.
- (d) *Not to issue for prohibited locations.* No sign permit shall be issued under this section for any sign in a district where signs are prohibited by Chapter 77, Zoning, as it currently exists or may be amended by ordinance.
- (e) *Fees.* The sign permit fee shall be a fee as established from time to time in the master fee schedule contained in appendix A of this Code.
- (f) *Interpretation and administration.* The building official shall be responsible for interpreting and administering this section. The building official may revoke any permit for a sign issued in error.

(Ord. No. 2007-48, app. A, § 2-1, 10-9-2007)

#### **Sec. 56-5. - Responsibility of compliance.**

The permittee, owner, agent, or person having the beneficial use of a sign, the owner of the land or structure on which the sign is located, and the person erecting the sign are all subject to the provisions of this chapter.

(Ord. No. 2007-48, app. A, § 2-2, 10-9-2007)

#### **Sec. 56-6. - Enforcement.**

- (a) *Authority.* The building official or his designee or such other person as may be appointed by the city manager is hereby designated to be the city's sign inspector and is further authorized and directed to interpret and enforce all the provisions of this chapter. For such purposes the sign inspector shall have the powers of a law enforcement officer.
- (b) *Right of entry.* Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever there is reasonable cause to believe that there exists in any building or upon any premises any condition or violation of this chapter which makes such building or premises unsafe, dangerous or hazardous, the sign inspector may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed by this chapter, provided that if such building or premises is occupied, he shall first present proper credentials and request entry. If such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused or the owner or other persons having charge or control of the building or premises cannot be located, the sign inspector shall have recourse to every remedy provided by law to secure entry.

(Ord. No. 2007-48, app. A, § 2-3, 10-9-2007)

#### **Secs. 56-7—56-30. - Reserved.**

### **ARTICLE II. - DEFINITIONS AND REGULATIONS**

**Sec. 56-31. - Definitions; sign regulations and requirements.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*A-frame sign* means a temporary sign constructed of two pieces of wood, metal or other similar material connected at the top by hinges or similar devices and may collapse when the connecting devices are overextended or the two pieces of wood, metal or other similar material are against one another.

- (1) The maximum width allowed is four feet. The maximum height allowed is four feet. The maximum copy area allowed is 16 square feet.
- (2) A-frame signs are only allowed to be displayed during normal daytime business hours between 8:00 a.m. and 5:00 p.m.
- (3) A-frame signs are prohibited in the city's Central Area (CA) Zoning District. See *Sandwich board* for the CA Zoning District.
- (4) A sign permit is not required.
- (5) A-frame signs must be located a minimum of four feet from any curb of any adjacent street. An A-frame sign shall not be closer than 20 feet to another A-frame sign. A maximum of one A-frame sign may be placed per business or tenant on the property where the A-frame sign is located. A-frame signs must provide an unobstructed pedestrian clearance of at least four feet in width. An A-frame sign shall not be placed in any manner that interferes with vehicular traffic or causes a potential hazard.
- (6) An A-frame sign shall not be placed in any median. An A-frame sign shall not be placed within a utility or right-of-way easement. An A-frame sign shall not be illuminated or contain any moving parts other than the fasteners holding the faces of the A-frame sign together.

*Abandoned or neglected sign.*

- (1) The term "abandoned or neglected sign" means a:
  - a. Sign that is not maintained or has missing panels, letters, or characters, burned out lights, rust, loose or damaged parts, or has faded from its original color or advertises a product or service no longer available or a business no longer in operation;
  - b. Sign which is illegible, nonfunctional, in disrepair, or hazardous as a result of a lack of maintenance; or
  - c. Previously nonconforming sign structure that has lost its lawful nonconforming status as a result of abandonment or lack of use.
- (2) Abandoned or neglected signs shall be considered a public nuisance and are prohibited in the city and its extraterritorial jurisdiction. See *Public nuisance*.

*Apartment sign* means a temporary stake sign made of wood, metal or other similar material used to convey information that relates to the operations of an apartment community or complex.

- (1) An apartment sign shall not exceed six square feet in total area. The maximum height of an apartment sign shall not exceed four feet.
- (2) No sign permit is required.
- (3)

Apartment signs may be placed in the front yard of a property developed as an apartment complex no earlier than Friday at 12:00 noon and shall be removed from the property no later than Sunday at 6:00 p.m.

- (4) Apartment signs may not be installed on any public property or right-of-way area. Apartment signs shall only be placed on the property for the apartment community to which it pertains. Apartment signs installed within the front of a property shall not be placed closer than 60 feet from another apartment sign. Apartment signs shall not be installed within 30 feet from a side property line.

*Audible sign* means any sign that emits music, talking, words, or other sound or amplification. Audible signs are prohibited in the city and its extraterritorial jurisdiction.

*Awning.*

- (1) The term "awning" means a retractable or nonretractable projection, shelter or structure of rigid or nonrigid canvas, metal, wood, or other similar material, attached to the building, that extends above a window, door, patio, or deck used as a shading device for windows or entryways, used as protection from the weather, used as a decorative embellishment, or used for identity. For the purposes of this ordinance an awning is not a canopy. See *Canopy* and *canopy sign*.
- (2) Minimum height of the lowest part of an awning shall be seven feet above grade.

*Awning sign* means a permanent sign that is directly applied, attached or painted onto an awning that extends above a window, door, patio, or deck used as a shading device for windows or entryways, intended for protection from the weather or as a decorative embellishment, or used for identity. An awning sign is used to advertise the name of the business, hours of operation, business telephone number, business address, or website address.

- (1) No building shall have both a wall sign and an awning sign on the same building face.
- (2) A sign permit is required.
- (3) The maximum height of an awning sign shall not exceed four feet. The width of an awning sign shall not exceed 75 percent in length of any side of an awning.
- (4) An awning sign shall only be permitted in conjunction with a nonresidential use or in a nonresidential zoning district.
- (5) An awning sign shall be secure and may not swing, sway, or move in any manner. An awning sign shall not contain any moving devices. See *Canopy* and *canopy sign*.

*Balloons and other floating devices* means a visible airtight, inflatable apparatus with a maximum size not to exceed three square feet in total area in various shapes or designs made of latex, Mylar, or other similar material that extends by, or is anchored to the ground by, a cord, rope, string, wire or other similar material.

- (1) Balloons and all other floating devices are allowed for temporary events only. Temporary events include business grand openings, festivals, fairs, tournaments, or other similar happenings.
- (2) No sign permit is required.
- (3) No person shall erect, maintain, or allow the installation of any floating devices anchored to the ground, any vehicle, structure or any other fixed object for the purpose of advertising or attracting attention to a business, commodity, service, sale, or product, except as otherwise

permitted in this section. See *Special event, special event signs, grand opening, grand opening signs, and wind devices*.

**Banner** means a temporary single sign or a grouping of pennants having characters, letters, or illustrations applied to plastic, cloth, canvas, or other light fabric or similar material, with the only purpose of such nonrigid material being for background used to promote awareness of special events or as seasonal decoration. Banners will include all flags or pennants that contain no names, initials, logos, insignia or similar items and are not national, state or municipal flags, or the official flag of a public or private institution. A banner does not include a municipal banner.

- (1) A sign permit is required for each display period lasting for up to a maximum of 30 calendar days. One banner sign may be placed on a building for a maximum of 30 days or less, two times in a 12-month period. Each suite within a retail development shall be considered a building and, therefore, shall be allowed to erect a banner accordingly.
- (2) Exemption. Religious organizations that temporarily operate in a school or other nonreligious facility may erect a banner no earlier than two hours before a worship service and remove the banner no later than two hours after such worship service without the issuance of a sign permit.
- (3) A banner shall be securely attached to the front, side or rear face of a building. A banner shall not face a residential neighborhood, unless the site of the banner is separated from the residential neighborhood by a major thoroughfare. However, banners are permitted only in conjunction with a nonresidential use or in a nonresidential zoning district.
- (4) A banner may be erected during social or athletic events at a public park or other city-owned property attached to pavilions, fences, vehicles, stakes, rails, or poles up to two hours prior to the start of the event and shall be removed no later than one hour after the conclusion of the event.
- (5) A banner shall not exceed 100 square feet in area. A banner shall be placed a minimum of nine feet above grade at any pedestrian traveled way. Where a building wall is nine feet in height or less, is adjacent to an approved parking surface, and is not a designated pedestrian walkway, one banner shall be placed a minimum of five feet above the grade above the parking surface.
- (6) Banners shall not be draped over vehicles.

**Beacon, searchlight or skylight** means a source of high-intensity light with one or more beams directed into the atmosphere or any other point, or any light with one or more beams that rotate or move. Beacons, searchlights or skylights are prohibited in the city except by written permission from the city council.

**Billboard** means a sign erected in the outdoor environment for the purpose of the display of commercial or noncommercial messages not pertinent to the use of products sold or primarily manufactured on the premises, or the sale or lease of the property on which it is displayed. Billboards include any of its support, frame or other appurtenances. Billboards are prohibited in the city and its extraterritorial jurisdiction.

**Building marker/memorial plaque/cornerstone** means a sign indicating the name, date and information about the building's historical significance, which is cut into or made an integral part of a wall surface, or a wall-mounted or freestanding plaque of bronze or other permanent material describing such information.

- (1) No sign permit is required.
- (2) This type of sign is not an address sign.

*Building official* means the city manager or his designee.

*Canopy* means a roof-like structure on a framework sheltering an area or forming a sheltered walkway to the entrance of a building. For the purposes of this article a canopy is not an awning. See *Awning* and *awning sign*.

