



**NOTICE OF MEETING  
OF THE  
GOVERNING BODY OF  
COPPERAS COVE, TEXAS**

*An agenda information packet is available for public inspection  
in the Copperas Cove Public Library, City Hall and  
on the City's Web Page, [www.ci.copperas-cove.tx.us](http://www.ci.copperas-cove.tx.us)*

Notice is hereby given that a **Regular Council Meeting** of the City of Copperas Cove, Texas, will be held on the **3rd day of November 2008** at **7:00 p.m.** in the City Hall Council Chambers at 507 South Main Street, Copperas Cove, Texas 76522, at which time the following subjects will be discussed:

**A. CALL TO ORDER**

**B. INVOCATION AND PLEDGE OF ALLEGIANCE**

**C. ROLL CALL**

**D. ANNOUNCEMENTS**

**E. PUBLIC RECOGNITION**

1. Employee Service Awards: **Andrea M. Gardner, City Manager**
  - James Piper, Fire Captain – 5 years
2. Proclamation: National Hospice Month – November 2008. **Robert L. Reeves, Mayor Pro Tem**

**F. CITIZENS FORUM** At this time, citizens will be allowed to speak on any matter other than personnel matters, matters under litigation, or matters on the regular agenda, for a length of time not to exceed five minutes per person. Thirty minutes total has been allotted for this section.

**G. CONSENT AGENDA:** All matters listed under this item are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.

1. Consideration and action on approval of minutes from the October 21, 2008 regular council meeting. **Jane Lees, City Secretary**
2. Consideration and action on Resolution No. 2008-40, authorizing the City Manager to submit an application and agreement with the Electric Reliability Council of Texas, Inc. (ERCOT) for membership year 2009. **Wanda Bunting, Director of Financial Services**

#### **H. PUBLIC HEARINGS/ACTION**

1. Public hearing and action on Ordinance No. 2008-39, amending the overall budget for the active Capital Improvement Project Funds for the City of Copperas Cove. **Wanda Bunting, Director of Financial Services**
2. Public hearing and action on Ordinance No. 2008-40, amending the 2008-09 fiscal year budget for the City of Copperas Cove. **Wanda Bunting, Director of Financial Services**

#### **I. ACTION ITEMS**

1. Consideration and action authorizing the City Manager to execute an agreement with Shallow Ford Construction for Summers Road paving and drainage improvements. **Wesley Wright, P.E., City Engineer**
2. Consideration and action on authorizing the City Manager to enter into a contract with Active Network to supply online registration and program management software. **Ken Wilson, Director of Community Services**
3. Consideration and action on authorizing the City Manager to enter into an Agreement with the Copperas Cove Athletic Officials Association to provide recreational sports officiating for the Parks and Recreation Department. **Ken Wilson, Director of Community Services**
4. Consideration and action to authorize the City Manager to enter into an agreement with Tyler Technologies for the INCODE Municipal Court software purchase. **Joseph R. Pace, Municipal Court Supervisor**
5. Consideration and action on authorizing the City Manager to execute a Sales Contract between the City of Copperas Cove and Dailey-Wells Communications, Inc. for the purpose of renewing a maintenance contract for the City's 800 MHz EDACS Radio Trunking System manufactured by M/A-Com. **Mike Baker, Fire Chief**
6. Consideration and action on the approval to purchase a T320 Bobcat Compact Track Loader from Bobcat of Waco. **James A. Trevino, Assistant Director of Public Works**

7. Consideration and action on the approval to purchase a Ford F-750, 6-8 yard dump truck from Philpott Motors, Nederland, Texas. **Robert M. McKinnon, Public Works Director**
8. Consideration and action on the approval to purchase a John Deere 5603 MFWD Cab Utility Tractor w/MX7 lift type rotary cutter, from Coufal Prater Equipment, Temple, Texas. **Robert M. McKinnon, Public Works Director**
9. Consideration and action on authorizing the City Manager to enter into a contract for construction manager at risk with Rogers-O'Brien Construction for the construction of the new police facility. **Tim Molnes, Police Chief**
10. Consideration and action authorizing the City Manager to execute an agreement with JWC, Inc. for Katelyn Circle drainage improvements. **Wesley Wright, P.E., City Engineer**
11. Consideration and action authorizing the City Manager to enter into an Agreement with Hearn Engineering for professional services related to the Bradford Drive extension. **Wesley Wright, P.E., City Engineer**
12. Consideration and action authorizing the City Manager to execute an agreement with HCN Partners for the reimbursement of costs associated with the widening of Ashley Road. **Wesley Wright, P.E., City Engineer**
13. Consideration and action upon adopting an Ordinance calling for the closing of the railroad crossing located on Olive Street. **Wesley Wright, P.E., City Engineer**
14. Consideration and action on Ordinance No. 2008-44, amending Personnel Policy No. 313, Sick Leave. **Kelli Sames, Human Resources Director**
15. Consideration and action on the appointment of a Commissioner to the Housing Authority of the City of Copperas Cove. **Jane Lees, City Secretary**
16. Consideration and action on Resolution No. 2008-39, approving the Identity Theft Prevention Program of the City of Copperas Cove. **Wanda Bunting, Director of Financial Services**
17. Consideration and action on Resolution No. 2008-41, adopting the Purchasing Policy for the City of Copperas Cove. **Wanda Bunting, Director of Financial Services**
18. Consideration and action on Resolution No. 2008-42, adopting the Procurement Card (P-Card) Policy for the City of Copperas Cove. **Wanda Bunting, Director of Financial Services**

19. Consideration and action on Ordinance No. 2008-45 amending the City of Copperas Cove's Code of Ordinances, Chapter 2, Administration, Article V, Financial Procedures and Fiscal Policy of the City of Copperas Cove. **Wanda Bunting, Director of Financial Services**
20. Consideration and Action on approval of Ordinance No. 2008-43, adopting new Sign Regulations. **Carl Ford, City Planner**

**J. STAFF REPORTS**

1. Fall Cleanup/Texas Recycles Day – November 15, 2008. **Michael Mundell, Solid Waste Superintendent**
2. Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting for Fiscal Year End September 30, 2007. **Wanda Bunting, Director of Financial Services**

**K. REPORTS OF ADVISORY COMMITTEES AND BOARDS – None.**

**L. ITEMS FOR FUTURE AGENDAS**

**M. EXECUTIVE SESSION**

1. Pursuant to §551.074 of the Open Meetings Act. *Tex. Gov't Code*, Council will meet in Executive Session to discuss the evaluation of the City Secretary.

**N. RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ANY ITEMS POSTED AND LEGALLY DISCUSSED IN EXECUTIVE SESSION**

**O. ADJOURNMENT**

The City Council reserves the right to adjourn into Executive Session at any time regarding any issue on this agenda for which it is legally permissible.

City Hall is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to the meeting. Please contact the City Secretary at (254) 547-4221, (254) 547-6063 TTY, or FAX (254) 547-5116 for information or assistance.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Governing Body of the City of Copperas Cove was posted at **4:30 p.m., October 31, 2008**, on the glass front door of City Hall, a place convenient and readily accessible to the general public at all times.

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/s/ Jane Lees, City Secretary



**NOTICE OF WORKSHOP  
OF THE  
GOVERNING BODY OF  
COPPERAS COVE, TEXAS**

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public inspection in the Copperas Cove Public Library, City Hall and on the  
City's Web Page [www.ci.copperas-cove.tx.us](http://www.ci.copperas-cove.tx.us)*

Notice is hereby given that a **Workshop** of the City of Copperas Cove, Texas will be held on the **3rd day of November 2008**, at **5:30 p.m.**, in the City Hall Council Chambers at 507 South Main Street, Copperas Cove, Texas 76522 at which time the following subjects will be discussed:

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. WORKSHOP ITEMS**

1. Presentation and discussion of proposed updates to the City's Finance Ordinance, Purchasing Policy, and P-Card Policy. **Wanda Bunting, Director of Financial Services**
2. Presentation and discussion of proposed amendments to the City's sign ordinance. **Carl Ford, Director of Community Development**

**D. ADJOURNMENT**

City Hall is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to the meeting. Please contact the City Secretary at (254) 547-4221, (254) 547-6063 TTY, or FAX (254) 547-5116 for information or assistance.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Governing Body of the City of Copperas Cove was posted at **2:30 p.m., October 31, 2008**, on the glass front door of City Hall, a place convenient and readily accessible to the general public at all times.

\_\_\_\_\_  
/s/ Jane Lees, City Secretary



## PROCLAMATION

- WHEREAS,** Hospice and palliative care provides patients and families the highest quality care during life-limiting illness and at the end of life, through pain management and symptom control, caregiver training and assistance, and emotional and spiritual support, allowing patients to live fully up until the final moments, surrounded and supported by the faces of loved ones, friends, and committed caregivers; and
- WHEREAS,** Last year, more than 1.4 million Americans living with life-limiting illness, and their families, received care from hospice and palliative care programs in communities throughout the United States, including thousands in Texas; and
- WHEREAS,** Professional and compassionate hospice staff—including physicians, nurses, social workers, therapists, counselors, health aides, and clergy—provide comprehensive care focused on the wishes of each individual patient; and
- WHEREAS,** More than 400,000 trained volunteers contribute 18 million hours of service to hospice programs annually; and
- WHEREAS,** Providing high-quality hospice and palliative care reaffirms our belief in the essential dignity of every person, regardless of age, health, or social status, and that every stage of human life deserves to be treated with the utmost respect and care; and
- WHEREAS,** Hospice and palliative care providers encourage all people to learn more about options of care and to share their wishes with family, loved ones, and their healthcare professionals.

**NOW, THEREFORE,** be it resolved that I, Robert L. Reeves, Mayor Pro Tem for the City of Copperas Cove, State of Texas, do hereby proclaim November 2008 as

### ***National Hospice/Palliative Care Month***

in Copperas Cove, Texas and encourage citizens to increase their understanding and awareness of care at the end of life and to observe this month with appropriate activities and programs.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Seal of the City of Copperas Cove to be affixed this 3rd day of November 2008.

\_\_\_\_\_  
Robert L. Reeves, Mayor Pro Tem

Attest: \_\_\_\_\_  
Jane Lees, City Secretary

**CITY OF COPPERAS COVE  
CITY COUNCIL REGULAR MEETING MINUTES  
October 21, 2008 – 7:00 P.M.**

**A. CALL TO ORDER**

Mayor Pro Tem Robert L. Reeves called the regular meeting of the City Council of the City of Copperas Cove Texas to order at 7:00 p.m.

**B. INVOCATION AND PLEDGE OF ALLEGIANCE**

Council Member Seffrood gave the Invocation, and led the Pledge of Allegiance.

**C. ROLL CALL**

**ALSO PRESENT**

Robert L. Reeves  
Larry D. Sheppard  
Mark E. Peterson  
Charlotte Heinze  
Ray Don Clayton  
Willie C. Goode  
Frank Seffrood

Andrea M. Gardner, City Manager  
James R. Thompson, City Attorney  
Jane Lees, City Secretary

**D. ANNOUNCEMENTS**

Council Member Peterson encouraged everyone to get out and vote. Early voting started yesterday, October 20, 2008 and runs through October 31, 2008.

City Manager Gardner introduced the City's new Fire Chief, James Michael Baker.

**E. PUBLIC RECOGNITION**

1. Employee Service Awards. ***Andrea M. Gardner, City Manager***

September 2008 Recipients: Travis Daniels, Solid Waste Driver, 5 years; Michael Oakes, Patrol Officer, 10 years; Martin Zeller, Police Sergeant, 10 years; Gilbert Fletcher, Mechanic, 15 years, and Julie Lehmann, Police Sergeant, 15 years.

2. Proclamation: DECA Week – October 19-25, 2008. ***Robert L. Reeves, Mayor Pro Tem***

Mayor Pro Tem Reeves read the proclamation and presented it to DECA's President, Rene Garcia, Vice President, Frank Spence, and Secretary, Nancy Guzman. DECA stands for Distributive Education Clubs of America. Mr. Garcia thanked the City for their support.

**F. CITIZENS' FORUM** citizens are allowed to speak on any matter other than personnel matters, matters under litigation, or matters on the regular agenda, for a length of time not to exceed five minutes per person. Thirty minutes total has been allotted for this section.

Representative Sid Miller stated that our country has heroes at home as well as heroes trying to protect our freedom overseas. Rep. Miller said that EMS crews all across the country and in Copperas Cove are saving lives every day. He stated that on June 3, 2008, an extraordinary group of courageous Americans here in Copperas Cove answered a 911 call to a local residence. The victim was suffering from a severe case of shortness of breath and chest pain and was near death. Under normal conditions, EMS crews secure the patient to a gurney in the prone position for transport. In this case, the patient suffered from a severe breathing problem and was unable to breathe while in a prone position. The patient was speechless and fighting for breath, the EMS crew leader spotted a BI Pack machine near the patient's oxygen and immediately appraised the situation. The crew leader understood the situation and told the others to not place the patient in a prone position. Instead they used an office chair with wheels to transport the patient in a sitting position. After the patient was stabilized at Darnall Army Medical Center and on his way to Scott & White, he was told by the attending physician, "If you had a good EMS crew we'd have lost you. You had a great EMS crew and that's the reason you are still with us today." We too often take for granted the heroes that live among us and are a part of our community. Let's remember that these seemingly everyday citizens are the brave men and women who stand between their friends and their neighbors protecting our very lives and our property. These are truly American heroes that are standing before you tonight. Never forget them and keep them in you prayers.

Rep. Miller handed out a certificate from the State of Texas, signed by him, to each member of the EMS crew that participated in that 911 call on June 3, 2008. The members of the EMS crew who received the certificates were:

Captain Michael Holt  
Firefighter Paramedic Tanja Martin  
Firefighter Paramedic Brandi Wolfe  
Firefighter EMT Jamie Stayton  
Firefighter EMT Danita Chovan  
Volunteer Firefighter John MacDonald

Walter Prugh and Ray Upp presented a plaque from the Lampasas County School Group to Council Member Ray Don Clayton and the Clayton Family in appreciation of their long time support in helping to get a new Lampasas ISD Pre-K – 5th grade school established on the east end of Lampasas County. Council Member Clayton thanked them for the plaque and stated that when he started on this project back in 1996 there were 456 students that would have been able to go to school in the east end of Lampasas County, if there had been a school there. Those students normally spend over two hours a day on buses being transported to and from Lampasas to attend school. Construction has begun on the new school, and it will be a great asset to the LISD, Lampasas County and for the City of Copperas Cove.