*Canopy sign* means a sign that is applied, attached, painted or affixed on a canopy or other roof-like cover over gasoline fuel pumps, vacuum areas at car detail facilities, or other areas where services are provided to a patron in a vehicle intended for protection from the weather or as a decorative embellishment.

- (1) A canopy sign may contain only the business's name or logo on the canopy band.
- (2) Canopy signs may only be erected on the sides of the canopy band that face a public street.
- (3) A sign permit is required.
- (4) Canopy signs may not exceed 15 square feet in size. Canopy signs must be attached directly to or painted on the exterior face of the canopy band and shall not project more than 18 inches from the canopy band. Only the canopy band may be illuminated, not the entire canopy. Canopy signs attached or applied to a canopy shall not extend above or below the canopy band. See *Awning sign*.

*Canopy sign attachments* means accessory supplemental signs attached above or below a canopy, commonly used in conjunction with a wall sign. Canopy sign attachments provide the name of the business.

- (1) A sign permit is required. Structural drawings, as required by the building official, sealed by a licensed engineer must be submitted with the permit application.
- (2) Canopy sign attachments shall only suspend from or extend above the edge of a pedestrian canopy. Canopy sign attachments installed for pedestrian display located and attached on the underside of a pedestrian canopy shall be centered.
- (3) Canopy sign attachments shall have a maximum height of 12 inches. Suspended or extended awning sign attachments shall not alternate up-and-down at a business's storefront. Suspended canopy sign attachments suspended over a pedestrian canopy shall maintain a minimum nine-foot clearance from pedestrian grade measured from the lowest hanging portion of the attachment. Canopy sign attachments, in the Central Area Zoning District, suspended over a pedestrian canopy shall maintain a minimum seven-foot clearance from pedestrian grade measured from the lowest hanging portion of the attachment.
- (4) Canopy sign attachments shall not be used in conjunction with a canopy sign. Only one type of canopy sign attachment shall be used per storefront.

*Central Area (CA) Zoning District.*

- (1) The area consists of the historic downtown area as established by Chapter 77, Zoning, as it currently exists or may be amended by ordinance, and as indicated on the city zoning map.
- (2) All signs for the Central Area (CA) Zoning District shall be regulated according to the provisions of this chapter. Refer to section 56-53 regarding signs in the Central Area Zoning District and see section 56-54.



*Changeable copy sign.*

- (1) The term "changeable copy sign" means a freestanding sign or wall-mounted sign, with manually interchangeable plastic letters and symbols, communicating information to the public, such as bulletin boards, marquees and the like. A changeable copy sign is usually secondary to and part of the sign area of a larger freestanding sign for which a sign permit is required.
- (2) If the changeable copy sign is to be the primary sign, it must meet the sign requirements as outlined in this chapter. See *Monument sign, pylon sign, wall sign, and electronic message center.*

*Church and civic organizations sign* means signs identifying groups, such as churches or civic organizations. These signs shall be regulated according to the provisions of this article.

*Cloud buster balloon and air devices* means any visible airtight or air flow-through, inflatable apparatus that exceeds one square foot in total area made of latex, Mylar, or other similar material that extends higher than ten feet into the sky which extends by, or is anchored to the ground by, a cord, rope, string, wire, or other similar material. A cloud buster balloon or air device is commonly used to attract passersby/patrons to a location having a promotion, sale, or other function. Cloud buster balloons, blimps, and other air devices are allowed for temporary special events only. No sign permit is required.

*Code enforcement officer* means the building official or other designated authority, appointed by the city manager, charged with the administration and enforcement of this chapter.

*Commercial real estate sign (CRES)* means an on-site, temporary sign made of wood, metal or similar material approved by the building official that pertains to the sale or lease of the commercial property where the sign is located. A CRES is a vertical framework consisting of one or more uprights supported by the ground. A CRES generally advertises the name of a building or property for sale or lease, property owner name, realtor information, telephone number, zoning information, and other information relating to the sale or lease of nonresidential property.

- (1) A CRES shall not exceed 32 square feet in area. A CRES shall not exceed eight feet in height. The maximum width of a CRES shall not exceed four feet.
- (2) A V-shape sign is not a CRES.
- (3) A sign permit is required.
- (4) A CRES requires removal within ten days after the sale or lease of a property or business.
- (5) A CRES shall be located no closer than 15 feet to any property line. A maximum of one CRES per property shall be placed on a lot. For a property with more than 500 feet of single street frontage, more than one CRES is allowed, provided that each CRES is spaced a minimum of 200 feet from other signs.

*Conforming sign* means a sign that is lawfully in place on a tract of land which complies with all regulations of this chapter.

*Construction (project development) sign* means any temporary sign identifying the property owner, architect, contractor and engineer, landscape architect, opening dates, decorator or financiers engaged in the construction or improvement of the premises on which the sign is located. A construction sign is generally constructed of wood, metal or other similar materials. A construction sign is a vertical framework consisting of one or more uprights supported by the ground.

- (1) A construction sign may include zoning information and advertise residential builders selling homes within a subdivision.
- (2) In no case shall a construction sign contain information that pertains to off-premises uses.
- (3) A sign permit is required.
- (4) A construction sign must be removed when 95 percent of the buildings/homes/units in the commercial project or subdivision have been issued a certificate of occupancy.
- (5) The construction sign shall be installed no closer than 15 feet to any property line. The minimum distance between a construction sign on one site and a construction sign on another construction site is 200 feet.
- (6) A construction sign installed on a lot where a contractor requests a final inspection must be removed prior to the final inspection and issuance of a certificate of occupancy.
- (7) The maximum area of a construction sign is 96 square feet. The maximum height of a construction sign is 16 feet.
- (8) A maximum of one construction sign is allowed along a major street frontage per subdivision. When a subdivision has more than one major thoroughfare, one construction sign may be placed on each major thoroughfare. See *Subdivision entrance sign*.

*Copy* means letters, characters, illustrations, logos, graphics, symbols, writing or any combination thereof, designed to communicate information of any kind, or to advertise, announce or identify a person, entity, business, business product, or to advertise the sale, rental or lease of premises.

*Copy area* means the area within the sign containing any copy, including the area between separate lines of text and the area between text and any symbol, sign, logo or graphic, as well as the area between any symbols, signs, logos or graphics.

*Decorative display* means a flag or banner that contains no name, initials, logos, insignia or similar items and does not represent a government or private organization.

- (1) Decorative displays are not signs.
- (2) Decorative displays shall not protrude over property lines.

*Developed property* means a nonresidential property for which a certificate of occupancy has been issued by the building official to occupy a building on the property, or a residential property for which a certificate of final acceptance has been issued by the city.

*Dilapidated* means any surface element, background, or support of any sign that has finished materials that are missing, broken, bent, cracked, decayed, dented, harmful, hazardous, illegible, leaning, splintered, ripped, torn, twisted, or unsightly.

*Directional sign* means any sign relating solely to internal pedestrian and vehicular traffic circulation within a complex or project without any form of advertising.

*Electronic message center* means any sign composed of lights, LEDs, or other form of illumination that displays a message or picture. An electronic message center is usually secondary to and part of the sign area of a larger freestanding sign for which a sign permit is required. Electronic message center signs shall be permitted subject to the applicable provisions within the zoning districts in which the sign is located as well as the following additional requirements:

- (1) An electronic message center sign shall not exceed 50 square feet in area. If an electronic message center is secondary to, incorporated into, or a component part of another type of sign, the fact that an electronic message center sign is so included shall not act to permit the type of sign of which it is a part to be enlarged beyond the dimensions and sign area allowed for the other type of sign. For example, the incorporation of an electronic message center into a "projecting sign," defined herein-below, shall not act to increase the allowable maximum area of a projecting sign beyond 12 square feet.
- (2) Electronic message center signs shall display static images for a period of at least eight seconds. Electronic message signs shall not be animated, flash, travel, blink or fade. Electronic message signs may scroll from one image to the next image provided that the scrolling process is completed within two seconds and provided further that the images scrolled from and to remain static for a period of at least eight seconds. Otherwise, electronic message signs shall transition instantaneously from one static image to another static image. Rotary beacon lights, flashing lights, strobe lights, or similar devices shall not be attached to, nor be incorporated in, any sign.
- (3) An electronic message center sign shall not exceed a brightness level of 0.3 foot-candles above ambient light as measured by the guidelines below:
  - a. At least 30 minutes past sunset, use a foot-candle meter to record the ambient light reading for the area. This reading is performed while the electronic message center sign is off or displaying all black copy.
  - b. Take a reading using foot-candle meter at five feet above grade and 45 feet from the electronic message center sign.
  - c. The meter shall be aimed directly at the electronic message center sign.
  - d. Turn the electronic message center sign on and illuminate entirely in white or red.
  - e. Take a reading using a meter at five feet above grade and 45 feet from the electronic message center sign.
  - f. The meter shall be aimed directly at the electronic message center sign.
  - g. If the difference between the two readings taken above is 0.3 foot-candles or lower, then the electronic message center sign is in compliance. If the result is greater than 0.3 foot-candles, the electronic message center sign is out of compliance and must be adjusted to meet standards or turned off until compliance can be met.
  - h. All measurements shall be taken in foot-candles.
- (4) Letters shall be no less than four inches in height.
- (5) Exception: Temporary signs required by government agencies for road and street repairs, public notifications, traffic control and similar activities.
- (6) In all zoning districts, electronic message center signs shall come equipped with automatic dimming technology, which automatically adjusts the sign's brightness based on ambient light.
- (7) Electronic message center signs have previously been prohibited in the city. Notwithstanding that prohibition, a few electronic message signs have been installed with or without permits. Electronic message signs that have been in continuous use for at least six months prior to the adoption of this ordinance that comply with the requirements of subsection (2) will be considered a lawful nonconforming sign, and may continue to be used for their current purpose and in their current dimensions only.
- (8)

Any change, upgrade, or retrofit of the previously existing electronic message center sign and/or sign cabinet shall require full compliance with the requirements of this provision.

*Erect or install* means to build, construct, attach, hang, place, suspend, affix, display, apply, assemble or place in any manner upon including, but not limited to, the exterior of a building or structure.

*Exempt* means a sign permit is not a requirement; however, compliance with all other Code provisions is required.

*Flag or flagpole* means a piece of fabric or other flexible material, attached to a ground-supported staff on one end, used as a symbol of a nation, state, political subdivision, or organization.

- (1) No sign permit is required.
- (2) A flag and its ground-supported staff shall be located on private property behind the property line.
- (3) At a property that contains a building with less than four floors, the maximum height of a ground-supported flagpole shall be 40 feet measured from the ground, with the maximum area of the flag not to exceed 60 square feet in area. At a nonresidential property that contains a building with four floors or more above ground, the maximum height of a flagpole shall be 60 feet measured from the ground, with the maximum area of a flag not to exceed 96 square feet in area.
- (4) A maximum of four flags or flagpoles may be located on a property.
- (5) A flag not displayed on a ground-supported staff shall meet the permit and display requirements of a banner. See *Banner*.
- (6) Temporary flags for special interest groups (e.g., schools, Boy Scouts, Girl Scouts, and the like) may be placed at public parks during social and athletic events.

*Flashing sign* means any sign that incorporates the use of a pulsating, blinking, revolving or rotating light source, including a light source that changes or alternates the color of the light in sequence. Flashing signs are prohibited in the city and its extraterritorial jurisdiction. See *Illuminated signs*.

*For sale, for rent, for lease or realtor open house signs* means a sign that advertises the availability for sale, rent or lease of a tract of land, a structure, or portions of a structure.

- (1) No permit is required.
- (2) Such signs are allowed in the right-of-way, a minimum three feet from the back of the curb, but not allowed in the median.
- (3) Maximum sign area is six square feet. Maximum height is three feet. Maximum number of signs is one builder sign, one realtor sign and one open house sign.

*Freestanding sign* means any type of sign supported by structures that are placed on or anchored in the ground, structurally independent of any building or other structure, and intended to be permanent. A sign permit is required. See *Monument, pole, or pylon signs*.

*Garage sale sign* means an on-site temporary stake sign used to advertise a garage sale, yard sale, or estate sale at an occupied residential property that has obtained a certificate of occupancy.

- (1) No permit is required.

- (2) Garage sale signs shall be located only on the private property of the residence having the garage sale.
- (3) Garage sale signs shall not be placed on a vehicle, fence, pole, tree, median, or railing. Garage sale signs shall not be balloons, wind devices or other types of signs, except stake signs, unless they meet the definition and requirements for that type of sign.
- (4) A garage sale sign shall not exceed six square feet in area. The maximum height of a garage sale sign shall not exceed four feet.

*Grade* means the ground elevation located at the base of a sign.

*Graffiti* means pictures, words or slogans, images, or other artwork painted, drawn, scratched, carved, cut or applied in any other manner to exterior walls, fences, structures, vehicles, stone, statues, buildings, or other items in public view. Graffiti includes the illegal or unauthorized defacing of a building, wall, or other edifice or object by painting or otherwise marking it with words, pictures, symbols, advertising, logos, relations with a group, indecent or vulgar images or offensive language. Graffiti is prohibited in the city and its extraterritorial jurisdiction.

*Grand opening* and *grand opening sign* mean a commemoration that promotes the opening of a new business and the sign commemorating such grand opening, respectively.

- (1) A grand opening sign shall be permitted within 180 days of the issuance of a certificate of occupancy from the building official. Grand openings occurring more than 180 days after the issuance of a certificate of occupancy require approval from the building official.
- (2) A grand opening sign may only be located at the business that received a certificate of occupancy from the building official.
- (3) The period for which a grand opening sign may be permitted shall not exceed 14 consecutive days in length.

*Grand opening balloons or balloon arrangement* means a visible airtight, inflatable apparatus with a maximum size not to exceed three square feet in total area, in various shapes or designs, made of latex, Mylar, or other similar material that extends by, or is anchored to the ground by, a cord, rope, string, wire or other similar material. Grand opening balloon arrangements are balloons tied, twisted, or connected in such a manner to design creative figures, shapes, crescents, or other displays.

- (1) Grand opening balloons or balloon arrangements may not exceed 20 feet in height.
- (2) No sign permit is required.
- (3) Grand opening balloons or balloon arrangements shall only be displayed during a grand opening at a business. Grand opening balloons or balloon arrangements require removal within two hours after the conclusion of the grand opening event.
- (4) Grand opening balloons or balloon arrangements shall only be displayed within 20 feet of the public entrance to the business.
- (5) Grand opening balloons or balloon arrangements shall not be placed or displayed in front of or at other businesses. Grand opening balloons or balloon arrangements shall not be attached to parking signs, bicycle stands, benches, trees, fences, poles, railings, vehicles, existing signage, display items, or other structures, or placed in required parking spaces. Grand opening balloons or balloon arrangements shall not block pedestrian or vehicular visibility or cause a safety hazard.

*Highway Commercial (HC) Zoning District.*

- (1) The area as established by Chapter 77, Zoning, as it currently exists or may be amended by ordinance, and as indicated on the city zoning map.
- (2) All signs for the Highway Commercial (HC) Zoning District shall be regulated according to the provisions of this chapter. See section 56-54.

*HOA-neighborhood sign (HOA-NS)* means a temporary stake sign used to convey residential subdivision board meetings, announcements, or other subdivision-related events to residents within the subdivision.

- (1) No sign permit is required.
- (2) An HOA-NS shall be located on private property within the subdivision.
- (3) An HOA-NS shall not be located along any major thoroughfare or street artery outside of the subdivision screening wall or perimeter barrier. An HOA-NS shall not exceed six square feet in area. The maximum height of an HOA-NS shall not exceed four feet.

*Home improvement sign* means an onsite temporary stake sign that advertises the name, telephone number, website address, or type of construction being performed on the property, such as a roof, fence, pool, paint, landscape, or other home improvement contractor.

- (1) No sign permit is required.
- (2) A home improvement sign shall be removed within 15 days of being initially installed or when the home improvement work is completed, whichever occurs first. A home improvement sign shall be located only on the lot at which the home improvement is occurring.
- (3) A home improvement sign shall not be erected on private property closer than ten feet from the edge of any street pavement or designated roadway. A home improvement sign shall not exceed six square feet in area. A home improvement sign shall not exceed four feet in height. A maximum of one home improvement sign shall be erected on a lot.

*Homebuilder directional signs* means a temporary sign which directs pedestrian or vehicular traffic to a particular home development or residential subdivision.

- (1) An annual permit is required.
- (2) A homebuilder directional sign may not be closer than 100 feet or more than 150 feet back from major intersections.
- (3) Homebuilder directional signs are allowed in the right-of-way a minimum of three feet from the back of the curb.
- (4) Homebuilder directional signs are not allowed in the median.
- (5) Individual builder signs shall be spaced at least 100 feet apart. Homebuilder directional signs are allowed to be displayed from 12:00 noon Friday until 12:00 noon on the following Monday, with the following exceptions: from 12:00 noon Thursday until 12:00 noon Tuesday when a Friday or Monday falls on New Year's Day, Memorial Day, Fourth of July or Christmas.
- (6) Maximum 25 signs per builder. Maximum sign area is six square feet. Maximum height is three feet.

*Human sign* means a sign held by or attached to a human being who stands or walks on the ground, on private property, at a business location.

- (1) No sign permit is required.
- (2) A human sign includes a person dressed in costume, both for the purpose of advertising or otherwise drawing attention to an individual, business, commodity, service, activity or product on the premises where the human sign is located.
- (3) Human signs may not be off-premises from where a promotion, sale, event or the like takes place. Podiums, risers, stilts, vehicles, roofs, or other structures or devices shall not support a human sign.
- (4) Human signs may be displayed 24 hours each and every continuing day until the promotion, sale, special event, or the like has ended.

*Illuminated sign* means a sign designed or made that consists of lights, LEDs, or other form of illumination that displays a message or picture that does not scroll, fade, blink, flash, travel, or use any other means that does not provide constant illumination. See *Electronic message center signs*.

*Impounded sign* means a sign that is legally removed by a city-authorized official, inspector, officer, other city employees or city-authorized persons in accordance with the provisions of this section.

- (1) Impounded signs may be recovered by the owner within 15 days from the date of impoundment by paying a fee as established from time to time in the master fee schedule as contained in appendix A of this Code.
- (2) Illegal signs removed from public property, including the city's right-of-way, park property or other city-maintained area, may be immediately disposed of by the city in any manner it shall elect. See *Public nuisance*.

*Inflatable device sign (IDS)* means a sign manufactured of plastic, cloth, canvas or other flexible or light fabric, inflated with air. An IDS only brings attention to a business, advertises the opening dates, sale of items offered or sold, date of sale, name of business, telephone number, or website information of a business.