Diane Steele, 905 North 4th Street. Ms. Steele stated that she was very upset with the Council. She said that they have the right to freedom of speech, but said they did not have the right to distort the facts. She requested they get their facts straight before writing on the blogs.

Judy Bowen Clark, 914 Post Office Road. She stated her concern regarding the outcome of the election on November 4. In the event that there would no longer be a quorum to conduct business, she requested that the Council temporarily give authority to the Planning and Zoning Commission on issues of platting and zoning changes, which normally go to Council for final approval. Her main concern was that many projects in the City would be put on hold until a Council could be established again.

## G. CONSENT ITEMS

1. Consideration and action on approval of minutes from the October 2, 2008 regular council meeting. **Jane Lees, City Secretary**

2. Consideration and action on authorizing the release of funds in the amount of \$2,746 from the Hotel Occupancy Tax Fund to the Boys and Girls Club of Copperas Cove. **Wanda Bunting, Director of Financial Services**

3. Consideration and action on authorizing the release of funds in the amount of \$27,500 from the Hotel Occupancy Tax Fund to the Copperas Cove Chamber of Commerce to satisfy the quarterly installment due for period ending September 30, 2008. **Wanda Bunting, Director of Financial Services**

Council Member Peterson made a motion to approve consent items G-1, G-2, and G-3. Council Member Goode seconded the motion, and with a unanimous vote, motion carried.

## H. PUBLIC HEARINGS/ACTION

1. Public hearing on Ordinance No. 2008-39, amending the overall budget for the active Capital Improvement Project Funds for the City of Copperas Cove. **Wanda Bunting, Director of Financial Services**

Wanda Bunting, Director of Financial Services, gave an overview of agenda item H-1.

Mayor Pro Tem Reeves opened the public hearing.

Speaking for: None.

Speaking Against: None.

Mayor Pro Tem Reeves closed the public hearing.

2. Public hearing on Ordinance No. 2008-40, amending the 2008-09 fiscal year budget for the City of Copperas Cove. **Wanda Bunting, Director of Financial Services**

Wanda Bunting, Director of Financial Services, gave an overview of agenda item H-2.

Mayor Pro Tem Reeves opened the public hearing.

Speaking for: None.

Speaking Against: None.

Mayor Pro Tem Reeves closed the public hearing.

3. Public hearing, consideration and action on Ordinance No. 2008-42, revising the current taxicab rates for taxicab companies permitted to provide taxicab service within the City of the City of Copperas Cove. **Andrea M. Gardner, City Manager**

Andrea M. Gardner, City Manager, gave an overview of agenda item H-3.

Mayor Pro Tem Reeves opened the public hearing.

Speaking for: None.

Speaking Against: None.

Mayor Pro Tem Reeves closed the public hearing.

Council Member Clayton made a motion to approve agenda item H-3. Council Member Heinze seconded the motion, and with a unanimous vote, motion carried.

## I. ACTION ITEMS

1. Consideration and action on Resolution No. 2008-37, finding that Oncor Electric Company's requested increases to its electric transmission and distribution rates and charges within the City of Copperas Cove should be denied and the City's reasonable rate case expenses shall be reimbursed by Oncor Electric Company. **Andrea M. Gardner, City Manager**

Andrea M. Gardner, City Manager, gave an overview of agenda item I-1.

Council Member Heinze made a motion to approve agenda item I-1. Council Member Peterson seconded the motion, and with a unanimous vote, motion carried.

The Resolution caption is as follows:

### RESOLUTION NO. 2008-37

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, FINDING THAT ONCOR ELECTRIC COMPANY'S REQUESTED INCREASES TO ITS ELECTRIC TRANSMISSION AND DISTRIBUTION RATES AND CHARGES WITHIN THE CITY OF COPPERAS COVE SHOULD BE DENIED AND THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY ONCOR ELECTRIC COMPANY.**

2. Consideration and action on Ordinance No. 2008-38, amending Personnel Policy No. 120, Salary Program Administration. **Kelli Sames, Human Resources Director**

Kelli Sames, Human Resources Director, gave an overview of agenda item I-2.

Council Member Peterson made a motion to approve agenda item I-2. Council Member Seffrood seconded the motion, and with a unanimous vote, motion carried.

The Ordinance caption is as follows:

### ORDINANCE NO. 2008-38

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, AMENDING PERSONNEL POLICY NO. 120, SALARY PROGRAM ADMINISTRATION.**

3. Consideration and action authorizing the City Manager to execute a contract with Maguire Iron, Inc. of Sioux Falls, South Dakota for construction of the Mesa Verde 300,000 gallon elevated water storage tank in the amount of \$1,075,000. **Robert M. McKinnon, Public Works Director**

Robert M. McKinnon, Public Works Director, gave an overview of agenda item I-3.

Council Member Peterson made a motion to approve agenda item I-3. Council Member Goode seconded the motion, and with a unanimous vote, motion carried.

4. Consideration and action on Resolution No. 2008-38, authorizing the City Manager to donate a 1995 RHEA recycling trailer to the Village of Salado. **Michael W. Mundell, Solid Waste Superintendent**

Michael W. Mundell, Solid Waste Superintendent, gave an overview of agenda item I-4.

Council Member Goode made a motion to approve agenda item I-4. Council Member Heinze seconded the motion, and with a unanimous vote, motion carried.

The Resolution caption is as follows:

**RESOLUTION NO. 2008-38**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, AUTHORIZING THE CITY MANAGER TO DONATE A 1995 RHEA RECYCLING TRAILER TO THE VILLAGE OF SALADO.**

5. Consideration and action on authorizing the purchase of a Recycling Trough Loader in the amount of \$140,412.92. **Michael W. Mundell, Solid Waste Superintendent**

Michael W. Mundell, Solid Waste Superintendent, gave an overview of agenda item I-5.

Council Member Peterson made a motion to approve agenda item I-5. Council Member Heinze seconded the motion, and a roll call vote was taken as follows:

Larry D. Sheppard	Against
Mark E. Peterson	For
Charlotte Heinze	For
Ray Don Clayton	For
Willie C. Goode	Against
Frank Seffrood	For

Motion carried 4-2.

6. Consideration and action on purchasing field lighting for Fields 5 and 8 from Musco Lighting in the amount of \$129,900. **Ken Wilson, Director of Community Services**

Ken Wilson, Director of Community Services, gave an overview of agenda item I-6.

Council Member Heinze made a motion to approve agenda item I-6. Council Member Peterson seconded the motion, and with a unanimous vote, motion carried.

7. Consideration and action on approving Ordinance No. 2008-41, approving an electric power contract with Cities Aggregation Power Project, Inc. ("CAPP") for electric capacity and energy, providing capacity payments as public property finance contractual obligations of the City, pledging and levying an Ad Valorem Tax to such payments, providing for energy payments for electric energy subject to annual appropriation by the City, providing for the assignment of such capacity payments to support debt issued by CAPP incurred to acquire electric capacity rights from Luminant Generation Company and related entities pursuant to a 24-Year Power Purchase Agreement ("PPA"); authorizing the City Manager to execute and deliver the member contract; further authorizing the City Manger to sign additional agreements arranged by CAPP for electric power needed by the City in the period 2009-2013 in excess of the amount obtained under the member contract; acknowledging, authorizing and directing the City Manager to sign and return CAPP's disclosure letter; further authorizing the City Manager to accept conforming changes to the member contract dependent on the final terms of the CAPP PPA; providing for validity and sufficiency of City employee's or City officer's signature if the officer or employee leaves office or employment prior to the delivery of the member contract, adopting a savings clause; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act. **Wanda Bunting, Director of Financial Services**

Wanda Bunting, Director of Financial Services, gave an overview of agenda item I-7.

Council Member Seffrood made a motion to approve agenda item I-7. Council Member Goode seconded the motion, and a roll call vote was taken as follows:

Larry D. Sheppard	Against
Mark E. Peterson	For
Charlotte Heinze	For
Ray Don Clayton	For
Willie C. Goode	For
Frank Seffrood	For

Motion carried 5-1.

The Ordinance caption is as follows:

**ORDINANCE NO. 2008-41**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, APPROVING AN ELECTRIC POWER CONTRACT WITH CITIES AGGREGATION POWER PROJECT, INC. ("CAPP") FOR ELECTRIC CAPACITY AND ENERGY, PROVIDING CAPACITY PAYMENTS AS PUBLIC PROPERTY FINANCE CONTRACTUAL OBLIGATIONS OF THE CITY, PLEDGING AND LEVYING AN AD VALOREM TAX TO SUCH PAYMENTS, PROVIDING FOR ENERGY PAYMENTS FOR ELECTRIC ENERGY SUBJECT TO ANNUAL APPROPERATION BY THE CITY, PROVIDING FOR THE ASSIGNMENT OF SUCH**

CAPACITY PAYMENTS TO SUPPORT DEBT ISSUED BY CAPP INCURRED TO ACQUIRE ELECTRIC CAPACITY RIGHTS FROM LUMINANT GENERATION COMPANY AND RELATED ENTITIES PURSUANT TO A 24-YEAR POWER PURCHASE AGREEMENT ("PPA"); AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER THE MEMBER CONTRACT; FURTHER AUTHORIZING THE CITY MANGER TO SIGN ADDITIONAL AGREEMENTS ARRANGED BY CAPP FOR ELECTRIC POWER NEEDED BY THE CITY IN THE PERIOD 2009-2013 IN EXCESS OF THE AMOUNT OBTAINED UNDER THE MEMBER CONTRACT; ACKNOWLEDGING, AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN AND RETURN CAPP'S DISCLOSURE LETTER; FURTHER AUTHORIZING THE CITY MANAGER TO ACCEPT CONFOMRING CHANGES TO THE MEMBER CONTRACT DEPENDENT ON THE FINAL TERMS OF THE CAPP PPA; PROVIDING FOR VALIDITY AND SUFFICIENCY OF CITY EMPLOYEE'S OR CITY OFFICER'S SIGNATURE IF THE OFFICER OR EMPLOYEE LEAVES OFFICE OR EMPLOYMENT PRIOR TO THE DELIVERY OF THE MEMBER CONTRACT, ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT.

Council Member Heinze made a motion to move item J-1 before item I-8. Council Member Clayton seconded the motion, and with a unanimous vote, motion carried.

#### J. STAFF REPORTS

1. Lobbying status report and legislative update. ***Brandon Aghamalian and Snapper Carr of Hillco Partners, and Representative Sid Miller***

Representative Sid Miller gave a legislative update. In the last 12 months, the State of Texas has created 255,000 new jobs, which is more than the other 49 states added together. There are still 1,000 people a day moving into Texas. This is because of our friendly business climate of low corporate taxes, low litigation, and an excellent work force. The legislators will return to Austin in January with about \$25-27 billion to work with.

Rep. Miller said that because Texas has had three hurricanes hit our coast, the legislature is going to have to make some expenditures. Galveston Island, for instance, is home of the University of Texas Medical Branch. 12,000 people were employed at that one facility. For all practical purposes, that facility is gone. He said that the State of Texas does not buy insurance because we are self-insured. He said that when the Governor's Mansion caught on fire, there was an appeal made to the public to help restore it. The State will have to front some cities money for infrastructure repairs, while they are waiting on FEMA money. He mentioned that the State is still waiting for some money from three years ago when Hurricane Rita struck. The other big expenditure will be into the windstorm damage pool. The Legislature set up a pool for those who could not get hurricane damage insurance on the coast. That money was gone after the first few applications. The Legislature does not know at this time how much money will have to be put back into the pool.

Rep. Miller also discussed the deregulation of electric rates in Texas, the cost of homeowner's insurance in the State, the turmoil in TxDOT and their \$1.1 billion accounting error, and immigration in Texas.

Regarding an annexation problem here in Copperas Cove, he said that a few years ago the City was trying to annex some agricultural land and the landowner's did not want to be annexed because they would no longer be able to hunt and ranch and use the land the way they wanted.

They did not want to be required to comply with city ordinances. Rep. Miller said that he has gotten a bill passed that he believes allows both sides to win. He said that usually a city doesn't want the agricultural land, but have usually set their sights on a subdivision or a commercial property beyond that land that has some tax base value. Under this new law that was passed, a city may now offer a non-annexation agreement to the agricultural landowner. If the landowner accepts that, he agrees not to develop that property, thus there is no need for city services. That non-annexation agreement acts as if the land was annexed, but the city leapfrogs the agricultural land and gets to annex the commercial piece of property or the subdivision that they want. Both sides win, the city does not have to provide services and the farm or ranch owner can continue operations as an agricultural enterprise. If the agricultural property is ever developed, the agreement would become null and void.

Brandon Aghamalian and Snapper Carr, Hillco Partners, updated the Council with a status report on lobbying. Some dates of interest were discussed, such as pre-filing of legislation on November 10, 2008 and the Committee assignments on February 1, 2009. The 81st Legislature convenes on January 13, 2009. It was noted that in the 80th Session, of the 1,495 bills passed, 120 affect cities. The hot issues were appraisal caps and revenue caps. Hot issues expected in the 81st Session will be the State Budget in light of the hurricanes and economic crisis, transportation issues with TxDOT and the Sunset Review, immigration, and economic development. Other issues include new funding mechanisms for water, TMRS (Texas Municipal Retirement System), and utilities relocation issues, franchise payments and cable issues.

## I. ACTION ITEMS

8. Consideration and action on Resolution No. 2008-36 authorizing the Cities Aggregation Power Project, Inc. (CAPP) to negotiate an electric supply agreement for deliveries of electricity and necessary, related services effective January 1, 2009; approving CAPP contracting with FPL Energy and Direct Energy and authorizing the Mayor Pro Tem or other designated City official to sign a contract with CAPP for the City's electricity needs for the period beginning January 1, 2009 and extending up to December 31, 2013; committing to budget for energy purchases and to honor the City's commitments to purchase power through CAPP for its electrical needs for the period beginning January 1, 2009, and extending up to December 31, 2013. **Wanda Bunting, Director of Financial Services**

Wanda Bunting, Director of Financial Services, gave an overview of agenda item I-8.