- (1) An IDS shall be secured directly to, and not suspended or floating from, the ground.
- (2) An IDS shall not be placed on a roof, canopy, parking garage, or awning, or suspended or floating from any building or garage.
- (3) The maximum height of an IDS shall not exceed 30 feet. One banner may be applied to an IDS. A banner applied to an IDS shall not count toward the allotted number of banners during a calendar year. The maximum area of a banner applied to an IDS shall not exceed 48 square feet.
- (4) An IDS shall not be installed within 200 feet from another IDS measured in a straight line in any direction.
- (5) Cloud buster balloons, blimps, wind devices or any similar type of apparatuses are not an IDS. See *Wind device*.
- (6) A sign permit is required.
- (7) One IDS may be erected on a lot for not more than three 14-day periods per calendar year. A business can only display one IDS at a time. In the case of multiple businesses or tenants located on a single lot, each business is allowed to erect an IDS on the lot for not more than three 14-day periods per calendar year, provided that not more than one IDS is installed along any street frontage at the same time. One IDS per street frontage may be installed each time.

(8)

An IDS shall not be located in required parking places, or driveways that provide access to parking spaces or fire lanes, nor shall any IDS or its securing devices encroach into a right-of-way.

- (9) IDSs are only permitted within a nonresidential zoning district.

*Instructional/informational sign* means a sign whose sole purpose is to provide instruction, information, or direction to the general public that is essential to the health, safety, and public welfare of the community.

- (1) An instructional/informational sign shall contain no other message, copy, announcement, or decoration other than the essential instruction, information or direction, and shall not advertise or otherwise draw attention to an individual, business, commodity, service, activity, or product. Such signs shall include, but are not limited to, a sign identifying a property address, street address, restrooms, public telephones, handicap parking spaces, reserved parking spaces, freeze warning, no trespassing, no dumping, no loitering, no soliciting, beware of warning, water resource information, neighborhood watch informational, lock/take and hide informational, construction entrance or exit signage.
- (2) Instructional/informational signs erected by the city, local, federal or state governments for the purpose of public instruction, warnings or other similar hazards, street or highway designation, traffic control and similar purposes incidental to public interests shall be considered an instructional/informational sign. An instructional/informational sign will include a sign of a warning, directive or instruction erected by a public utility company that operates under a franchise agreement with the city or signs required by federal, state or other local authorities.
- (3) A sign permit is not required.
- (4) There are no restrictions.
- (5) The maximum area of an instructional/informational sign is 16 square feet.

*Lights* means any form of light sources or lumens, whether by electromagnetic radiation, flame, reflection, or any other form of lumens, that act upon the retina of the eye and optic nerve that makes sight possible.

*Logo* means any design, insignia or other marking of a company or product which is used in advertising to identify the company, business or product.

*Lot* means an individual parcel or tract of land recorded by a plat or deed in the county clerk's office.

*Lot line* means a line dividing one lot from another, or from a street or place.

*Menu board sign* means a sign erected in conjunction with a use that incorporates a drive-thru or drive-in and generally used to provide service or product options and pricing for patrons who remain in a vehicle.

- (1) *Sign permit.* A sign permit is required.
- (2) *Restrictions.* A menu board sign is permitted only in conjunction with a nonresidential use or in a nonresidential zoning district. The minimum front building setback is 25 feet from the property line.
- (3)



*Drive-thru menu board sign.* A menu board sign shall be supported from the grade to the bottom of the sign having or appearing to have a solid base. The design, materials, and finish of a menu board sign shall match those of the buildings on the same lot. One menu board sign is permitted per drive-thru use on a lot. The maximum sign area of a menu board sign is 60 square feet. The maximum height of a menu board sign is six feet.

- (4) *Drive-thru pre-order sign.* A drive-thru pre-order sign shall be supported from the grade to the bottom of the sign having or appearing to have a solid base. The design, materials, and finish of a drive-thru pre-order sign shall match those of the buildings on the same lot. One drive-thru pre-order sign is permitted at the entrance of the drive-thru lane on a lot. The maximum sign area of a drive-thru pre-order sign is 24 square feet in area. The maximum height of a drive-thru pre-order sign is six feet.
- (5) *Drive-in menu board sign.* A drive-in menu board sign shall be supported from the grade to the bottom of the sign having or appearing to have a solid base. If the drive-in stalls are covered by a canopy, the drive-in menu board signage may be attached directly to the canopy support columns. The design, materials, and finish of a drive-in menu board sign shall match those of the buildings on the same lot. One drive-in menu board sign is permitted per ordering station. The maximum sign area of a drive-in menu board sign is nine square feet. The maximum height of a drive-in menu board sign is six feet.

*Mobile advertisement sign* means an operable or inoperable vehicle with illuminated or nonilluminated panels, other devices, or appendages used to advertise, promote or draw attention to products, services, events, or other similar purposes, designed or intended to be relocated from time to time. A mobile advertisement includes signs on wheels or mobile structures such as, among other things, trailers, skids, banners, tents or other mobile structures. The primary purpose of a mobile advertisement sign is advertising and it is not used in the daily function of the business it advertises.

- (1) A mobile advertisement is prohibited in the city and its extraterritorial jurisdiction for longer than 20 minutes in a 24-hour day.
- (2) A mobile advertisement sign shall only be driven on public streets in the city and its extraterritorial jurisdiction. A mobile advertisement sign is not a vehicle sign. See *Portable sign* and *vehicle sign*.

*Model home sign* means a sign used to identify a builder or contractor model house that is open to the public for inspection by customers and located within a residential district. A model home sign provides a builder's name, corporate logo, hours of operation, website information, and telephone number.

- (1) A sign permit is required.
- (2) A model home sign is permitted on a lot that has been issued a building permit for construction of a residential dwelling or temporary sales trailer. A model home sign is a vertical framework consisting of one or more uprights supported by the ground. One model home sign is allowed per residential lot.
- (3) The minimum front setback of a model home sign shall be 15 feet from the property line. The minimum side or rear setback of a model home sign shall be ten feet from the property line. The maximum area of a model home sign shall not exceed 32 square feet. The maximum height of a model home sign shall not exceed ten feet. The average finished grade of the lot shall not be altered to increase the height of a model home sign.

- (4) Model home signs shall not contain neon or prohibited lights. Exterior lighting must meet the requirements of the light and glare standards as defined in Chapter 77, Zoning, as it currently exists or may be amended by ordinance.

*Monument sign* means a freestanding sign having a low profile, supported from the grade to the bottom of the sign having, or appearing to have, a solid base made of stone, concrete, metal, brick, routed wood planks or beams, or similar materials equivalent to the architecture of the building or complex.

- (1) A sign permit is required.
- (2) Maximum height for lots five acres or less is eight feet including base, measured from grade.
- (3) Maximum sign area for lots five acres or less is 64 square feet.
- (4) Maximum height for lots five acres or more is ten feet including base, measured from grade.
- (5) Maximum sign area for lots five acres or more is 150 square feet.
- (6) Setback is 15 feet from the curbline. If no curbline exists, the setback shall be 15 feet from the property line.
- (7) Number of signs allowed is no more than one monument sign per lot, with the following exceptions:
  - a. For lots over five acres abutting a state highway which is not classified as a business route: Minimum 200 feet separation between other allowed permanent freestanding signs on the same lot.
  - b. For lots over 20 acres: Minimum 300 feet separation between other allowed permanent freestanding signs on the same lot. See *Pylon sign*.

*Moving sign* means any sign, sign appendages or apparatus designed or made to move freely in the wind or designed or made to move by an electrical or mechanical device. Moving signs or any sign appendage that moves are prohibited in the city and its extraterritorial jurisdiction.

*Municipal banner* means a temporary sign having characters, letters, or illustrations applied to plastic, cloth, canvas, or other light fabric or similar material, with the only purpose of such nonrigid material being for background used by the city, either acting alone or in cooperation with another person or entity, to promote the city, aid in economic development or economic activity in the city, promote citizenry and good will, promote awareness of happenings in the city, promote municipal-related places, activities, or events, or promote municipal-related information or an event or similar happening determined by the city to directly relate to the city's objectives in speaking on its own property. A municipal banner includes ornamentations and seasonal decorations.

- (1) Written permission from the building official is required. There is no time restriction.
- (2) A municipal banner may be erected on any city-owned property including, but not limited to, pavilions, fences, walls, vehicles, poles and light poles, or any other structure or apparatus approved by the building official.
- (3) Municipal banners shall not be faded, tattered or torn.

*Mural* means noncommercial pictures or artwork painted, drawn or applied on the exterior walls that do not depict or contain advertising, logos, or images of a product or service offered or sold on premises or off premises.

- (1)

Murals shall not be used to advertise products or services of any kind offered or sold off premises or on premises. Any form of wording or logo shall be of secondary nature to a mural.

- (2) A sign permit is required.
- (3) A detailed drawing of the proposed mural shall be submitted to the city with the sign permit application for review to determine conformity with all applicable city, state and federal laws, statutes and ordinances.
- (4) The mural shall be executed in conformity to the detailed drawing of the proposed mural that is submitted to the city with the sign permit application.
- (5) A mural shall be located above grade and below a roof and only within a nonresidential zoning district. Murals shall not be applied to a roof or other similar cover of a building or structure. The maximum area of a mural shall not exceed the length or height of the exterior wall on which it is painted, drawn or applied. A mural shall not face a residential neighborhood unless separated by a major thoroughfare.
- (6) Murals are permitted only in conjunction with a nonresidential use or in a nonresidential zoning district.
- (7) Murals shall not contain any matter that is obscene, or which offends the public morals, or that is inappropriate viewing material for anyone under the age of 18 years including, but not limited to:
  - a. Nudity or a state of nudity, specified anatomical areas and specified sexual activities, as those terms are defined in this section;
  - b. Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; and
  - c. Human male genitals in a discernibly turgid stage whether covered or uncovered.