Council Member Clayton made a motion to approve agenda item I-8. Council Member Peterson seconded the motion, and a roll call vote was taken as follows:

Larry D. Sheppard	Against
Mark E. Peterson	For
Charlotte Heinze	For
Ray Don Clayton	For
Willie C. Goode	For
Frank Seffrood	For

Motion carried 5-1.

The Resolution caption is as follows:

RESOLUTION NO. 2008-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, AUTHORIZING THE CITIES AGGREGATION POWER PROJECT, INC. (CAPP) TO NEGOTIATE AN ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY AND NECESSARY, RELATED SERVICES EFFECTIVE JANUARY 1, 2009; APPROVING CAPP CONTRACTING WITH FPL ENERGY AND DIRECT ENERGY AND AUTHORIZING THE MAYOR PRO TEM OR OTHER DESIGNATED CITY OFFICIAL TO SIGN A CONTRACT WITH CAPP FOR THE CITY'S ELECTRICITY NEEDS FOR THE PERIOD BEGINNING JANUARY 1, 2009 AND EXTENDING UP TO DECEMBER 31, 2013; COMMITTING TO BUDGET FOR ENERGY PURCHASES AND TO HONOR THE CITY'S COMMITMENTS TO PURCHASE POWER THROUGH CAPP FOR ITS ELECTRICAL NEEDS FOR THE PERIOD BEGINNING JANUARY 1, 2009, AND EXTENDING UP TO DECEMBER 31, 2013.

9. Consideration and action on appointment of two (2) Commissioners to the Housing Authority of the City of Copperas Cove. **Jane Lees, City Secretary**

Jane Lees, City Secretary, gave an overview of agenda item I-9.

Council Member Heinze made a motion to appoint Billy F. Minton and Loyd Thomas to serve the term October 21, 2008 to September 30, 2010. Council Member Clayton seconded the motion, and with a unanimous vote, motion carried.

10. Consideration and action on the appointment of a City staff member to the Central Texas Council of Government's Solid Waste Advisory Committee. **Wanda Bunting, Director of Financial Services**

Wanda Bunting, Director of Financial Services, gave an overview of agenda item I-10.

Council Member Goode made a motion to appoint Mike Mundell, Solid Waste Superintendent, as a member to the Central Texas Council of Government's Solid Waste Advisory Committee for fiscal year 2009. Council Member Heinze seconded the motion, and with a unanimous vote, motion carried.

11. Consideration and action on authorizing the City Council of the City of Copperas Cove to declare certain property as surplus and to sell said property of the City of Copperas Cove to Police Officers of the Copperas Cove Police Department. **Tim Molnes, Police Chief**

Tim Molnes, Police Chief, gave an overview of agenda item I-11.

Council Member Sheppard made a motion to approve agenda item I-11 and selling the cost at zero. Council Member Clayton seconded the motion, and with a unanimous vote, motion carried.

12. Consideration and action on authorizing the City of Copperas Cove to serve as the depository for contributions made to Cove in Lights. **Andrea M. Gardner, City Manager**

Andrea M. Gardner, City Manager, gave an overview of agenda item I-12.

Council Member Clayton made a motion to approve agenda item I-12. Council Member Heinze seconded the motion, and with a unanimous vote, motion carried.

13. Consideration and action authorizing the City Manager to execute a Contractual Agreement for Administrative Management Services to implement the 2008 Disaster Relief Fund Grant Project #728267. **Andrea M. Gardner, City Manager**

Andrea M. Gardner, City Manager, gave an overview of agenda item I-13.

Council Member Peterson made a motion to approve agenda item I-13. Council Member Goode seconded the motion, and with a unanimous vote, motion carried.

14. Consideration and action on approving the Publicity and Tourism Agreement between the City of Copperas Cove and the Copperas Cove Chamber of Commerce. **Wanda Bunting, Director of Financial Services**

Wanda Bunting, Director of Financial Services, gave an overview of agenda item I-14.

Council Member Peterson made a motion to approve agenda item I-14, with an amendment to change the last sentence in the second paragraph of Section III of the agreement to read as follows: "Quarterly reports will be signed by the Chamber President." Council Member Heinze seconded the motion, and with a unanimous vote, motion carried.

15. Consideration and action on legal services for the City of Copperas Cove. **Robert L. Reeves, Mayor Pro Tem**

Robert L. Reeves, Mayor Pro Tem, gave an overview of agenda item I-15.

Council Member Goode made a motion to approve Option 6, take no action at this time and postpone the item for consideration at a future Council Meeting. Council Member Sheppard seconded the motion, and a roll call vote was taken as follows:

Larry D. Sheppard	For
Mark E. Peterson	Against
Charlotte Heinze	Against
Ray Don Clayton	Against
Willie C. Goode	For
Frank Seffrood	Against

Motion failed 2-4.

Council Member Peterson made a motion to approve Option 2, by hiring the law firm of Denton Navarro, Rocha & Bernal, P.C. to serve as the City Attorney and require Mr. James Thompson to continue serving as the City Prosecutor for the remainder of the 180 day period; upon conclusion of the 180 day period assign the City Manager with the responsibility of hiring a City Prosecutor subject to Council Approval. Council Member Clayton seconded the motion, and a roll call vote was taken as follows:

Larry D. Sheppard	Against
Mark E. Peterson	For

Charlotte Heinze      For  
Ray Don Clayton      For  
Willie Goode          Against  
Frank Seffrood        Against  
Robert L. Reeves      For

Motion carried 4-3.

**J.      STAFF REPORTS**

2.      Chamber of Commerce 3rd Quarter Report for 2008. **Marty Smith, President, Chamber of Commerce & Visitors Bureau**

Marty Smith, President of the Chamber of Commerce & Visitors Bureau, gave the Chamber of Commerce 3rd Quarter Report for 2008.

3.      Boys & Girls Club of Copperas Cove year end report for FY 2007-08. **Francie Charles, Boys and Girls Club of Copperas Cove**

Francie Charles, Boys and Girls Club of Copperas Cove, gave the Boys & Girls Club of Copperas Cove year end report for FY 2007-08.

4.      Financial Report for the Month ended July 31, 2008. **Wanda Bunting, Director of Financial Services**

Wanda Bunting, Director of Financial Services, gave the financial report for the month ended July 31, 2008.

5.      Financial Report for the Month ended August 31, 2008. **Wanda Bunting, Director of Financial Services**

Wanda Bunting, Director of Financial Services, gave the financial report for the month ended August 31, 2008.

**K.      REPORTS OF ADVISORY COMMITTEES AND BOARDS – None.**

**L.      ITEMS FOR FUTURE AGENDAS – None.**

**M.      EXECUTIVE SESSION – None.**

**N.      RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ANY ITEMS POSTED AND LEGALLY DISCUSSED IN EXECUTIVE SESSION – None.**

**O.      ADJOURNMENT**

There being no further business, Mayor Pro Tem Reeves adjourned the meeting at 9:33 p.m.

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Robert L. Reeves, Mayor Pro Tem

**ATTEST:**

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Jane Lees, City Secretary

**RESOLUTION NO. 2008-40**

**A RESOLUTION OF THE CITY OF COPPERAS COVE, TEXAS AUTHORIZING THE CITY'S MEMBERSHIP IN THE COMMERCIAL CONSUMER SEGMENT OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS FOR 2009.**

**WHEREAS**, the Electric Reliability Council of Texas (ERCOT) is the entity in Texas charged with overseeing the state's electric grid and making decisions regarding the operation of the state's wholesale and retail electricity market; and

**WHEREAS**, the decisions made at ERCOT impact the cost and reliability of electric service to the City of Copperas Cove and its residents and businesses; and

**WHEREAS**, decisions at ERCOT are made by a vote of the organization's corporate members and by their representatives who are elected by the corporate members; and

**WHEREAS**, the City of Copperas Cove qualifies to be a corporate member in ERCOT's Commercial Consumer Segment; and

**WHEREAS**, a corporate membership in ERCOT for 2009 requires a \$100 fee.

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

The City of Copperas Cove is authorized to apply for membership in ERCOT's Commercial Consumer Segment for 2009.

**PASSED, APPROVED, AND ADOPTED** on this 3rd day of November 2008 at a regular meeting of the City Council of the City of Copperas Cove, Texas which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code*, §551.001, et.seq. at which meeting a quorum was present and voting.

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Robert L. Reeves, Mayor Pro Tem

**ATTEST:**

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Jane Lees, City Secretary

**APPROVED AS TO FORM:**

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Charles E. Zech, City Attorney

Mr. Brewster's Direct Line: (512) 322-5831  
Email: [cbrewster@lglawfirm.com](mailto:cbrewster@lglawfirm.com)  
Fax: (512) 472-0532

## MEMORANDUM

TO: Current City Members of ERCOT

FROM: Chris Brewster

DATE: October 2, 2008

RE: ERCOT Membership Renewal for 2009

Attached to this memorandum is the Electric Reliability Council of Texas's (ERCOT's) membership renewal form for the 2009 membership year. **We recommend that your city renew its current ERCOT membership for 2009.** Renewal of your ERCOT membership is a straightforward and cost-effective way for your city to influence electric policy in Texas. The membership fee is \$100 per year.

As you know, ERCOT is the entity in Texas that maintains the set of complex rules that establish the mechanisms by which electricity is bought and sold in the wholesale market. The ERCOT stakeholder process is constantly reviewing and revising these rules, the ERCOT protocols. Most of the issues addressed at ERCOT are addressed nowhere else.

Consumers — like cities — can have a voice in ERCOT's decision making. Each segment of the ERCOT market has a vote on issues before ERCOT, through its representatives on the Technical Advisory Committee (TAC) and the Board of Directors.

TAC and the Board are the bodies responsible for making the most important decisions about the detailed workings of the ERCOT market. These decisions can have bottom-line impacts on electricity prices. In 2008, cities again successfully elected two city representatives to TAC and one Director to ERCOT's Board of Directors. If ERCOT member cities renew their membership for 2009, we stand to maintain that strong presence in the coming year. A number of critical issues will come before ERCOT in 2009, perhaps most importantly issues relating to the stalled transition to a nodal wholesale market. It will be essential that cities be a strong voice for consumers in the coming year.

Thanks to your interest and responsiveness, Cities have had remarkable success in expanding their ERCOT presence in the past two years. A large number of cities joined ERCOT in 2008, including the following:

Abilene	Eules	Ovilla
Addison	Farmers Branch	Paris
Alamo	Flower Mound	Plano
Alice	Forest Hill	Point Comfort
Allen	Frisco	Port Aransas
Arlington	Gainesville	Port Lavaca
Belton	George West	Portland
Benbrook	Grand Prairie	Red Oak
Brownwood	Harker Heights	Robinson
Carrizo Springs	Harlingen	Rockport
Carrollton	Highland Park	Rowlett
Cedar Hill	Irving	San Angelo
Charlotte	Killeen	Sherman
Cisco	La Feria	Snyder
Cleburne	Laguna Vista	South Padre Island
Colleyville	Lewisville	Sugar Land
Colorado City	Los Fresnos	Sweetwater
Commerce	McAllen	Texas City
Copperas Cove	McKinney	The Colony
Corinth	Mercedes	Tyler
Corpus Christi	Midlothian	University Park
Crockett	Mission	Victoria
Dallas	Missouri City	Waxahachie
Dilley	Murphy	Whitney
Duncanville	North Richland Hills	Woodsboro
Eastland	Odessa	Woodway

**In order to vote for candidates for the 2009 Technical Advisory Committee and the Board of Directors, you must become a corporate member of ERCOT by November 7, 2008.**

**In completing the attached form, please note the following:**

- Only corporate members may vote in ERCOT matters. In response to Question No. 2 on the form, we recommend that cities renew as corporate, rather than associate, members.
- For corporate members in the Small or Large Commercial Consumer Segment, the renewal fee is \$100. The form designates how the payment is to be made.
- Question No. 4 asks that you designate the segment in which you are renewing. Cities qualify for membership in the Consumer segment, and within that segment must choose either the Small or Large Commercial Consumer Sub-segments. **If you do not know if your city is a Small or Large Commercial Consumer please call me (Chris Brewster) at 322-5831 (or email: cbrewster@lglawfirm.com) and I can help you with this information.**

October 31, 2008

Page 3

- In response to Question No. 5, please designate as your authorized representative an employee of your city that can receive notices from ERCOT. ERCOT contacts its members very rarely; this person will not be inundated with emails. During the coming year, please feel free to forward anything you receive from ERCOT to me at the email address above.
- There is no need to answer Question No. 6, as it is not relevant to cities' memberships in ERCOT.
- The form states how to submit the form to ERCOT, which can be done by email or fax. **After you have sent it to ERCOT, please forward a copy of your application to us at my email address or fax number shown above.** This will help us track pending applications, and will allow us to follow up with ERCOT if issues arise.

Please feel free to call or email us if you have any questions in completing the form or about ERCOT in general.



**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.  
MEMBERSHIP APPLICATION AND AGREEMENT FOR MEMBERSHIP YEAR 2009**

This Membership Application and Agreement (Agreement) is by and between the Electric Reliability Council of Texas, Inc. (ERCOT) and the City of Copperas Cove, Texas (Member), whose address is 507 South Main Street, Copperas Cove, Texas, 76522. In consideration of the mutual covenants contained herein, the parties hereby agree that the Member shall become an ERCOT Member and receive the ERCOT Member Services and benefits described herein, subject to the terms and conditions of this Agreement. This Agreement shall be effective as of the date signed by the Member provided that the Member meets all of the qualifications for ERCOT Membership.

Capitalized terms that are not defined in this Agreement shall have the meaning as defined in the ERCOT Bylaws or the ERCOT Protocols.

**A. Membership Application Information**

1. Name of Entity applying for Membership: City of Copperas Cove, Texas
  
2. Type of Membership: Check **ONE** type of Membership. *Affiliated Entities as defined in the ERCOT Bylaws may hold only one Corporate Membership.* Entities applying for additional Memberships, such as an Associate Membership, should use a separate Agreement for each Membership. The applicable fees as listed below and entitle Members to services ERCOT provides such as hosting ERCOT meetings, providing Members with necessary information and such other Member Services as may from time to time be offered. Please note that any Member may request that the Member's Annual Member Service Fees be waived for good cause shown.
  - Corporate.** Voting. \$2,000/year (except Residential and Commercial Consumer Members fees are \$100/year, and there is no charge for an association that qualifies pursuant to the ERCOT Bylaws for Commercial Consumer Membership). Corporate Membership includes the right to vote on matters submitted to the general membership such as election of Board Directors, election of TAC Representatives and TAC subcommittees thereof and amendments to the Articles of Incorporation and the ERCOT Bylaws. Residential Consumer Members do not elect Board Directors.
  