*Nameplate sign or address sign* means a sign showing only the name and address of the owner or occupant of the premises with a maximum area of two square feet. No sign permit is required.

*Neon tubing* means a discharge tube containing neon that ionizes and glows with various colors when electric current is sent through it.

*Nonconforming sign* means any sign and its supporting structure that does not conform to all or any portion of this chapter and was in existence and lawfully erected prior to the effective date of the ordinance from which this chapter is derived, and was in existence and lawfully located and used in accordance with the provision of any prior ordinances applicable thereto, or which was considered legally nonconforming thereunder, and has since been in continuous or regular use, or was used on the premises at the time it was annexed into the city and has since been in regular and continuous use. A nonconforming sign may be maintained.

- (1) The right to continue all nonconforming signs shall cease and such sign shall be removed whenever:
  - a. An approved application for a certificate of occupancy has been submitted or a certificate of occupancy is issued as provided in Chapter 77, Zoning, and a sign is associated with such occupancy. This provision applies to on-premises advertising signs only.
  - b. A sign is altered, moved or relocated without a permit pursuant to the provisions of this chapter.
  - c. A sign leans such that an angle between the sign and the ground is 45 degrees or less.

- (2) If a structurally sound nonconforming sign is destroyed in part or in whole by fire, storm, wind, or any other uncontrollable event, the sign may be rebuilt to its original state unless the cost to repair exceeds 60 percent of the replacement cost on the date of damage. If a nonconforming sign is destroyed and removed by any other means, the sign must be repaired or replaced in compliance with this article.
- (3) Signs designated by official action of the city as having special historic or architectural significance are exempt from subsection (1) of this definition.
- (4) A nonconforming general business sign situated on property purchased by the city may be relocated provided the sign is removed or rebuilt to conform to this chapter within one year by the sign owner or responsible party. Relocation is limited to the same physical sign with no increase in height, area, or change in other physical attributes. For purposes of this provision, a property acquisition initiated by the city does not include a right-of-way dedicated in the subdivision plat process. See *Public nuisances*.

*Notice*, as required by this chapter, shall be sufficient if it is effected by personal delivery or registered or certified mail, return receipt requested, by the United States Postal Service or by posting notice at the premises.

*Official sign* means a sign erected by a governmental agency within its territorial jurisdiction for the purpose of carrying out an official duty or responsibility and including, but not limited to, traffic signs and signals, zoning signs, and street signs. Special lighting or banners celebrating seasonal or civic events sponsored or endorsed by the city council may be official signs.

*Off-premises or off-location sign* means a sign that advertises, promotes, or pertains to a business, person, organization, activity, event, place, service, product, etc., at a location other than where the business, person, organization, activity, event, place, service, product, etc., is located. Off-location and off-premises signs are prohibited in the city and its extraterritorial jurisdiction.

*On-premises or on-location* means the property or location on which a business, person, organization, activity, event, place, service, product, etc., is located.

*Owner* means the owner of the sign, land or structure, or person responsible for erecting, altering, replacing, relocating, or repairing the sign or structure.

*Permanent sign* means any attached or detached sign placed in a fixed location or affixed to a permanent structure of a maximum height and area.

*Pole sign* means a sign erected on a vertical framework consisting of one or more uprights supported by the ground. Pole signs are prohibited in the city and its extraterritorial jurisdiction. See *Monument signs*, *pylon signs*, or *wall signs*.

*Political sign* means a sign that relates to the election of a person to a public office, a political party, or a matter to be voted upon at an election called by a public body or contains primarily a political message.

- (1) No sign permit required.
- (2) Political signs shall be located only on private property with the consent of the property owner.
- (3)

A political sign shall not be erected closer than ten feet from the edge of the street pavement, located on any public property, or within a designated easement or right-of-way. Political signs shall not exceed eight feet in height measured from the ground to the highest point of the sign. Political signs shall not exceed 36 square feet in area. Political signs shall not be illuminated. Political signs shall not contain any moving elements or parts. Political signs shall not be dilapidated or cause a hazard.

*Portable sign* means any sign with illuminated or nonilluminated panels, other devices, or appendages used to advertise, promote or draw attention to products, services, events, or other similar purposes, designed or intended to be relocated from time to time, whether or not it is permanently attached to a building or structure. Portable signs include signs on wheels or portable or mobile structures such as, among other things, trailers, skids, banners, tents or other portable structures.

- (1) Portable signs are prohibited in the city and its extraterritorial jurisdiction, except as specifically allowed by other sections and subsections of this chapter.
- (2) A portable sign is not a vehicle sign. See *Mobile advertisement sign* and *vehicle sign*.

*Prohibited lights* means lights that blink, strobe, flash, fade, scroll, or are anything other than stationary or static, that attract the attention of the general public or cause light pollution or light trespass.

- (1) Prohibited lights placed in any manner where the light is visible from the exterior of a business or other nonresidential use facility are prohibited in the city and its extraterritorial jurisdiction.
- (2) Exception. Federal, state and municipal authorized emergency devices or apparatuses, emergency vehicles, utility repair vehicles, fire and building code light devices for emergency or security purposes, or other required lighting for public safety purposes are not prohibited and must comply with all applicable Code provisions.

*Projecting sign* means a sign attached to and projecting out from a building face or wall, generally at a right angle to the building. A projecting sign advertises the name, telephone number, street address, or website information of a business.

- (1) A sign permit is required.
- (2) A projecting sign is permitted only in conjunction with a nonresidential use or in a nonresidential district. When a projecting sign is constructed over a pedestrian sidewalk, a minimum of a nine-foot clearance shall be provided between the grade of the sidewalk and the lowest portion of a projecting sign.
- (3) A projecting sign shall not extend above a building wall.
- (4) The maximum area of a projecting sign is 12 square feet.

*Property line* means the line denoting the limits of legal ownership of property.

*Public nuisance* means any sign or similar device erected, constructed or placed in a manner that constitutes a traffic hazard, causes annoyance either to a limited number of persons or the general public, or causes a hazard or dangerous condition, any sign erected or constructed in or over any public right-of-way, or any prohibited or noncompliant sign.

- (1)

The city shall immediately remove any sign deemed to present an immediate danger to the public health, safety or welfare. Within ten days after the removal of the sign, the owner of the property on which the sign was located shall be notified of the reasons for the removal of such sign.

- (2) Upon written notification to the owner, agent, or person having beneficial use of the land, building or structure upon which a neglected sign or an abandoned sign is located, such neglected sign shall be repaired by the owner, agent or person having beneficial use thereof or such abandoned sign shall be removed. The notification shall state that the offending sign shall be repaired or removed within ten days after written notification to do so. The notification shall further state that if the sign is not removed or repaired, a citation may be issued and the city may pursue any remedy available to it to remove or repair the sign, up to and including impoundment. See *Impounded signs*.

*Public view* means visible from any public right-of-way, city right-of-way, or access easement.

*Pylon sign* means a freestanding sign supported from the grade to the bottom of the sign having, or appearing to have, a solid base made of stone, concrete, metal, brick, or similar materials designed to complement the architecture of the building or complex.

- (1) A sign permit is required.
- (2) Pylon signs are prohibited in the Central Area (CA) Zoning District.
- (3) Minimum height is eight feet. Maximum height is 20 feet including base, measured from grade.
- (4) Maximum sign area is 150 square feet.
- (5) Setback is 15 feet from the back of the curb. If no curblane exists, the setback shall be 15 feet from the property line.
- (6) Number of signs allowed is no more than one pylon sign per lot, with the following exceptions:
  - a. For lots over five acres abutting a state highway which is not classified as a business route: Minimum 200 feet of separation between other allowed permanent freestanding signs on the same lot.
  - b. For lots over 20 acres: Minimum 300 feet of separation between other allowed permanent freestanding signs on the same lot. See *Monument sign* and *pole sign*.

*Rear wall sign* means a sign erected onto a wall with no main entrances or store fronts, and which does not face the front or side of the lot.

- (1) A sign permit is required.
- (2) A building may have a maximum of one rear wall sign.
- (3) Rear wall signs shall only be permitted in the CA Zoning District.

*Revolving sign* means any sign that turns, spins, or partially revolves or completely revolves 360 degrees on an axis. Revolving signs are prohibited in the city and its extraterritorial jurisdiction.

*Right-of-way* means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the city has an interest.

*Roof (secondary) sign* means a sign that is mounted to or projects from a canopy or secondary roof over the entry to a building, but does not project above the highest point of the building. A roof (secondary) sign may be attached to a parapet wall.

- (1) A sign permit is required.
- (2) In lieu of a wall sign, a roof (secondary) sign may be installed on a parapet wall, provided the parapet wall extends around the entire perimeter of the building at the same elevation. A roof (secondary) sign may be erected on a secondary canopy or a secondary roof over an entry to a building.
- (3) The structural or mechanical elements of a roof (secondary) sign shall not be visible from six feet above the grade of adjacent streets.

*Roof sign* means a sign mounted on and supported by the roof portion of a building, or above the uppermost edge of a parapet wall of a building, and which is wholly or partially supported by such building or a sign that is painted directly to or applied on the roof or top of a building or structure.

- (1) A sign that is mounted on mansard facades, pent eaves or architectural projections, such as canopies or the fascia (wall) of a building or structure, shall not be considered to be a roof sign.
- (2) Roof signs are prohibited in the city and its extraterritorial jurisdiction.