  - Associate.** Non-voting. \$500/year (except Residential and Commercial Consumer Members fees are \$50/year). Associate Membership includes no voting rights. However, an Associate Member may be elected by Corporate Members to serve as a voting member of the Board, TAC or a TAC subcommittee thereof.
  
  - Adjunct.** Non-voting. \$500/year. Entities not meeting the Segment requirements for Membership may join as Adjunct Members upon Board approval. Adjunct Membership does not include voting rights or the right to be elected to the Board, TAC or a TAC subcommittee thereof.
  
3. The Applicable Annual Member Services Fee must accompany this Agreement and be delivered to ERCOT by the Record Date in order for the Member to participate in the elections for the Membership Year. Please make checks payable to ERCOT and mail to ERCOT, Attention: Legal Department, 7620 Metro Center Drive, Austin, Texas 78744. Please send an email to [mpappl@ercot.com](mailto:mpappl@ercot.com) for wire instructions.



4. Segment Participation: (Check ONE Segment designation.)

**Consumer.** Any organization or agency representing the interests of end-users of electricity in the ERCOT Region.

Check **ONE** Subsegment designation:

- Residential Consumer**  
 **Small Commercial Consumer** (Peak demand of 1000 KW or less)  
 **Large Commercial Consumer** (Peak demand greater than 1000 KW)  
 **Industrial Consumer** (Average monthly demand greater than 1 megawatt and engaged in an industrial process)

**Cooperative.** An Entity operating in the ERCOT Region that is: (i) a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter; (ii) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; (iii) a cooperative association organized under Tex.Rev.Civ.Stat. 1396-50.01 or a predecessor to that statute and operating under that statute; or (iv) a River Authority as defined in Tex. Water Code §30.003.

**Independent Generator.** Any Entity that is not a Transmission and Distribution Entity (T&D Entity) or an Affiliate of a T&D Entity and (i) owns or controls generation of at least 10 MW in the ERCOT Region; or (ii) is preparing to operate and control generation of at least 10 MW in the ERCOT Region, and has approval of the appropriate governmental authority, has any necessary real property rights, has given the connecting transmission provider written authorization to proceed with construction and has provided security to the connecting transmission provider.

**Independent Power Marketer.** Any Entity that is not a T&D Entity or an Affiliate of a T&D Entity and is registered at the Public Utility Commission of Texas (PUCT) as a Power Marketer to serve in the ERCOT Region.

**Independent REP.** Any Entity that is certified by the PUCT to serve in the ERCOT Region as a Retail Electric Provider (REP) under PURA §39.352 and that is not an Affiliate of a T&D Entity operating in the ERCOT Region.

**Aggregators** may register to participate in this Segment if unable to qualify in any other Segment.

**Investor Owned Utility.** (i) An investor-held, for-profit “electric utility” as defined in PURA §31.002(6) that (a) operates within the ERCOT Region, (b) owns 345 KV interconnected transmission facilities in the ERCOT Region, (c) owns more than 500 pole miles of transmission facilities in the ERCOT Region, or (d) is an Affiliate of an Entity described in (a), (b) or (c); or (ii) a public utility holding company of any such electric utility.

**Municipal.** An Entity operating in the ERCOT Region that owns or controls transmission or distribution facilities, owns or controls dispatchable generating facilities, or provides retail electric service and is either: (i) a municipally owned utility as defined in PURA §11.003 or (ii) a River Authority as defined in Tex. Water Code §30.003.



5. Identify your designated representative for required notices to ERCOT Members and for participation in meetings of the Corporate Members:

Name: Wanda Bunting  
Title: Director of Financial Services  
Address: 507 South Main Street  
City, State, Zip: Copperas Cove, Texas 76522  
Phone: 254-547-4221  
Fax: 254-547-2800  
Email: wbunting@ci.copperas-cove.tx.us

6. List any other ERCOT Memberships held by the Member or any Affiliates (attach extra pages if necessary):

(a) Entity name: \_\_\_\_\_  
Segment: \_\_\_\_\_

(b) Entity name: \_\_\_\_\_  
Segment: \_\_\_\_\_

(c) Entity name: \_\_\_\_\_  
Segment: \_\_\_\_\_

## B. Membership Agreement

1. **Membership.** Membership in ERCOT is open to any Entity that meets any of the Segment definitions set forth in the Bylaws. Members must be an organization that either operates in the ERCOT Region or represents consumers within the ERCOT Region. Members may join as a Corporate, Associate or Adjunct Member subject to the criteria set forth in the ERCOT Bylaws. Members must apply for Membership through an authorized officer or agent.

2. **Fees.** Annual Member Services Fees are described in the ERCOT Bylaws and may be changed through the procedure set forth therein. Any change in fees shall automatically become effective as to all ERCOT Members without the necessity of amending this Agreement. All Memberships are year to year and must be renewed annually. Annual Member Services Fee renewals will be billed to the Member and shall be due by the record date for the annual membership meeting. Membership fees may not be prorated. This Agreement shall renew in yearly increments upon ERCOT's receipt of the following (1) Member's Renewal Application and (2) Member's applicable Annual Member Services Fee. Any Member may request that the Member's Annual Member Service Fees be waived for good cause shown.

3. **Application for Membership.** Members will submit the following items in order to apply for Membership: (i) payment of the Annual Member Services Fee and (ii) a signed copy of this Agreement. Upon approval, ERCOT will promptly notify Member Applicant of the same.

4. **Change of Designated Representative.** An ERCOT Member may change its representative at any time by written request (signed by a duly authorized representative of the ERCOT Member) submitted to the ERCOT Legal Department.



5. **Suspension and Expulsion.** All ERCOT Members shall abide by the ERCOT Bylaws, as they may be amended from time to time, and any other rule or regulation duly adopted by the Board of Directors. Any ERCOT Member, who willfully violates any provision of this Agreement, the ERCOT Bylaws, or any other rule or regulation duly adopted by the Board of Directors, may be reprimanded, suspended, and/or expelled in accordance with procedures adopted by the Board of Directors or set forth in the ERCOT Bylaws. Such action will affect all persons deriving Membership privileges through such ERCOT Member.

6. **Amendment.** This Agreement may be amended, modified, superseded, canceled, renewed, or extended and the terms and conditions hereof may be waived only by a written instrument executed by both parties hereto or, in the case of a waiver, by the party waiving compliance.

7. **Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Parties consent to the exclusive jurisdiction of Texas.

IN WITNESS WHEREOF, the Member certifies that (i) the Member meets the requirements for ERCOT Membership in the Segment designated herein; (ii) all information provided herein is true and correct to the best of the Member's knowledge; and (iii) through its authorized representative the Member agrees to be bound by the terms of this Agreement, the ERCOT Bylaws and any other requirements duly adopted by the Board of Directors.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: Andrea Gardner

Title: City Manager

# City of Copperas Cove City Council Agenda Item Report

November 3, 2008

## Agenda Item No. G-2

Contact – Wanda Bunting, Director of Financial Services, 547-4221

wbunting@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on Resolution No. 2008-40, authorizing the City Manager to submit an application and agreement with the Electric Reliability Council of Texas, Inc. (ERCOT) for membership year 2009 in the amount of \$100.**

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### 1. BACKGROUND/HISTORY

The Electric Reliability Council of Texas, Inc (ERCOT) is the entity in Texas that maintains the set of complex rules that establish the mechanisms by which electricity is bought and sold in the wholesale market. The ERCOT stakeholder process is constantly reviewing and revising these rules.

### 2. FINDINGS/CURRENT ACTIVITY

Each segment of ERCOT's market has a vote on issues that go before ERCOT through its representatives on the Technical Advisory Committee and the Board of Directors. By renewing the City as a member of ERCOT, the City will join many other cities throughout Texas to have a vote on the decisions that have a bottom-line impact on electricity prices.

### 3. FINANCIAL IMPACT

Funding will be provided through the General Fund's non-departmental operating budget.

### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends that the City Council approve Resolution No. 2008-40, authorizing the City Manager to submit an application and agreement with the Electric Reliability Council of Texas, Inc. (ERCOT) for membership year 2009 in the amount of \$100.

**ORDINANCE NO. 2008-39**

**AN ORDINANCE APPROVING AND ADOPTING AN AMENDMENT TO THE BUDGET FOR OPERATING THE MUNICIPAL GOVERNMENT OF THE CITY OF COPPERAS COVE FOR THE ACTIVE CAPITAL IMPROVEMENT PROJECT FUND BUDGETS; REPEALING ALL ORDINANCES AND APPROPRIATIONS IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE; AND ESTABLISHING A SAVINGS CLAUSE AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Council desires to amend the operating budget of the municipal government of the City of Copperas Cove for the active Capital Improvement Project budgets; and

**WHEREAS**, said budget amendments have been submitted to the City Council by the City Manager in accordance with the City Charter; and

**WHEREAS**, public notices of public hearings upon this budget have been duly and legally made as required by City Charter and law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE:**

**SECTION I.**

That the City Council of the City of Copperas Cove ratify, approve and adopt the amendments to the budget considered for the active Capital Improvement Project Fund budgets, as identified in "Attachment A" of this ordinance.

**SECTION II.**

That all ordinances for which provision has heretofore been made are hereby expressly repealed if in conflict with the provisions of this ordinance.

**SECTION III.**

That should any part, portion, or section of this ordinance be declared invalid or inoperative or void for any reason by a court of competent jurisdiction, such decision, opinion or judgment shall in no way affect the remaining portions, parts, or sections or parts of section of this ordinance, which provisions shall be, remain and continue to be in full force and effect.

**SECTION IV.**

That this ordinance shall take effect and be in full force and effect from and after its passage and publication according to law.

**PASSED, APPROVED AND ADOPTED** this 3rd day of November 2008, at a regular called meeting of the City Council of the City of Copperas Cove, Texas, which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code* 551.001, et.seq., at which meeting a quorum was present and voting.

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Robert Reeves, Mayor Pro Tem

ATTEST:

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Jane Lees, City Secretary

APPROVED AS TO FORM:

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Charles E. Zech, City Attorney

**City of Copperas Cove, Texas  
2001 Certificates of Obligation  
(Capital Equipment/Improvements)**

Account	Description	Total Project Budget	As of 08/31/2008	Total Ammended Project Budget
<b>Beginning Fund Balance</b>				
90-300-0001	Fund Balance	\$ -		
<b>Revenues</b>				
90-390-1001	Bond Proceeds	\$ 1,915,000	\$ 1,914,227	\$ 1,914,227
90-370-6001	Interest Income	-	90,980	96,255
90-370-6005	Miscellaneous Revenue	-	1,500	
<b>Total Revenues</b>		<u>\$ 1,915,000</u>	<u>\$ 2,006,707</u>	<u>\$ 2,010,482</u>
<b>Expenditures*</b>				
90-4606-9000-8600	Bond Issuance Costs	\$ 43,832	\$ 56,766	\$ 56,766
90-4606-9000-6050	Inspection Services	-	3,263	3,263
90-4606-3500-xxxx	City-Wide Network	148,700	148,622	148,622
90-4606-4100-8500	Municipal Court	182,594	196,779	196,779
90-4606-4300-xxxx	Animal Control Facility	60,147	60,119	60,119
90-4606-4400-8500	Fire Station No. 3	179,509	215,496	215,496
90-4606-4400-8300	Fire Equipment	250,000	248,855	248,855
90-4606-5300-8400	Street Equipment	126,170	126,170	126,170
90-4606-5300-8500	Reliever Route ROW Acquisition	400,000	172,155	440,437
90-4606-5400-8505	Ogletree Improvements	364,548	394,604	394,604
90-4606-5600-8500	Public Works Facility (1/2)	159,500	113,119	113,119
90-4606-9000-6014	Arbitrage Rebate Service	-	6,253	6,253
<b>Total Expenditures</b>		<u>\$ 1,915,000</u>	<u>\$ 1,742,201</u>	<u>\$ 2,010,482</u>
<b>Ending Fund Balance</b>				
90-300-0001	Fund Balance	<u>\$ -</u>	<u>\$ 264,505</u>	<u>\$ -</u>

\* Prior year expenditures have been reconciled to the fund cash balance.

**City of Copperas Cove, Texas  
2001 Certificates of Obligation  
(Phase II of Water/Wastewater CIP)**

Account	Description	Total Project Budget	As of 08/31/2008	Total Ammended Project Budget
<b>Beginning Fund Balance</b>				
91-300-0001	Fund Balance	\$ -		
<b>Revenues</b>				
91-390-1001	Bond Proceeds	\$ 6,485,000	\$ 6,482,383	6,482,383
91-370-6001	Interest Income	-	338,774	344,648
<b>Total Revenues</b>		<u>\$ 6,485,000</u>	<u>\$ 6,821,157</u>	<u>\$ 6,827,031</u>
<b>Expenditures*</b>				
91-4607-9100-8600	Bond Issuance Costs	\$ 162,800	\$ 165,380	165,380
91-4607-9100-6100	Advertising	-	191	191
91-4607-5600-6800	Professional Services	-	28,743	28,743
91-4607-9100-9032	Public Works Facility (1/2)	159,500	130,184	130,184
91-4607-9100-9034	Turkey Run Pumps & Tank	439,000	443,736	443,736
91-4607-9100-9036	Hogg Mt. Pumps & Tank	819,000	135,545	135,545
91-4607-9100-9038	Killeen/CC Water Line	3,073,700	3,206,692	3,206,692
91-4607-9100-9040	Turkey Run Tank Rehab.	180,000	275,763	275,763
91-4607-9100-9042	Joint Pump Station	700,000	753,512	753,512
91-4607-9100-9044	Grimes Crossing Water Line	701,000	503,837	503,837
91-4607-9100-9046	Joes Road Water Line	50,000	68,981	68,981
91-4607-9100-9047	Wolfe Road	75,000	75,855	75,855
91-4607-9100-9048	Taylor Mountain Pump Stn	-	220,606	220,606
91-4607-9100-9052	Mickan Mountain Rehab	-	214,078	214,078
91-4607-9100-9054	Hughes Mountain Rehab	-	12,500	252,500
91-4607-9100-9050	South Wastewater Plant	-	93,380	93,380
91-4607-5100-xxxx	Salaries/Related Expense	125,000	38,048	38,048
91-4607-9100-9318	Principal - 2001 C/O	-	-	220,000
<b>Total Expenditures</b>		<u>\$ 6,485,000</u>	<u>\$ 6,367,030</u>	<u>\$ 6,827,031</u>
<b>Ending Fund Balance</b>				
91-300-0001	Fund Balance	<u>\$ -</u>	<u>\$ 454,128</u>	<u>\$ -</u>

\* Prior year expenditures have been reconciled to the fund cash balance.

**City of Copperas Cove, Texas  
2003 Certificates of Obligation  
Tax Supported Capital Projects**

Account	Description	Total Project Budget	As of 08/31/2008	Total Ammended Project Budget
<b>Beginning Fund Balance</b>				
70-300-0001	Fund Balance	\$ -		
<b>Revenues</b>				
70-390-1003	Bond Proceeds	\$ 4,190,000	\$ 4,190,000	4,190,000
70-370-6001	Interest Income	-	231,086	231,951
70-370-6005	Miscellaneous Revenue	-	1,953	1,953
<b>Total Revenues</b>		<u>\$ 4,190,000</u>	<u>\$ 4,423,039</u>	<u>\$ 4,423,904</u>
<b>Expenditures*</b>				
70-231-0920	Bond Issuance Costs	\$ 82,539	\$ 82,543	\$ 82,543
70-231-0922	Unamortized Bond Discount	20,061	20,061	20,061
70-4615-4400-9021	Communications System	1,645,140	1,611,545	1,611,545
70-4615-4400-9023	Fire Department Pumper Truck	250,000	247,064	247,064
70-4615-5100-xxxx	Salary/Benefits	-	5,344	5,344
70-4615-4200-9039	Police Department Bldg. Repairs	20,000	22,537	22,537
70-4615-5300-9029	Improvements to FM 1113	320,000	377,386	377,386
70-4615-5400-9025	Renovation of Civic Center	130,000	132,691	132,691
70-4615-5400-9027	Construction of Skate Park	25,000	24,750	24,750
70-4615-5400-9033	Feeder Road	600,000	95,021	589,637
70-4615-5400-9035	City Hall Roof Repairs	20,000	11,441	11,441
70-4615-5400-9037	Human Resources Bldg. Repairs	95,000	94,312	94,312
70-4615-8500-9019	Construction of Big Divide	579,000	954,535	954,535
70-4615-8500-9043	Street Reconstruction	400,000	250,058	250,058
<b>Total Expenditures</b>		<u>\$ 4,186,740</u>	<u>\$ 3,929,288</u>	<u>\$ 4,423,904</u>
<b>Ending Fund Balance</b>				
70-300-0001	Fund Balance	<u>\$ 3,260</u>	<u>\$ 493,752</u>	<u>\$ -</u>

\* Prior year expenditures have been reconciled to the fund cash balance.

**City of Copperas Cove, Texas  
2003 Certificates of Obligation  
(Phase III of Water/Wastewater CIP)**

Account	Description	Total Project Budget	As of 08/31/2008	Total Ammended Project Budget
<b>Beginning Fund Balance</b>				
71-300-0001	Fund Balance	\$ -		
<b>Revenues</b>				
71-390-1003	Bond Proceeds	\$ 9,820,000	\$ 9,820,000	\$ 9,820,000
71-370-6001	Interest Income	-	541,992	542,531
71-390-1001	Developer Contributions	-	21,085	21,085
71-370-6005	Miscellaneous Revenue	-	167,965	167,965
<b>Total Revenues</b>		<u>\$ 9,820,000</u>	<u>\$ 10,551,042</u>	<u>\$ 10,551,581</u>
<b>Expenditures*</b>				
71-4615-xxxx-xxxx	Bond Issuance Costs	\$ 192,591	\$ 192,601	\$ 192,601
71-4615-xxxx-xxxx	Bond Discount	46,809	46,809	46,809
71-4615-4400-9021	Communications System	195,680	181,613	181,613
71-4615-5100-xxxx	Salaries/Benefits	60,000	87,689	87,689
71-4615-8500-9003	Meadow Brook Sewer Project	235,714	158,996	158,996
71-4615-8500-9005	Hwy 190 Sewer Project	162,430	181,203	181,203
71-4615-8500-9007	Mountain Top Water Project	460,000	565,131	565,131
71-4615-8500-9009	Big Divide (Sewer)	484,000	630,650	630,650
71-4615-8500-9011	Big Divide (Water)	1,710,000	982,358	982,358
71-4615-8500-9013	NE WW Plant Expansion	4,242,489	4,399,837	4,399,837
71-4615-8100-9041	Utility Admin. Bldg. Repairs	20,000	19,526	19,526
71-4615-8500-9014	South Plant-Fine Screens	101,500	101,500	101,500
71-4615-8500-9015	NW WW Plant Expansion	1,104,456	1,134,003	1,134,003
71-4615-8500-9017	4th Year Sewer Improvement	594,000	306,379	845,457
71-4615-8500-9021	Water Model Study	60,000	84,196	84,196
71-4615-8500-9029	FM 1113 Improvement (Sidewalk)	-	10,066	10,066
71-4615-8500-9031	Expansion of Constitution	122,000	128,100	128,100
71-4615-8500-9322	Principal 2003 CO	-	-	230,000
71-4615-8500-9422	Interest 2003 CO	-	-	270,035
<b>Total Expenditures</b>		<u>\$ 9,791,669</u>	<u>\$ 9,210,657</u>	<u>\$ 10,249,770</u>
<b>Ending Fund Balance</b>				
71-300-0001		<u>\$ 28,331</u>	<u>\$ 1,340,384</u>	<u>\$ 301,811</u>

\* Prior year expenditures have been reconciled to the fund cash balance.

**City of Copperas Cove, Texas  
2005 Certificates of Obligation  
Water Projects**

Account	Description	Total Project Budget	As of 08/31/2008	Total Ammended Project Budget
<b>Beginning Fund Balance</b>				
93-300-0001	Fund Balance	\$ -		
<b>Revenues</b>				
93-390-1003	Bond Proceeds	\$ 3,080,000	\$ 3,050,000	\$ 3,050,000
93-370-6001	Interest Revenue	-	318,658	344,476
<b>Total Revenues</b>		<u>\$ 3,080,000</u>	<u>\$ 3,368,658</u>	<u>\$ 3,394,476</u>
<b>Expenditures*</b>				
93-4616-5100-xxxx	Salary/Benefits	\$ -	\$ 458	\$ 458
93-4615-8500-6100	Contractual Services	-	244	244
93-4616-8500-8600	Issuance Costs	89,000	62,050	62,050
93-4616-8500-9032	East Pump Station	1,380,000	808,055	1,423,593
93-4616-8500-9034	Turkey Run Pump Station	868,000	94,988	1,184,185
93-4616-8500-9036	Hogg Mountain Water Tank	743,000	723,946	723,946
<b>Total Expenditures</b>		<u>\$ 3,080,000</u>	<u>\$ 1,689,741</u>	<u>\$ 3,394,476</u>
<b>Ending Fund Balance</b>				
93-253-0001		<u>\$ -</u>	<u>\$ 1,678,917</u>	<u>\$ -</u>

\* Prior year expenditures have been reconciled to the fund cash balance.

**City of Copperas Cove, Texas**  
**2006 Limited Tax Notes**  
**Capital Equipment/Land & Professional Services**

Account	Description	Total Project Budget	As of 08/31/2008	Total Ammended Project Budget
<b>Beginning Fund Balance</b>				
73-300-0001	Fund Balance	\$ -		
<b>Revenues</b>				
73-390-1003	Bond Proceeds	\$ 1,260,000	\$ 1,260,000	\$ 1,260,000
73-370-6001	Interest Revenue	-	81,861	82,420
<b>Total Revenues</b>		<u>\$ 1,260,000</u>	<u>\$ 1,341,861</u>	<u>\$ 1,342,420</u>
<b>Expenditures*</b>				
73-4617-9900-9500	Bond Issuance Costs	\$ -	\$ 25,796	\$ 25,796
73-4617-4200-2200	Postage	-	20	20
73-4617-4200-6800	Professional Services	600,000	474,133	856,500
73-4617-4200-8600	Land	400,000	197,134	197,134
73-4617-4400-8300	Ambulance	100,000	97,525	97,525
73-4617-5300-8300	Street Sweeper	160,000	165,445	165,445
<b>Total Expenditures</b>		<u>\$ 1,260,000</u>	<u>\$ 960,053</u>	<u>\$ 1,342,420</u>
<b>Ending Fund Balance</b>				
73-253-0001		<u>\$ -</u>	<u>\$ 381,808</u>	<u>\$ -</u>

\* Prior year expenditures have been reconciled to the fund cash balance.

**City of Copperas Cove, Texas  
2007 Certificates of Obligation  
Police Facility**

Account	Description	Total Project Budget	As of 08/31/2008	Total Ammended Project Budget
<b>Beginning Fund Balance</b>				
74-300-0001	Fund Balance	\$ -	\$ -	-
<b>Revenues</b>				
74-390-1001	Bond Proceeds	\$ 5,300,000	\$ 5,300,000	\$ 5,300,000
74-370-6001	Interest Revenue	50,000	261,743	325,974
<b>Total Revenues</b>		<u>\$ 5,350,000</u>	<u>\$ 5,561,743</u>	<u>\$ 5,625,974</u>
<b>Expenditures*</b>				
74-4618-4200-8600	Bond Issuance Costs	\$ 50,000	\$ 54,030	\$ 54,030
74-4618-4200-2200	Postage	-	23	23
74-4618-4200-6100	Advertising	-	541	541
74-4618-4200-6800	Professional Services	-	-	65,000
74-4617-4200-8500	Police Facility	5,300,000	-	5,506,380
<b>Total Expenditures</b>		<u>\$ 5,350,000</u>	<u>\$ 54,594</u>	<u>\$ 5,625,974</u>
<b>Ending Fund Balance</b>				
74-253-0001		<u>\$ -</u>	<u>\$ 5,507,149</u>	<u>\$ -</u>

\* Prior year expenditures have been reconciled to the fund cash balance.

## NOTICE OF PUBLIC HEARING

On November 3, 2008, during a Regular City Council Meeting, the City Council of the City of Copperas Cove will hold a public hearing on the ordinance to amend the Capital Improvement Project Fund budgets for the City of Copperas Cove. The November 3, 2008 City Council Meeting will begin at 7:00 pm and will be held in the City Council Chambers at City Hall, 507 South Main Street, Copperas Cove, Texas 76522.

The proposed amendments to the Capital Improvement Project Fund budgets are as follows:

	Increase (Decrease)
<b>2001 Certificate of Obligation (Tax Supported)</b>	
Revenues	\$ 95,482
Expenditure Appropriations	\$ 95,482
<b>2001 Certificate of Obligation (Water &amp; Sewer)</b>	
Revenues	\$342,031
Expenditure Appropriations	\$342,031
<b>2003 Certificate of Obligation (Tax Supported)</b>	
Revenues	\$233,904
Expenditure Appropriations	\$237,164
<b>2003 Certificate of Obligation (Water &amp; Sewer)</b>	
Revenues	\$731,581
Expenditure Appropriations	\$458,101
<b>2005 Certificate of Obligation (Water &amp; Sewer)</b>	
Revenues	\$314,476
Expenditure Appropriations	\$314,476
<b>2006 Limited Tax Notes (Tax Supported)</b>	
Revenues	\$ 82,420
Expenditure Appropriations	\$ 82,420
<b>2007 Certificate of Obligation (Tax Supported)</b>	
Revenues	\$275,974
Expenditure Appropriations	\$275,974

# City of Copperas Cove City Council Agenda Item Report

November 3, 2008

## Agenda Item H-1

Contact – Wanda Bunting, Director of Financial Services, 547-4221

wbunting@ci.copperas-cove.tx.us

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SUBJECT: **Public Hearing and action on Ordinance No. 2008-39, amending the overall budget for the active Capital Improvement Project Funds for the City of Copperas Cove.**

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### 1. BACKGROUND/HISTORY

According to Section 6.16(b)(1) of the Copperas Cove City Charter, in order for the City Council to amend the budget it must first hold a public hearing on the proposed amendments. The Charter also provides a requirement that when fund balance is to be used to fund increases in expenditures that two public hearings be held. The proposed budget amendment will require the use of fund balance. This is the second and final of two public hearings as required by the Charter. The first Public Hearing was held on October 21, 2008.

Capital Improvement Program (CIP) funds include various bond and tax note issuances. The projects that are funded with these funds instead of operating funds are often times projects that require multiple years to complete with many factors taken into account. Once projects are identified, any required planning, architectural and engineering services are performed. After this stage is complete, the project may have one or multiple construction contracts. Once the construction begins, some projects are in the construction phase for several months to ones that may last up to or more than two years. Due to this process, most of the CIP projects just roll funds from year to year until all of the projects are complete at which time the fund is closed out and any remaining funds go to pay back the debt service.

Over the last several months, City staff has reconciled the CIP fund balances to the actual cash balances.

### 2. FINDINGS/CURRENT ACTIVITY

Reconciling the funds enabled City staff to identify what funds were available in each of the CIP projects and identify projects that have been completed and ones that are still outstanding. In the Fiscal Year 2008-09 budget process, any funds that were identified to be available were assigned to outstanding projects, projects that qualify under the bond convent as a project that may be completed with the funding source, or any funds that may be used for debt service payments. The Fiscal Year 2008-09 Budget includes the estimated funds that are available.

Some of the projects that are still ongoing in these active CIP funds include:

- Reliever Route Right-of-Way Acquisition.
- Hughes Mountain Rehab.
- Feeder Road Project.
- 4<sup>th</sup> Year Sewer Improvements.
- East Pump Station.
- Turkey Run Pump Station.
- New Police Facility.

**3. FINANCIAL IMPACT**

See attached proposed amendments.

**4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends that the City Council hold a public hearing and approve Ordinance No. 2008-39, amending the overall budget for the active Capital Improvement Project Funds.