*Sandwich board sign* means a temporary sign constructed of two pieces of wood, metal, or other similar material connected at the top by hinges or similar devices and may collapse when the connecting devices are overextended or the two pieces are against one another.

- (1) A sign permit is not required.
- (2) Sandwich board signs are only allowed to be displayed during normal daytime business hours between 8:00 a.m. and 5:00 p.m.
- (3) The maximum height is four feet. The maximum width is two feet. The maximum copy area is eight square feet per side.
- (4) One sandwich board is allowed per primary entrance to a commercial structure. A sandwich board sign must provide an unobstructed pedestrian clearance of at least four feet in width.
- (5) A sandwich board sign shall not be placed in any median. A sandwich board sign shall not be placed within a utility or right-of-way easement. A sandwich board sign shall not be illuminated or contain any moving parts other than the fasteners holding the faces of the sandwich board sign together.
- (6) A sandwich board sign shall not be placed in any manner to interfere with vehicular traffic or cause a potential hazard. Sandwich board signs are allowed only in the CA Zoning District. See *Signs in Central Area Zoning District* and *A-frame sign*.

*School sign* means an on-site temporary stake sign used to convey school registrations, enrollments, open houses, award ceremonies, PTA meetings, or other school-related events or functions for a city-based public or private educational facility to which the information pertains.

- (1) A school sign excludes information pertaining to dates, times, and locations of scheduled athletic games.
- (2) No sign permit is required.
- (3) A school sign may be erected up to seven days prior to the event and shall be removed no more than 48 hours after the conclusion of the meeting or event.
- (4)

With permission of the owner, a school sign may be placed at a private or public school or at an improved property that has received a certificate of occupancy. A school sign erected on private property shall be no closer than ten feet from the edge of any street pavement.

- (5) The maximum area of a school sign shall not exceed six square feet. The maximum height of a school sign shall not exceed four feet.
- (6) A school sign shall not contain balloons, streamers, flags, pennants, or wind devices.

*Security sign.*

- (1) The term "security sign" means a sign which identifies emergency telephone numbers, hours, and security information.
- (2) No sign permit is required.

*Sign* means any medium, including its structure and component parts, including a name, number, identification, description and announcement, declaration, demonstration, device, display, flag, banner, pennant, illustration, beacon, light or insignia, and structure supporting any of the same, affixed directly or indirectly to or upon any building, structure, or vehicle, or erected or maintained upon a piece of land, which directs attention to any object, project, product, service, place, activity, person, institution, organization or business. The term "sign" shall also include any device, fixture, placard, or structure that uses any color, form, graphic, illumination, or symbol to communicate information of any kind to the public.

*Sign area* means the gross surface area of the sign, including a single surface of a sign with messages on both sides, the sum of all surfaces where two or more signs share a single structure, the gross surface area of both faces of a V-shaped sign not to exceed a 45 degree angle, and the copy area of a monument sign.

- (1) The square footage of a sign made up of letters, words or symbols within a frame shall be determined from the outside edge of the frame itself.
- (2) The square footage of a sign composed of only letters, words or symbols shall be determined from imaginary straight lines drawn around the entire copy or grouping of such letters, words, or symbols.
- (3) Double-faced signs shall be calculated as the area of one side only.
- (4) Three-dimensional or multifaceted signs shall be calculated as the maximum area visible from any single direction at any point in time.
- (5) In the case of an irregularly shaped sign, the sign area is calculated by enclosing the extreme limits of the sign by no more than four rectangles. The sum of the area of the rectangles shall be the gross surface area. The maximum allowable area is reduced by ten percent for the second and each subsequent rectangle used in the calculation.

*Sign height* means the vertical height of a sign measured from the sign grade to the highest point of the sign or its structure.

*Sign setback* means the horizontal distance between the closest portion of a sign, whether the support structure or edge of the sign area, and the front or side property line, as measured from that part of the sign, including its extremities and supports, nearest any point on an imaginary vertical plane projecting vertically from the front or side property line.



*Special event* means a festival, fair, tournament, or other similar happening.

- (1) Should city staff question a proposed activity or celebration as a valid special event, a description of the proposed activity or celebration will be prepared by the applicant and forwarded to the city council by city staff for the city council's consideration of the event as a special event.
- (2) Business promotions, such as grand openings and sales events, shall not be classified as a special event.

*Special event signs* means temporary signs, banners, pennants, or lights as may be authorized for a special event.

- (1) No sign permit is required.
- (2) Signage associated with a special event shall be erected no earlier than seven days prior to the event and removed no later than 24 hours after the conclusion of the event.

*Stake sign* means a temporary directional sign with a maximum height of three feet and a maximum copy area of six square feet with an end for driving into the ground. A stake sign includes, but is not limited to, garage sale, realtor/open house, homebuilder directional, for rent, for sale, and similar signage.

*Subdivision identity/entrance sign* means a sign mounted to a screening wall or engraved into a masonry block which identifies a residential development or a planned development, whether residential or noncommercial, and generally refers to the platted name of the subdivision or planned development.

- (1) A sign permit is required.
- (2) A sign permit shall not be issued to erect or place a subdivision identity/entrance sign on a property until a final plat is approved by the planning and zoning commission for development of the property.
- (3) All subdivision identity/entrance signs shall be located within the platted limits of a residential subdivision to which it pertains. Subdivision identity/entrance signs may be in the form of a sign mounted to a screening wall that does not project from the fascia of the wall more than one inch. Subdivision identity/entrance signs are limited to two signs per entrance.

*Temporary religious sign* means a temporary stake sign used to provide the name of and direction to a location occupied by a religious organization or religious group that temporarily operates in a school or other facility. A temporary religious sign identifies the meeting location and address, website information, hours of service, and telephone number of a religious organization or group.

- (1) A sign permit is not required.
- (2) A temporary religious sign may be erected during times of worship, provided that the sign is placed no earlier than two hours prior to worship and removed no later than two hours after worship.
- (3) A temporary religious sign shall be placed on private property with consent of the property owner. Temporary religious signs shall be erected on private property not closer than ten feet from the edge of any street pavement or designated roadway or right-of-way.
- (4) The maximum area of a temporary religious sign shall not exceed six square feet. The maximum height of a temporary religious sign shall not exceed four feet.
- (5)

A temporary religious sign shall not contain balloons, streamers, flags, pennants, or wind devices. See *Banner signs*.

*Temporary sign* means any sign used to display information that relates to a land use, or a sign with a limited duration which is not rigidly and permanently installed into or on the ground, attached to a building, or as identified in this chapter.

*Traffic lights and signage* mean any traffic-related sign, light, apparatus, or device installed and which provides information to vehicular drivers and pedestrian traffic.

- (1) No sign permit is required.
- (2) Traffic-related signs, lights, apparatuses, or devices require approval from the engineering department, which includes the review and approval of design, size, placement, and any other specifications or requirements prior to installation from the traffic engineer.
- (3) Exemption. Signs, lighting, apparatuses, or devices installed or required by federal or state laws are exempt from these provisions.

*V-shaped sign* means a sign that fronts two street frontages with more than five degrees of parallel. V-shaped signs are prohibited in the city.

*Vacant building sign*.

- (1) No sign shall be permitted to remain on the lot of, or on, any vacant building, except a sign regarding the lease or sale of the building and property to which it pertains, or a sign which is under lease from an owner or his authorized agent when such sign is maintained by a person operating under his own bond.
- (2) Vacant building signage is prohibited in the city.

*Variance request* means an official written request to the planning and zoning commission to allow exceptions to the regulations or requirements of this chapter.

- (1) Variance requests shall be in writing and authorized by the property owner.
- (2) Variance requests shall be heard by the planning and zoning commission at a public hearing.
- (3) An application for such a request may be obtained from the city.

*Vehicle* means any operable or inoperable motorized machine on wheels, treads, or runners by which any persons, materials, commodity, or property is or may be transported.

*Vehicle sign* means any sign attached to any vehicle, truck, car, bus, trailer, boat, recreational vehicle, motorcycle or any other vehicle.

- (1) Any vehicle, whether operable or not, shall not be parked or decorated where the primary purpose is to use the vehicle as a sign.
- (2) Vehicle signs shall exclude bumper stickers and state required registration or inspection stickers.
- (3) No sign permit is required.
- (4) Vehicle signs are allowed 24 hours each and every continuing day. Vehicles signs are permitted provided the vehicle is operable, currently registered, and licensed to operate on public streets and actively used in the daily function of the business to which such sign relates.

*Vending machine sign* means a sign attached to or incorporated as part of a vending machine or gasoline pump, and generally advertises products dispensed, offered or sold from the vending machine or gasoline pump.

- (1) No sign permit is required.
- (2) Vending machine signs may be displayed 24 hours each and every day.
- (3) Vending machines displaying vending machine signs shall not obstruct pedestrian or vehicular traffic.
- (4) Vending machine signs shall be directly attached to a vending machine or gasoline pump. Vending machine signs shall be flat and not project from the vending machine or gasoline pump. Unless otherwise required by federal, state or local laws, signs that promote products or other items shall not be attached to light poles, canopy supports, rails, trees, parking signs, vehicles, or other objects.

*Wall sign* means any sign erected against an exterior wall or erected parallel directly onto a wall. A wall sign is a sign erected parallel to and extending not more than 12 inches from the facade of any building to which it is attached, supported throughout its entire length by the building face. A wall sign identifies the name or logo of a business.

- (1) A sign permit is required.
- (2) Wall signs are permitted only in conjunction with a nonresidential use or in a nonresidential zoning district.
- (3) Maximum wall coverage for signs placed on the front or side of a building, which wall contains a main entrance into the building, above the highest opening (window or door), shall be limited to 25 percent of the area, measured vertically from the highest opening (window or door) up to the highest point of the wall, and horizontally from outside corner to outside corner of such wall, including openings.
- (4) Maximum wall coverage for signs placed on the front or side of a building, which wall contains a main entrance into the building, below the top of the first floor opening (window or door), shall be limited to ten percent of the area, measured vertically from the top of the highest opening (window or door) down to the sidewalk, and horizontally from outside corner to outside corner of such wall, including openings.
- (5) Maximum wall coverage for rear wall signs shall be limited to 15 percent of the rear wall surface, measured vertically from the bottom of the wall to the roof, and horizontally from outside corner to outside corner of the rear wall.

*Wind device* means any pennant, streamer, spinner, balloon, cloud buster balloon, inflatable objects or similar devices made of cloth, canvas, plastic or any flexible material designed to float or move, or which moves freely in the wind, with or without a frame or other supporting structure, used for the purpose of advertising or drawing attention to a business, commodity, service, sale or product.

- (1) No permit is required.
- (2) Wind devices are allowed for temporary events only. Temporary events include business grand openings, festivals, fairs, tournaments, or other similar happenings.
- (3) Wind devices shall be erected no earlier than seven days prior to an event and removed no later than 24 hours after the conclusion of the event.

- (4) Wind devices are allowed for not more than three 14-day periods per calendar year.
- (5) Flags and grand opening balloons or balloon arrangements shall not be considered a wind device.

*Window sign* means any sign, poster, window slick, or other similar displayed item, excluding banners, located on the internal or external surface of a window, for the purpose of advertising a business's name, telephone number, website information, services, commodities, or products offered or sold that are available within the building, that is visible from a public street or sidewalk.

- (1) No sign permit is required.
- (2) The maximum area of a window sign shall not exceed 50 percent of the window where the sign is displayed. Illuminated window signs shall not exceed 25 percent of a window and shall not be closer than three feet from a public door. A window sign may be displayed 24 hours each and every continuing day.
- (3) Window signs may be displayed and installed on the inside or exterior of a window.
- (4) Illuminated and nonilluminated window signs or their appendages shall not blink, strobe, fade, flash, scroll, or move in any manner. Illuminated window signs shall remain static and stationary.

*Yard sign* means a temporary stake sign used to publicize the arrival of a newborn, participation of a family member in a school activity or sport, the presence of a security system, animals, and seasonal decorations.

- (1) No sign permit is required.
- (2) Yard signs may be erected 24 hours each and every day.
- (3) Yard signs shall be located only on lots containing an occupied single-family, two-family, or multifamily dwelling. Yard signs shall be erected no closer than ten feet from the street pavement.
- (4) Signs advertising the presence of a home security system shall not exceed one square foot in area.
- (5) Signs advertising the arrival of a newborn, the participation of a family member in a school activity or sport, or the presence of animals shall not exceed four square feet in area.
- (6) Seasonal decorations are excluded from place and manner requirements.

*Zoning sign* means a temporary sign erected to publicize a request to zone or rezone a property.

- (1) No sign permit is required.
- (2) The zoning sign shall be placed in a location visible from all streets adjacent to the property included in the zoning request. One zoning sign shall be erected adjacent to each street frontage of the property. The area of a zoning sign shall be 16 square feet. The width of a zoning sign shall be four feet.

(Ord. No. 2007-48, app. A, § 3-1, 10-9-2007; Ord. No. O-2013-0611-001, § 2, 6-11-2013)

## **Sec. 56-32. - Prohibited signs.**

- (a) Certain signs are prohibited in the city, including any sign which:
  - (1) Uses any combination of forms, words, colors, or lights to imitate emergency or traffic signs or signals;

- (2) Is obsolete or abandoned;
  - (3) Is not specifically permitted by this chapter;
  - (4) Exceeds the maximum height and area requirements established in this chapter and any temporary sign exceeding the time limits established in this chapter;
  - (5) Is not referenced in or governed by this chapter;
  - (6) Is erected or installed without the issuance of a permit (if a permit was required), either prior to or after the adoption of the ordinance from which this chapter is derived;
  - (7) Emits odor or visible matter;
  - (8) Is erected or installed in or over a right-of-way or access easement, unless permitted within this chapter;
  - (9) Does not comply with this chapter or applicable municipal ordinances, or those which do not comply with federal or state laws;
  - (10) Is a pole sign;
  - (11) Is an off-premises sign; or
  - (12) Is a vehicular sign.
- (b) It shall be unlawful for any person to display upon any sign any obscene, indecent or immoral matter, such as will offend public morals or decency.
  - (c) No person shall place or suspend from any building, light pole, utility pole, structure, sidewalk, parkway, and driveway or parking area, any goods, wares, merchandise or other advertising or display of such items other than a sign, as defined, regulated and permitted by this chapter.
  - (d) No cloth, paper, banner, flag, device or other similar advertising matter shall be permitted to be attached to, suspended from or be allowed to hang from, any sign, building or structure, when the same shall create a public nuisance or danger.
  - (e) No person shall attach any sign, paper or other material, or paint, stencil, or write any name, number (except address numbers) or otherwise mark on any sidewalk, curb, gutter, street, utility pole, public building, fence or structure, except as otherwise allowed by this chapter.
  - (f) No person shall paste, stick, tack, nail or otherwise place any advertisement, handbill, placard or printed, pictured or written matter or thing for any purpose upon any fence, railing, sidewalk or public property, including trees thereon.
  - (g) It shall also be unlawful for any person to scatter or throw any handbills, circulars, cards, tear sheets or any other advertising device of any description, along or upon the street or sidewalk in the city.
  - (h) No sign shall be illuminated to such intensity or in such a manner as to cause a glare of brightness to a degree that it constitutes a hazard or nuisance to traffic. Moving, flashing, intermittently lighted, color changing, beacons, undulating, swinging, rotating, revolving or similarly constructed signs shall not be allowed, except for time and temperature on an otherwise permitted sign, except as signs hung or displayed inside a window.
  - (i) No rear lighted, or internally lighted, plastic signs shall be allowed in the Central Area Zoning District.
  - (j) No portion of any sign shall be erected on or over public property, unless the same is erected by the city, or with the permission of the city.
  - (k) Any sign erected on a vertical framework supported by and located immediately and entirely over the roof of a building is prohibited.
  - (l)

No portion of any sign shall be painted directly on to the exterior wall or facade of any building or structure other than on a window or door.

(Ord. No. 2007-48, app. A, § 3-2, 10-9-2007)

**Secs. 56-33—56-52. - Reserved.**

**ARTICLE III. - ZONING DISTRICTS AND SPECIAL REQUIREMENTS**

**Sec. 56-53. - Signs for the Central Area (CA) Zoning District.**

*(a) Policy and purpose.*

- (1) The Central Area (CA) Zoning District is a unique historical and cultural environment that provides a certain charm and aura to the city which cannot be replaced and is worthy of preservation.
- (2) In an age of uniform franchise signs and generic, plastic box signs, historic signs and even new historic styled signs (signs which emulate or imitate historic signage) often attract by their individuality. Historic signage typically allowed buyers and sellers to communicate quickly using images that were the medium of daily life. By communicating names, addresses, prices, products, images and other fragments of daily life, historic styled signs also bring the past to life.

*(b) Design considerations.* In order to preserve the benefits of the CA, all signs in the CA shall have a design appearance compatible with, reflective of, and incorporating materials and design elements utilized in, the original building design, time era, and historic downtown character of the CA. The following points should be considered when designing and constructing new signs for structures in the CA:

- (1) New signs should emulate or imitate historic signage. The simple signs that were originally used on these buildings serve as the best example for new signs.
- (2) Signs should be viewed as part of an overall graphics system for the historic building to which they are attached. Signs should work with the building, rather than against it.
- (3) New signs should respect the size, scale and design of the historic building.
- (4) Sign placement is an important decision and new signs should not obscure significant architectural features and building elements or design details of a historic building.
- (5) New signs should also respect neighboring buildings and add to the tapestry and appeal of the CA. New signs should not overpower the historic building to which they are attached or adjacent structures.
- (6) Sign materials should be compatible with the historic character of the building and the CA. Materials characteristic of the building's period and style, used in contemporary designs, can form effective new signs.
- (7) New signs should be attached to the building carefully to prevent damage to historic fabric and to ensure the safety of pedestrians. Fittings should penetrate mortar joints rather than brick, for example, and sign loads should be properly calculated and distributed.

*(c) Sign standards.*

- (1) Allowable signs in the CA include general business signs, incidental signs, menu boards, nameplates, wall signs and rear wall signs.
- (2) Signs shall be designed for pedestrian and slow moving traffic. Big does not mean better.