**ORDINANCE NO. 2008-40**

**AN ORDINANCE APPROVING AND ADOPTING AN AMENDMENT TO THE BUDGET FOR OPERATING THE MUNICIPAL GOVERNMENT OF THE CITY OF COPPERAS COVE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2008, AND ENDING ON SEPTEMBER 30, 2009; REPEALING ALL ORDINANCES AND APPROPRIATIONS IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE; AND ESTABLISHING A SAVINGS CLAUSE AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Council desires to amend the operating budget of the municipal government of the City of Copperas Cove for the fiscal year October 1, 2008 to September 30, 2009; and

**WHEREAS**, said budget amendments have been submitted to the City Council by the City Manager in accordance with the City Charter; and

**WHEREAS**, public notices of public hearings upon this budget have been duly and legally made as required by City Charter and law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE:**

**SECTION I.**

That the City Council of the City of Copperas Cove ratify, approve and adopt the amendments to the budget considered for the fiscal year of October 1, 2008 to September 30, 2009, as identified in "Attachment A" of this ordinance.

**SECTION II.**

That all ordinances for which provision has heretofore been made are hereby expressly repealed if in conflict with the provisions of this ordinance.

**SECTION III.**

That should any part, portion, or section of this ordinance be declared invalid or inoperative or void for any reason by a court of competent jurisdiction, such decision, opinion or judgment shall in no way affect the remaining portions, parts, or sections or parts of section of this ordinance, which provisions shall be, remain and continue to be in full force and effect.

**SECTION IV.**

That this ordinance shall take effect and be in full force and effect from and after its passage and publication according to law.

**PASSED, APPROVED AND ADOPTED** this 3<sup>rd</sup> day of November 2008, at a regular called meeting of the City Council of the City of Copperas Cove, Texas, which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code* 551.001, et.seq., at which meeting a quorum was present and voting.

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Robert L. Reeves, Mayor Pro Tem

**ATTEST:**

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Jane Lees, City Secretary

**APPROVED AS TO FORM:**

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Charles E. Zech, City Attorney

**CITY OF COPPERAS COVE, TEXAS**

**FISCAL YEAR 2008-09 BUDGET**

**GENERAL FUND**

**SUMMARY OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE**

Description	Projected FY 2007-08	Adopted FY 2008-09	Proposed Amendment	Amended Budget FY 2008-09
<b>BEGINNING FUND BALANCE:</b>				
Unreserved, Undesignated	\$ 2,279,959	\$ 2,677,839	\$ 100,000	\$ 2,777,839
Prior Yr Enc Voided in Current Yr	53,721	-	-	-
Prior Period Adjustment	600,980	-	-	-
Unreserved, Designated	1,000,000	1,000,000	-	1,000,000
<b>TOTAL BEGINNING FUND BALANCE</b>	<b>\$ 3,934,660</b>	<b>\$ 3,677,839</b>	<b>\$ 100,000</b>	<b>\$ 3,777,839</b>
<b>REVENUES:</b>				
Taxes	\$ 9,771,183	\$ 10,746,164	\$ -	\$ 10,746,164
Permits & Licenses	215,780	237,874	-	237,874
Charges for Services	866,997	922,989	-	922,989
Fines	760,160	834,404	-	834,404
Administrative Reimbursements	1,300,500	1,250,500	-	1,250,500
Miscellaneous Revenue	476,671	508,955	-	508,955
<b>TOTAL REVENUES</b>	<b>\$ 13,391,291</b>	<b>\$ 14,500,886</b>		<b>\$ 14,500,886</b>
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 17,325,951</b>	<b>\$ 18,178,725</b>	<b>\$ 100,000</b>	<b>\$ 18,278,725</b>
<b>EXPENDITURES:</b>				
City Council (21)	\$ 42,503	\$ 39,400	\$ -	\$ 39,400
City Manager (22)	210,993	273,073	12,339	285,412
City Secretary (23)	135,834	162,515	667	163,182
City Attorney (24)	136,957	155,062	-	155,062
Finance (Incl. Purchasing) (31)	558,353	647,537	5,823	653,360
Human Resources (34)	183,108	236,245	4,426	240,671
Information Systems (35)	194,045	235,383	2,815	238,198
Municipal Court (41)	339,611	345,103	6,052	351,155
Police (42)	4,309,775	4,604,941	157,249	4,762,190
Public Information Office (4250)	54,990	121,389	-	121,389
Animal Control (43)	220,525	238,160	2,736	240,896
Fire/EMS (44)	3,068,671	3,139,872	35,783	3,175,655
Emergency Management (4420)	30,884	62,443	-	62,443
Emergency Management (4420) Adj.	(24,500)	(45,000)	-	(45,000)
Engineering (51)	139,314	205,775	1,484	207,259
Engineering (51) CIP Adj.	-	(38,000)	-	(38,000)
Building Development (52)	299,977	291,314	2,230	293,544
Streets (53)	1,048,865	815,263	4,319	819,582
Parks and Recreation (54)	946,078	1,022,299	7,747	1,030,046
Fleet Services (55)	236,840	247,524	5,702	253,226
Public Works (56)	39,922	-	-	-
Facility Maintenance (57)	168,409	108,836	2,283	111,119
Planning (61)	156,216	208,550	2,291	210,841
Library (71)	528,100	527,744	6,177	533,921
Code & Health (72)	163,972	217,236	2,166	219,402
Non-Departmental (75)	458,670	713,182	(182,289)	530,893
<b>TOTAL EXPENDITURES</b>	<b>\$ 13,648,112</b>	<b>\$ 14,535,846</b>	<b>\$ 80,000</b>	<b>\$ 14,615,846</b>
<b>ENDING FUND BALANCE:</b>				
Unreserved, Undesignated	\$ 2,677,839	\$ 2,642,879		\$ 2,662,879
Unreserved, Designated	1,000,000	1,000,000		1,000,000
<b>TOTAL ENDING FUND BALANCE</b>	<b>\$ 3,677,839</b>	<b>\$ 3,642,879</b>	<b>\$ 20,000</b>	<b>\$ 3,662,879</b>
<b>IDEAL FUND BALANCE</b>	<b>\$ 3,412,028</b>	<b>\$ 3,633,962</b>	<b>\$ 20,000</b>	<b>\$ 3,653,962</b>
<b>OVER (UNDER) IDEAL FUND BALANCE</b>	<b>\$ 265,811</b>	<b>\$ 8,918</b>	<b>\$ -</b>	<b>\$ 8,918</b>

**CITY OF COPPERAS COVE  
FISCAL YEAR 2008-09 BUDGET  
WATER & SEWER FUND  
SUMMARY OF REVENUES, EXPENSES AND CHANGES IN FUND BALANCE**

Description	Projected FY 2007-08	Adopted FY 2008-09	Proposed Amendment	Amended Budget FY 2008-09
<b>BEGINNING FUND BALANCE:</b>				
Unreserved, Undesignated	\$ 1,730,982	\$ 1,579,636	\$ -	\$ 1,579,636
Prior Yr Enc Voided in Current Yr	7,117	-	-	-
Prior Period Adjustment	77,449	-	-	-
<b>TOTAL BEGINNING FUND BALANCE</b>	<b>\$ 1,815,548</b>	<b>\$ 1,579,636</b>	<b>\$ -</b>	<b>\$ 1,579,636</b>
Water Revenue	\$ 4,700,000	\$ 4,756,780	\$ -	\$ 4,756,780
Sewer Revenue	3,450,234	3,570,000	-	3,570,000
Senior Citizen Discount	(137,000)	(140,800)	-	(140,800)
Water Tap Fees	100,000	100,000	-	100,000
Sewer Tap Fees	26,000	26,000	-	26,000
Connect Fee	60,000	60,000	-	60,000
Meter Box Reset Fee	500	500	-	500
Subtotal	<u>8,199,734</u>	<u>\$ 8,372,480</u>	<u>\$ -</u>	<u>\$ 8,372,480</u>
Composting Sales Revenue	\$ 12,000	\$ 12,000	\$ -	\$ 12,000
Admin Reimb-Drainage	20,000	20,000	-	20,000
Interest Revenue	89,000	100,000	-	100,000
Late Charge For Billing	262,000	270,000	-	270,000
Miscellaneous Revenues	39,885	54,990	-	54,990
Insurance Proceeds	-	-	-	-
Riser Forfeiture Revenue	1,000	1,000	-	1,000
Auction Proceeds	-	1,000	-	1,000
Subtotal	<u>423,885</u>	<u>458,990</u>	<u>-</u>	<u>458,990</u>
<b>TOTAL REVENUE</b>	<b>\$ 8,623,619</b>	<b>\$ 8,831,470</b>	<b>\$ -</b>	<b>\$ 8,831,470</b>
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 10,439,167</b>	<b>\$ 10,411,106</b>	<b>\$ -</b>	<b>\$ 10,411,106</b>
<b>EXPENSES:</b>				
Water & Sewer Operations (80)	\$ 160,001	\$ 165,694	\$ 3,989	\$ 169,683
Utility Administration (81)	547,150	585,491	8,357	593,848
Water Distribution (82)	1,239,092	1,296,159	8,412	1,304,571
Sewer Collection (83)	502,259	548,186	7,800	555,986
Wastewater Treatment (84)	1,135,349	1,189,147	11,447	1,200,594
Composting (84-01)	163,155	181,726	3,263	184,989
Principal & Int Pymts in Bond Funds	-	(720,035)	-	(720,035)
Non-Departmental (85)	5,112,525	5,533,509	(43,268)	5,490,241
<b>TOTAL EXPENSES</b>	<b>\$ 8,859,531</b>	<b>\$ 8,779,877</b>	<b>\$ -</b>	<b>\$ 8,779,877</b>
<b>ENDING FUND BALANCE:</b>				
Unreserved, Undesignated	\$ 1,579,636	\$ 1,631,229	\$ -	\$ 1,631,229
<b>TOTAL ENDING FUND BALANCE</b>	<b>\$ 1,579,636</b>	<b>\$ 1,631,229</b>	<b>\$ -</b>	<b>\$ 1,631,229</b>
<b>IDEAL FUND BALANCE</b>	<b>\$ 2,214,883</b>	<b>\$ 2,194,969</b>	<b>\$ -</b>	<b>\$ 2,194,969</b>
<b>OVER (UNDER) IDEAL FUND BALANCE</b>	<b>\$ (635,247)</b>	<b>\$ (563,740)</b>	<b>\$ -</b>	<b>\$ (563,740)</b>

**CITY OF COPPERAS COVE  
FISCAL YEAR 2008-09 BUDGET  
SOLID WASTE FUND  
SUMMARY OF REVENUES, EXPENSES AND CHANGES IN FUND BALANCE**

Description	Projected FY 2007-08	Adopted FY 2008-09	Proposed Amendment	Amended Budget FY 2008-09
<b>BEGINNING FUND BALANCE:</b>				
Unreserved, Undesignated	\$ 769,843	\$ 750,357	\$ -	\$ 750,357
Prior Yr Enc Voided in Current Yr	296	-	-	-
Prior Period Adjustment	(57,476)	-	-	-
<b>TOTAL BEGINNING FUND BALANCE</b>	<b>\$ 712,663</b>	<b>\$ 750,357</b>	<b>\$ -</b>	<b>\$ 750,357</b>
<b>REVENUES:</b>				
Garbage Collection Fees	\$ 2,361,767	\$ 2,451,700	\$ -	\$ 2,451,700
Senior Discount	(39,375)	(40,700)	-	(40,700)
Sanitary Landfill Fees	375,000	400,000	-	400,000
Recycling Proceeds	45,000	45,000	-	45,000
Sale of Kraft Bags	11,000	13,000	-	13,000
Sale of Scrap Metal	19,000	16,000	-	16,000
Container Reload-On Site	5,000	7,500	-	7,500
Rtn Svce-Overload Container	200	500	-	500
Auto-Lid Locks	1,306	1,000	-	1,000
Rear Load Dumpster Rental	3,770	2,000	-	2,000
Roll-Off Rental Income	55,000	45,000	-	45,000
Bulky/White Goods Collection	-	68,040	-	68,040
Container Removal from Curb	-	15,450	-	15,450
Miscellaneous Solid Waste Fees	-	3,274	-	3,274
Subtotal	<u>\$ 2,837,668</u>	<u>\$ 3,027,764</u>	<u>\$ -</u>	<u>\$ 3,027,764</u>
Interest Revenue	\$ 26,000	\$ 28,000	\$ -	\$ 28,000
Late Charge For Billing	120,000	123,000	-	123,000
Auction Proceeds	1,000	5,000	-	5,000
Miscellaneous Revenues	3,000	1,000	-	1,000
Subtotal	<u>\$ 150,000</u>	<u>\$ 157,000</u>	<u>\$ -</u>	<u>\$ 157,000</u>
<b>TOTAL REVENUES</b>	<b>\$ 2,987,668</b>	<b>\$ 3,184,764</b>	<b>\$ -</b>	<b>\$ 3,184,764</b>
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 3,700,331</b>	<b>\$ 3,935,121</b>	<b>\$ -</b>	<b>\$ 3,935,121</b>
<b>EXPENSES:</b>				
Solid Waste Operations (90)	\$ 205,017	\$ 224,623	\$ 4,727	\$ 229,350
Solid Waste Collection - Residential (91-01)	336,029	386,085	1,169	387,254
Solid Waste Collection - Recycling (91-02)	123,605	148,076	591	148,667
Solid Waste Collection - Brush (91-03)	141,737	163,866	1,168	165,034
Solid Waste Collection - Commercial (91-04)	346,709	430,964	2,780	433,744
Solid Waste Collection - KCCB (91-05)	22,000	24,789	-	24,789
Solid Waste Disposal (92)	1,269,053	1,184,994	2,618	1,187,612
Non-Departmental (95)	505,824	567,022	(13,053)	553,969
<b>TOTAL EXPENSES</b>	<b>\$ 2,949,974</b>	<b>\$ 3,130,419</b>	<b>\$ -</b>	<b>\$ 3,130,419</b>
<b>ENDING FUND BALANCE:</b>				
Unreserved, Undesignated	\$ 750,357	\$ 804,703	\$ -	\$ 804,703
<b>TOTAL ENDING FUND BALANCE</b>	<b>\$ 750,357</b>	<b>\$ 804,703</b>	<b>\$ -</b>	<b>\$ 804,703</b>
<b>IDEAL FUND BALANCE</b>	<b>\$ 737,494</b>	<b>\$ 782,605</b>	<b>\$ -</b>	<b>\$ 782,605</b>
<b>OVER (UNDER) IDEAL FUND BALANCE</b>	<b>\$ 12,863</b>	<b>\$ 22,098</b>	<b>\$ -</b>	<b>\$ 22,098</b>