- (3) Signs shall be flat signs with an allowable thickness of no more than four inches, measured from the wall surface to that portion of the face of the sign which projects furthest away from the building wall.
- (4) Signs should be placed under the lower cornice. No sign shall be allowed above the top of the second-story windows of a building.
- (5) Signs may be placed on the building's fascia or on the sign frieze, which is the horizontal flat bank above the store windows. Such signs may be on a flat signboard or made of individual letters or symbols attached to the building's fascia or sign frieze.
- (6) Signs may be placed on an awning. The following shall apply:
  - a. Only one awning sign is allowed per building.
  - b. Awnings shall be positioned to emphasize special shapes or details of the facade, draw attention to shop entrances, or to emphasize a display window.
  - c. Awning signs positioned along the first floor level of the facade shall be no less than eight feet from the sidewalk to the sign.
  - d. Awning signs shall not extend beyond the awning or canopy projection.
  - e. Awnings and awning signs shall not be made of metal, shiny plastic, barrel or square extension awning, or internally-illuminated vinyl awning.
- (7) Sandwich boards are allowed provided they adhere to the following criteria:
  - a. One sign per primary entrance;
  - b. May extend out a maximum of two feet from the building, with the maximum of six square feet of sidewalk area used.
- (8) Projecting signs that hang over the sidewalk are discouraged because they often obscure individual buildings and interrupt the visual harmony of the street. A projecting sign that is attached to a wall and extends out from a building may be used provided it meets the following criteria:
  - a. The projecting sign shall not extend more than 15 inches in whole or in part horizontally or diagonally beyond the surface of the building to which it is attached;
  - b. The projecting sign shall be placed along the first floor level of the facade;
  - c. Projecting signs must have a minimum clearance above the sidewalk of eight feet and shall not extend 12 feet or more above the sidewalk nor above the roof line of the building to which it is affixed;
  - d. The projecting sign shall be of a unique shape and design or symbolize the services offered within the business being advertised, such as a bowl and trestle advertising a drug store or pharmacy; and
  - e. The projecting sign shall be no more than four inches thick.
- (9) Materials and colors shall be harmonious with the architecture of surrounding structures in the CA.
- (10) Sign materials should be durable and easy to maintain.
  - a. Appropriate and acceptable sign materials include:
    1. Painted or carved wood;
    2. Carved wooden letters;
    3. Galvanized sheet metal;

4. Porcelain enamel;
  5. Slate, marble, or sandstone;
  6. Gold leaf;
  7. Gilt, painted, stained, or sandblasted glass; or
  8. Stained glass.
- b. Plastic shall not be allowed unless it is determined to have the appearance of one of the appropriate sign materials identified herein.
- (11) A sign in the CA shall not visually dominate the structure to which it belongs or call undue attention to it.
- (12) No Day-Glo, fluorescent, neon or brilliant bright colored signs shall be allowed in the CA. Standard or traditional colors shall be used.
- (13) No rear lighted, or internally lighted, plastic signs shall be allowed in the CA.
- (14) No sign shall contain any moving parts or be lit from behind or internally unless and except it is an historically accurate reproduction of a sign previously existing in the specific location proposed.

(Ord. No. 2007-48, app. A, § 4-1, 10-9-2007)

#### **Sec. 56-54. - Zoning districts.**

The zoning district in which the sign is located is established as indicated in Chapter 77, Zoning, and on the city zoning map. The zoning provisions, as contained in Chapter 77, Zoning, and the zoning map may be amended from time to time.

- (1) *Single-family residential district.* Includes areas located in districts zoned SF-1, SF-2, SF-3, and PD-Planned Development.
- (2) *Multifamily residential district.* Includes areas located in districts zoned 2-F Duplex, MF-1, MF-2 Multifamily, and PD-Planned Development.
- (3) *Office and office technology district.* Includes areas located in districts zoned O-Office, CA-Central Area, HC-Highway Commercial, and PD-Planned Development.
- (4) *Commercial/retail district.* Includes areas located in districts zoned GR-General Retail, NS-Neighborhood Services, HC-Highway Commercial, CA-Central Area, and PD-Planned Development.
- (5) *Industrial district.* Includes areas located in districts zoned L1-Light Industrial, L2-Heavy Industrial, and PD-Planned Development.

(Ord. No. 2007-48, app. A, § 4-2, 10-9-2007)

#### **Secs. 56-55—56-81. - Reserved.**

### **ARTICLE IV. - INSPECTIONS AND DESIGN REQUIREMENTS**

#### **Sec. 56-82. - Inspection; purpose and method.**

The building official is authorized to perform an inspection of all signs. The purpose of the inspection is to ensure that the sign has been constructed in accordance with this article, other applicable Code provisions, and the applicable permits. The method and time of such inspections shall be determined by the building official.



(Ord. No. 2007-48, app. A, § 5-1, 10-9-2007)

**Sec. 56-83. - Sign specifications; design and other requirements.**

- (a) *Compliance with comprehensive zoning ordinance, International Building Code, National Electrical Code, and other ordinances.* All sign structures shall comply with Chapter 77, Zoning, as it currently exists or may be amended by ordinance, the International Building Code, the National Electrical Code, and other Code provisions, as they currently exist or may be amended by ordinance. If the standards as described in this subsection are more restrictive than another Code provision or code, the provisions of this article shall apply.
- (b) *Visibility.* All signs shall observe all visibility requirements. Signs shall not be placed within visibility triangles, corner clips, or easements as defined in the Thoroughfare Plan or Design Manual, as they currently exist or may hereafter be amended. Signs shall not create a hazard.
- (c) *Signs posted in specified areas.* Unless otherwise permitted within this article, no person shall post or cause to be posted, attach or maintain a sign upon any:
  - (1) City-owned property or right-of-way without written permission of the city manager or his designated representative;
  - (2) Utility easement. Should a property owner be able to demonstrate to the city engineer or franchise utility company that there is no other viable location for a sign other than a utility easement, a sign may be located within the utility easement subject to written approval from the city engineer or franchise utility company and subject to the providing of a letter to the city releasing the city of any liability for repair or replacement of a sign damaged by work occurring within the utility easement;
  - (3) Tree, utility pole or structure, street sign, rail, or any fence;
  - (4) Fence, railing or wall, except in accordance with section 56-31; or
  - (5) Sidewalk within the right-of-way or sidewalk easement, curb, gutter, or street, except for house numbers or fire lane designation.
- (d) *Signs attached to fire escapes.* No sign shall be attached in any manner to any fire escape or to the supporting members of any fire escape, nor shall it be guyed to or supported by any part of a fire escape.
- (e) *Accumulation of rainwater.* All signs shall be constructed to prevent the accumulation of rainwater in the sign.
- (f) *Location near telephone cable, power line, or street light.* No sign shall be erected nearer than two feet from any telephone cable, power line or any street light standard:
- (g) *Signs not to block or interfere with exits or windows, or pedestrian and vehicular traffic.* No sign shall be erected to block, partially block, or interfere, in any way, neither with a required means of exit from any building nor with any window. No sign shall block, interfere, or otherwise hinder pedestrian or vehicular traffic on a public sidewalk, a public thoroughfare, a fire lane easement, or a driveway required to access parking.
- (h) *Glass signs over public property or pedestrian area.* Signs constructed of glass or other materials which may shatter upon impact are prohibited over a public right-of-way or pedestrian area.
- (i) *Assumed wind load for design purposes.* For the purposes of design of structural members in signs, an assumed wind load of 20 pounds per square foot shall be used.
- (j)

*Multiple signs on a property or building.* The permitting of a sign on a property or building shall not preclude the permitting of other types of signs on a property or building, unless the signs are expressly prohibited herein.

- (k) *Exemptions.* Signs located within a building, with the exception of window signs, shall not be regulated by this article.

(Ord. No. 2007-48, app. A, § 5-2, 10-9-2007)

**Secs. 56-84—56-109. - Reserved.**

## **ARTICLE V. - VARIANCES**

### **Sec. 56-110. - Variance procedures.**

The planning and zoning commission shall perform the functions of the sign board of appeals (the "board"). Refer to article VI of this chapter for more information regarding the sign board of appeals. The following procedure shall be followed when a request for a variance to these sign regulations is sought:

- (1) Requests for variances to sign regulations and allegations of errors in orders, decisions, or determinations by an administrative official in the administration of the sign regulations shall be made in writing by the applicant and heard by the board at a public hearing. An application for such appeal may be obtained from the city. The board shall hear, if possible, the request for a variance or the allegation of error within 30 days after receipt of a completed application and applicable application fees. The application will require written authorization from the property owner before being filed.
- (2) Before the tenth day before the date of the public hearing conducted by the board, written notice of the public hearing shall be sent by its deposit in the United States mail to each owner, as indicated by the most recently approved municipal tax roll of property within 200 feet of the property on which the variance is proposed. The notice shall include a description of the time and place of such hearing, a description of the location of the subject property, and a description of the requested variance. In addition, the notice shall be published in the official newspaper of the city stating the time and place of such hearing, a minimum of ten days prior to the date of the public hearing.
- (3) In order to approve a request for a variance, the board shall determine whether the request meets three of the following four criteria:
  - a. The proposed sign shall not adversely impact the adjacent property (visibility, size and the like);
  - b. The proposed sign shall be of a unique design or configuration;
  - c. The variance is needed due to restricted area, shape, topography, or physical features that are unique to the property or structure on which the proposed sign would be erected;
  - d. The variance will substantially improve the public convenience and welfare and does not violate the intent of this article.
- (4) Should the board deny a request for a variance, the applicant may appeal the request to city council. A vote of three-quarters of the councilmembers present or four votes, whichever is greater, is required to approve the appeal. The city council's decision is final. The appeal to

the city council will require renotification of the surrounding property owners and publication in the newspaper in the same manner described in subsection (2) of this section.

- (5) A variance shall not be approved for a sign that is prohibited by this article.

*(Ord. No. 2007-48, app. A, § 6-1, 10-9-2007)*

**Secs. 56-111—56-133. - Reserved.**



TO: Mayor and Councilmembers

FROM: Ben White, City Manager

DATE: January 13, 2015

SUBJECT: Consider directing Planning & Zoning Commission to draft an ordinance regarding parking restrictions in residential neighborhoods

- City Manager Ben White will discuss this item.

**ACTION: Council to offer further direction.**