**CITY OF COPPERAS COVE  
FISCAL YEAR 2008-09 BUDGET  
GOLF COURSE FUND  
SUMMARY OF REVENUES, EXPENSES AND CHANGES IN FUND BALANCE**

Description	Projected FY 2007-08	Adopted FY 2008-09	Proposed Amendment	Amended Budget FY 2008-09
<b>BEGINNING FUND BALANCE:</b>				
Unreserved, Undesignated	\$ (22,335)	\$ 109,343		\$ 109,343
Prior Yr Enc Voided in Current Yr	666	-		-
Prior Period Adjustment	39,719			-
<b>TOTAL BEGINNING FUND BALANCE</b>	<b>\$ 18,050</b>	<b>\$ 109,343</b>	<b>\$ -</b>	<b>\$ 109,343</b>
<b>REVENUES:</b>				
Swimming Pool Receipts	\$ 500	\$ 500	\$ -	\$ 500
Green Fees	200,000	229,705	-	229,705
Cart Rental Fees	175,000	214,800	-	214,800
Membership Dues	118,000	124,340	-	124,340
Tournament-Green Fees	15,500	15,500	-	15,500
Tournament-Cart Fees	12,250	12,500	-	12,500
Tournament Fees	-	10,250	-	10,250
Cart Storage Fees	23,000	36,800	-	36,800
Handicap Fees	500	1,500	-	1,500
Trail Fees	16,200	16,200	-	16,200
Pro Shop Sales	80,000	80,000	-	80,000
Facility Rental Income	1,300	3,000	-	3,000
Driving Range Fees	37,000	40,000	-	40,000
Snack Bar Revenue-Food & Beverage	70,000	75,000	-	75,000
Food & Beverage (non-tax)	1,236	1,000	-	1,000
Snack Bar Revenue-Alcohol Sale	23,000	25,000	-	25,000
Interest Revenue	20	50	-	50
Miscellaneous Revenue	73	140	-	140
Auction Proceeds	5,000	-	-	-
Transfer from General Fund	59,072	-	-	-
Special Green Fees	6,200	6,500	-	6,500
Special Cart Fees	-	-	-	-
Special Lunch	3,200	3,200	-	3,200
Golf Lesson Revenue	300	1,000	-	1,000
<b>TOTAL REVENUES</b>	<b>\$ 847,351</b>	<b>\$ 896,985</b>	<b>\$ -</b>	<b>\$ 896,985</b>
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 865,401</b>	<b>\$ 1,006,328</b>		<b>\$ 1,006,328</b>
<b>EXPENSES:</b>				
Golf Course - Operations	\$ 297,062	\$ 272,192	\$ 2,317	\$ 274,509
Golf Course - Concession	105,073	111,609	360	111,969
Golf Course - Maintenance	353,923	466,756	3,442	470,198
Golf Course - Non-Departmental	-	29,450	(6,119)	23,331
<b>TOTAL EXPENSES</b>	<b>\$ 756,058</b>	<b>\$ 880,007</b>	<b>\$ -</b>	<b>\$ 880,007</b>
<b>ENDING FUND BALANCE:</b>				
Unreserved, Undesignated	\$ 109,343	\$ 126,321	\$ -	\$ 126,321
<b>TOTAL ENDING FUND BALANCE</b>	<b>\$ 109,343</b>	<b>\$ 126,321</b>	<b>\$ -</b>	<b>\$ 126,321</b>
<b>IDEAL FUND BALANCE</b>	<b>\$ 189,015</b>	<b>\$ 220,002</b>	<b>\$ -</b>	<b>\$ 220,002</b>
<b>OVER (UNDER) IDEAL FUND BALANCE</b>	<b>\$ (79,672)</b>	<b>\$ (93,681)</b>	<b>\$ -</b>	<b>\$ (93,681)</b>

**CITY OF COPPERAS COVE  
FISCAL YEAR 2008-09 BUDGET  
DRAINAGE UTILITY FUND  
SUMMARY OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE**

Account	Description	Projected FY 2007-08	Adopted FY 2008-09	Proposed Amendment	Amended Budget FY 2008-09
<b>BEGINNING FUND BALANCE:</b>					
	Unreserved, Undesignated	\$ 324,584	\$ 72,479	\$ -	\$ 72,479
	Prior Period Adjustment	(72,769)			
<b>TOTAL BEGINNING FUND BALANCE</b>		<u>\$ 251,815</u>	<u>\$ 72,479</u>	<u>\$ -</u>	<u>\$ 72,479</u>
<b>REVENUES</b>					
05-340-1020	Drainage Utility Fee	\$ 842,539	\$ 870,000	\$ -	\$ 870,000
05-340-1001	Maintenance Revenue	-	-	-	-
Subtotal		<u>\$ 842,539</u>	<u>\$ 870,000</u>	<u>\$ -</u>	<u>\$ 870,000</u>
<b>Other Revenue</b>					
05-390-6005	Miscellaneous Revenues	\$ 35	\$ 10	\$ -	\$ 10
05-370-6001	Interest Revenue	28,900	35,000	-	35,000
05-390-6003	Late Charge for Billing	540	500	-	500
05-392-1001	Auction Proceeds	926	200	-	200
Subtotal		<u>\$ 30,401</u>	<u>\$ 35,710</u>	<u>\$ -</u>	<u>\$ 35,710</u>
<b>TOTAL REVENUES</b>		<u>\$ 872,940</u>	<u>\$ 905,710</u>	<u>\$ -</u>	<u>\$ 905,710</u>
<b>TOTAL FUNDS AVAILABLE</b>		<u>\$ 1,124,755</u>	<u>\$ 978,189</u>	<u>\$ -</u>	<u>\$ 978,189</u>
<b>EXPENDITURES</b>					
	Drainage	\$ 773,825	\$ 463,568	\$ 3,618	\$ 467,186
	Non-Departmental	278,451	348,208	(3,618)	344,590
<b>TOTAL EXPENDITURES</b>		<u>\$ 1,052,276</u>	<u>\$ 811,776</u>	<u>\$ -</u>	<u>\$ 811,776</u>
<b>ENDING FUND BALANCE</b>					
	Unreserved, Undesignated	\$ 72,479	\$ 166,413	\$ -	\$ 166,413
<b>TOTAL ENDING FUND BALANCE</b>		<u>\$ 72,479</u>	<u>\$ 166,413</u>	<u>\$ -</u>	<u>\$ 166,413</u>

## NOTICE OF PUBLIC HEARING

On November 3, 2008, during a Regular City Council Meeting, the City Council of the City of Copperas Cove will hold a public hearing on the ordinance to amend the FY 2008-09 Budget for the City of Copperas Cove. The November 3, 2008 City Council Meeting will begin at 7:00 pm and will be held in the City Council Chambers at City Hall, 507 South Main Street, Copperas Cove, Texas 76522.

The proposed amendments to the FY 2008-09 Annual Budget are as follows:

<b>General Fund</b>	<b>Increase (Decrease)</b>
Beginning Fund Balance	\$100,000
Expenditure Appropriations	\$ 80,000

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item H-2

Contact – Wanda Bunting, Director of Financial Services, 547-4221  
wbunting@ci.copperas-cove.tx.us

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SUBJECT: **Public Hearing and action on Ordinance No. 2008-40, amending the 2008-09 fiscal year budget for the City of Copperas Cove.**

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#### 1. BACKGROUND/HISTORY

The 2008-09 budget was adopted on September 16, 2008. According to Section 6.16(b)(1) of the Copperas Cove City Charter, in order for the City Council to amend the 2008-09 budget it must first hold a public hearing on the proposed amendments. The Charter also provides a requirement that when fund balance is to be used to fund increases in expenditures that two public hearings be held. The proposed budget amendment will require the use of fund balance. This is the second and final of two public hearings as required by the Charter. The first Public Hearing was held on October 21, 2008.

#### 2. FINDINGS/CURRENT ACTIVITY

The General Fund requires an increase of 80,000 in expenditure appropriations. The fund balance is being used to adequately fund the expenditures for the Police department. The Police department released over \$100,000 in FY 2007-08 budget that will increase the City's fund balance. The fund balance will be reconciled with the annual audit after the year-end books are closed. The final adjustment will be made to the fund balance at that time. With this update, the City still maintains a fund balance that meets the ideal fund balance as recommended in the City Charter.

Increases include:

- The Police Department increase includes funds for the purchase of two replacement patrol vehicles. The patrol vehicles were requested in the Police Department 2008-09 budget request, but due to funds not being available, they were not recommended at that time. With the Police Department returning a significant amount of funds to the fund balance primarily due to salary savings, the funds are available and City staff requests to include this purchase in the 2008-09 budget.
- The increase also includes updating the appearance of the Patrol units. With the purchase of new patrol units in the 2008-2009 budget, a new color scheme will be incorporated. The current fleet consists of all white in color vehicles with a full length graphic applied to the vehicle. The new vehicles will be two tone consisting of the colors black and white. The

current vehicle scheme was introduced in 1996. This process took several years to complete as vehicle schemes were changed as the cars were replaced during annual budget cycles. In doing so, two completely different looking vehicles were out on the streets. In the end, we finally repainted the remainder of the fleet to complete the process to standardize the fleet.

With the current scheme, each time a vehicle body is damaged and sent for repairs; new graphics must be purchased and applied to the vehicle. The current graphics begin to fade out after approximately 2 years due to the sun and heat exposure. Thus, City staff desires to change out the entire set of graphics to avoid the appearance of "patchwork". The current price for a complete set of graphics is approximately \$420 per patrol unit.

With the new paint scheme, only the doors will contain graphics which will reduce the initial cost as well as any replacement costs in the future for graphics. The new scheme will also afford greater visibility to the public, be immediately recognized as a police vehicle, and separate our vehicle's appearance from several other agencies appearance that is similar to our current scheme. Approving the amendment for the re-painting of the vehicles not scheduled for replacement during this budget cycle will allow the police department to complete this project during the budget cycle and project a recognizable and fresh appearance to the public.

A reallocation of funds is also included in this budget amendment. The reallocation is for the merit increases that were approved in the non-departmental budget during the budget process. The performance evaluations have been completed and the employee merits were processed in October, the following is a re-allocation of the funds:

• City Manager	\$12,339
• City Secretary	667
• Finance	5,823
• Human Resources	4,426
• Information Systems	2,815
• Municipal Court	6,052
• Police	77,249
• Animal Control	2,736
• Fire/EMS	35,783
• Engineering	1,484
• Building Development	2,230
• Streets	4,319
• Parks and Recreation	7,747
• Fleet Services	5,702
• Facility Maintenance	2,283
• Planning	2,291
• Library	6,177
• Code & Health Compliance	2,166
• Non-Departmental	(182,289)

The Water and Sewer Fund will require a reallocation of funds for the merit increases that were approved in the non-departmental budget during the budget process. The performance evaluations have been completed and the employee merits were processed in October, the following is a re-allocation of the funds:

- Water and Sewer Operations \$ 3,989
- Utility Administration 8,357
- Water Distribution 8,412
- Sewer Collection 7,800
- Wastewater Treatment 11,447
- Composting 3,263
- Non-Departmental (43,268)

The Solid Waste Fund will require a reallocation of funds for the merit increases that were approved in the non-departmental budget during the budget process. The performance evaluations have been completed and the employee merits were processed in October, the following is a re-allocation of the funds:

- Solid Waste Operations \$ 4,727
- SW Residential Collection 1,169
- SW Recycling 591
- SW Brush Collection 1,168
- SW Commercial Collection 2,780
- SW Disposal 2,618
- Non-Departmental (13,053)

The Golf Course Fund will require a reallocation of funds for the merit increases that were approved in the non-departmental budget during the budget process. The performance evaluations have been completed and the employee merits were processed in October, the following is a re-allocation of the funds:

- Golf Course Operations \$ 2,317
- Golf Course Concession 360
- Golf Course Maintenance 3,442
- Non-Departmental (6,119)

The Drainage Fund will require a reallocation of funds for the merit increases that were approved in the non-departmental budget during the budget process. The performance evaluations have been completed and the employee merits were processed in October, the following is a re-allocation of the funds:

- Drainage \$ 3,618
- Non-Departmental (3,618)

The Cemetery Fund, Recreation Activities Fund, and the City Wide Grant Fund will each require a budget transfer since the merits were budgeted in a separate line item. A budget amendment is not required since these funds do not have a separate non-departmental budget. The funds for the merits were budgeted in the regular departmental budgets.

**3. FINANCIAL IMPACT**

See attached ordinance and proposed amendments.

**4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends that the City Council hold a public hearing and approve Ordinance No. 2008-40 amending the fiscal year 2008-09 Budget.

**City of Copperas Cove**  
**Summers Road Street Improvement Project**  
**BID TABULATION**

10-21-08

Base Bid

Shallow Ford Construction Co., Inc.

TTG Utilities, LP

David D. Smith Construction, Inc.

Aaron Concrete Contractors, LP

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	
1	Furnish and install 11 1/2" flex base complete in place	24,728 SY	\$8.60	\$212,660.80	\$10.80	\$267,062.40	\$11.13	\$275,222.64	\$10.00	\$247,280.00	
2	Furnish and install 2" type D, H.M.A.C. complete in place	24,728 SY	\$10.80	\$267,062.40	\$11.65	\$288,081.20	\$10.81	\$267,309.68	\$10.00	\$247,280.00	
3	Furnish and install curb and gutter complete in place	11,772 LF	\$9.30	\$109,479.60	\$11.90	\$140,086.80	\$8.92	\$105,006.24	\$9.00	\$105,948.00	
4	Furnish and install 8'x5' box culvert complete in place	294 LF	\$465.00	\$136,710.00	\$408.00	\$119,952.00	\$437.44	\$128,607.36	\$600.00	\$176,400.00	
5	Furnish and install 8'x6' box culvert complete in place	114 LF	\$535.00	\$60,990.00	\$444.00	\$50,616.00	\$444.38	\$50,659.32	\$620.00	\$70,680.00	
6	Furnish and install 5'x3' box culvert complete in place	44 LF	\$355.00	\$15,620.00	\$244.00	\$10,736.00	\$249.26	\$10,967.44	\$320.00	\$14,080.00	
7	Furnish and install reinforced concrete head wall sta 8+50	1 EA	\$16,800.00	\$16,800.00	\$14,650.00	\$14,650.00	\$7,676.25	\$7,676.25	\$35,000.00	\$35,000.00	
8	Furnish and install reinforced concrete head wall sta 18	1 EA	\$10,000.00	\$10,000.00	\$7,750.00	\$7,750.00	\$7,124.25	\$7,124.25	\$15,000.00	\$15,000.00	
9	Furnish and install reinforced concrete head walls sta 25+50	1 EA	\$12,200.00	\$12,200.00	\$14,800.00	\$14,800.00	\$7,383.00	\$7,383.00	\$32,000.00	\$32,000.00	
10	Furnish and install reinforced concrete head walls sta 40+50	1 EA	\$13,150.00	\$13,150.00	\$15,275.00	\$15,275.00	\$7,210.50	\$7,210.50	\$45,000.00	\$45,000.00	
11	Furnish and install metal guard fence complete in place	765 LF	\$27.50	\$21,037.50	\$30.50	\$23,332.50	\$28.18	\$21,557.70	\$30.00	\$22,950.00	
12	Furnish and install guardrail ends complete in place	8 EA	\$3,050.00	\$24,400.00	\$4,330.00	\$34,640.00	\$3,162.50	\$25,300.00	\$2,200.00	\$17,600.00	
13	Traffic control plan and signage complete in place	1 LS	\$22,700.00	\$22,700.00	\$18,000.00	\$18,000.00	\$23,000.00	\$23,000.00	\$30,000.00	\$30,000.00	
14	Furnish and install silt fence, complete in place	492 LF	\$2.50	\$1,230.00	\$2.80	\$1,377.60	\$3.88	\$1,908.96	\$2.10	\$1,033.20	
15	Furnish and install revegetation complete in place	33,466 SY	\$0.55	\$18,406.30	\$0.75	\$25,099.50	\$0.55	\$18,406.30	\$0.40	\$13,386.40	
16	Furnish and install water drop off wall	121 LF	\$105.00	\$12,705.00	\$80.00	\$9,680.00	\$119.79	\$14,494.59	\$280.00	\$33,880.00	
17	Furnish and install rock berm complete in place	116 LF	\$30.00	\$3,480.00	\$28.00	\$3,248.00	\$38.81	\$4,501.96	\$16.00	\$1,856.00	
18	Furnish and install gravel driveway complete in place	25 EA	\$465.00	\$11,625.00	\$655.00	\$16,375.00	\$1,610.00	\$40,250.00	\$600.00	\$15,000.00	
19	Furnish and install asphalt driveway complete in place	5 EA	\$570.00	\$2,850.00	\$1,300.00	\$6,500.00	\$2,875.00	\$14,375.00	\$1,500.00	\$7,500.00	
20	Furnish and install concrete driveway complete in place	12 EA	\$1,525.00	\$18,300.00	\$1,650.00	\$19,800.00	\$3,450.00	\$41,400.00	\$1,700.00	\$20,400.00	
21	Furnish and install 24"x6"x6" curb stops	98 EA	\$52.00	\$5,096.00	\$25.00	\$2,450.00	\$34.50	\$3,381.00	\$50.00	\$4,900.00	
22	Furnish and install stream crossing complete in place	175 LF	\$130.00	\$22,750.00	\$25.00	\$4,375.00	\$77.92	\$13,636.00	\$80.00	\$14,000.00	
23	Road excavation complete in place	4,870 CY	\$14.50	\$70,615.00	\$10.00	\$48,700.00	\$9.37	\$45,631.90	\$15.00	\$73,050.00	
24	Placement and compaction of excavated material	2,861 CY	\$14.75	\$42,199.75	\$5.70	\$16,307.70	\$2.45	\$7,009.45	\$20.00	\$57,220.00	
25	Disposal of excess excavated material	2,008 CY	\$1.50	\$3,012.00	\$1.90	\$3,815.20	\$9.34	\$18,754.72	\$20.00	\$40,160.00	
26	Furnish and install concrete valley gutter	9 EA	\$3,450.00	\$31,050.00	\$2,290.00	\$20,610.00	\$4,485.00	\$40,365.00	\$2,800.00	\$25,200.00	
27	Relocate and install existing fire hydrant	8 EA	\$1,665.00	\$13,320.00	\$1,950.00	\$15,600.00	\$740.17	\$5,921.36	\$1,800.00	\$14,400.00	
28	Relocate and install existing traffic sign	5 EA	\$160.00	\$800.00	\$290.00	\$1,450.00	\$287.50	\$1,437.50	\$350.00	\$1,750.00	
29	Relocate and install existing mail box	28 EA	\$125.00	\$3,500.00	\$145.00	\$4,060.00	\$287.50	\$8,050.00	\$150.00	\$4,200.00	
30	Relocate and install existing air release valve	3 EA	\$665.00	\$1,995.00	\$1,260.00	\$3,780.00	\$726.80	\$2,180.40	\$1,500.00	\$4,500.00	
31	Relocate and install water valve	1 EA	\$1,330.00	\$1,330.00	\$2,280.00	\$2,280.00	\$8,336.93	\$8,336.93	\$1,500.00	\$1,500.00	
32	Lower and install existing water line	780 LF	\$15.00	\$11,700.00	\$82.00	\$63,960.00	\$40.18	\$31,340.40	\$125.00	\$97,500.00	
33	Furnish and install trench safety	1 LS	\$1,100.00	\$1,100.00	\$1,460.00	\$1,460.00	\$4,513.75	\$4,513.75	\$1,500.00	\$1,500.00	
34	Furnish and install french drain	1,619 LF	\$12.70	\$20,561.30	\$18.50	\$29,951.50	\$14.01	\$22,682.19	\$50.00	\$80,950.00	
35	Install 4" pavement markings denoting turning lane	30,000 LF	\$0.20	\$6,000.00	\$0.32	\$9,600.00	\$1.09	\$32,700.00	\$0.20	\$6,000.00	
TOTAL BASE BID COST					\$1,226,435.65		\$1,315,461.40		\$1,318,301.79		\$1,579,103.60

Alternate Item # 1 - 11th Street

36	Furnish and install handicap curb ramp and landing	4 EA	\$625.00	\$2,500.00	\$750.00	\$3,000.00	\$1,437.50	\$5,750.00	\$1,400.00	\$5,600.00	
37	Furnish and install 4" concrete sidewalk	586 LF	\$25.00	\$14,650.00	\$22.50	\$13,185.00	\$23.00	\$13,478.00	\$18.00	\$10,548.00	
38	Remove and replace concrete driveway with sidewalk	8 EA	\$110.00	\$880.00	\$60.00	\$480.00	\$77.63	\$621.04	\$75.00	\$600.00	
TOTAL ALTERNATE ITEM #1 COST					\$18,030.00		\$16,665.00		\$19,849.04		\$16,748.00

Alternate Item #2 - Hike and Bike Trail

39	Furnish and install 18" ribbon curb complete in place	3,160 LF	\$7.75	\$24,490.00	\$8.70	\$27,492.00	\$9.78	\$30,904.80	\$8.00	\$25,280.00	
TOTAL ALTERNATE ITEM #2 COST					\$24,490.00		\$27,492.00		\$30,904.80		\$25,280.00

Alternate Item #3 - Grimes Crossing Road

40	Scarify and compact existing pavement	8,275 SY	\$0.85	\$7,033.75	\$2.90	\$23,997.50	\$4.91	\$40,630.25	\$1.50	\$12,412.50	
41	Furnish and install 6" flex base complete in place	8,275 SY	\$5.00	\$41,375.00	\$6.80	\$56,270.00	\$4.22	\$34,920.50	\$5.00	\$41,375.00	
42	Furnish and install 1 1/2" Type D, H.M.A.C.	8,275 SY	\$9.20	\$76,130.00	\$9.65	\$79,853.75	\$8.97	\$74,226.75	\$8.20	\$67,855.00	
TOTAL ALTERNATE ITEM #3 COST					\$124,538.75		\$160,121.25		\$149,777.50		\$121,642.50

Total Base Bid plus Alternates 1, 2, and 3

\$1,393,494.40

\$1,519,739.65

\$1,518,833.13

\$1,742,774.10

# HEARN ENGINEERING, INC.

2101 N. Mays • Round Rock, Texas 78664 • Telephone (512) 310-0176 • FAX (512) 244-7316

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October 23, 2008

Wesley Wright, P.E.  
City Engineer  
City of Copperas Cove  
P.O. Box 1449  
Copperas Cove, TX 76522

RE: City of Copperas Cove  
Summers Road Improvements Project

Dear Mr. Wright:

At 2:00 p.m. on October, 21, 2008, bids for the referenced project were publicly opened and read aloud in the Council Chambers. The bid consisted of road work on Summers Road, sidewalk along 11<sup>th</sup> Street, repairs to the hike and bike trail damaged by floods, and re-paving Grimes Crossing Road. Of the four received, bids with the three alternates ranged from \$1,393,494.40 to \$1,742,774.10. After reviewing the bids, the low bidder is Shallow Ford Construction Co., Inc. who has successfully completed numerous construction jobs for Temple, Belton, Killeen, Harker Heights, Fort Hood, and TxDOT. They have a reputation for doing good work in a timely manner. We recommend awarding the contract with the base bid and all three alternates to the low bidder, Shallow Ford Construction Co. for the price of \$1,393,494.40. Attached is the bid tabulation for the referenced project.

If you should have any questions please contact me at (512) 310-0176.

Sincerely,



Douglas C. Hearn, P.E., R.P.L.S.

cc: Andrea Gardner  
James Trevino  
Bob McKinnon  
Tracy Molnes

City of Copperas Cove  
Summers Road  
Street Improvements  
Opinion of Probable Cost  
October, 20-2008

**Summers Road - 2 Lane w/ Continuous Turning Lane**

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
1	Furnish and install 11 1/2" thick flexible base	24,728 SY	\$9.50	\$234,916
2	Furnish and install 2" type D, H.M.A.C.,	24,728 SY	\$9.20	\$227,498
3	Furnish and install curb and gutter	11,772 LF	\$12.00	\$141,264
4	Furnish and install 8'x5' Box Culverts	294 LF	\$639.00	\$187,866
5	Furnish and install 8'x6' Box Culverts	114 LF	\$739.00	\$84,246
6	Furnish and install 5'x3' Box Culverts	44 LF	\$474.00	\$20,856
7	Furnish and install reinforced concrete head walls	4 EA	\$9,000.00	\$36,000
8	Furnish and install metal beam guard fence	765 LF	\$35.00	\$26,775
9	Furnish and install single guardrail terminal end	8 EA	\$3,500.00	\$28,000
10	Traffic Control Plan	1 LS	\$15,000.00	\$15,000
11	Furnish and install silt fence	492 LF	\$13.00	\$6,396
12	Furnish and install revegetation	33,466 SY	\$2.00	\$66,932
13	Furnish and install water drop off wall	121 LF	\$25.00	\$3,025
14	Furnish and install rock berm	116 LF	\$7.00	\$812
15	Furnish and install gravel driveway	25 EA	\$1,000.00	\$25,000
16	Furnish and install asphalt driveway	5 EA	\$1,200.00	\$6,000
17	Furnish and install concrete driveway	12 EA	\$2,000.00	\$24,000
18	Furnish and install 24"x8"x6" curbs	98 EA	\$25.00	\$2,450
19	Furnish and install stream crossing	175 LF	\$300.00	\$52,500
20	Unclassified cut & fill excavation complete in place	4,780 CY	\$6.00	\$28,680
21	Compacted fill complete in place	2,861 CY	\$6.00	\$17,166
22	Disposal of excess excavated material	2,008 CY	\$10.00	\$20,080
23	Furnish and install concrete valley gutter	9 LS	\$6,000.00	\$54,000
24	Relocate and install fire hydrant	8 EA	\$750.00	\$6,000
25	Relocate and install traffic sign	5 EA	\$300.00	\$1,500
26	Relocate and install mail box	28 EA	\$100.00	\$2,800
27	Relocate and install automatic air release valve	3 EA	\$1,000.00	\$3,000
28	Relocate and install water valve	1 EA	\$1,000.00	\$1,000
29	Lower and install waterline	780 LF	\$24.00	\$18,720
30	Furnish and install trench safety	1 LS	\$5.00	\$5
31	Furnish and install french drains	1,619 LF	\$25.00	\$40,475
32	Furnish and install striping	30,000 LF	\$1.75	\$52,500

TOTAL BASE PRICE

\$1,435,462

**Alt # 1, 11th Street**

DESCRIPTION				
1	Furnish and install handicap curb ramp			
1	Furnish and install 4' concrete sidewalk			
1	Remove and replace 4' concrete driveway	75 SY	\$60.00	\$4,500

TOTAL BASE PRICE

\$4,500

**Alt # 2, Hike and Bake Trail Repairs**

DESCRIPTION				
1	Furnish and install ribbon curb	3,160 LF	\$13.00	\$41,080

TOTAL BASE PRICE

\$41,080

**Alt. # 1, Grime's Crossing Rd.**

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
1	Furnish and install 8" thick flexible base	8,275 SY	\$8.00	\$66,200
2	Furnish and install 2" type D, H.M.A.C.,	8,275 SY	\$9.20	\$76,130
3	Scarify existing asphalt	8,275 SY	\$2.00	\$16,550

TOTAL BASE PRICE

\$158,880

# City of Copperas Cove City Council Agenda Item Report

November 3, 2008

## Agenda Item No. I-1

Contact – Wesley Wright, P.E., City Engineer, 547-0751

wwright@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action authorizing the City Manager to execute an agreement with Shallow Ford Construction for Summers Road paving and drainage improvements in the amount of \$1,393,494.40.**

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### 1. BACKGROUND/HISTORY

Summers Road is an asphalt road, approximately 16'-18' wide, connecting FM 1113 to Lutheran Church Road. Approximately 3,000 vehicles per day use Summers Road. The road is currently in poor condition and subject to frequent flooding. In May 2008, Tax Notes were issued to cover the street reconstruction costs. Following that issuance, Council authorized the City Manager to enter into an agreement with Hearn Engineering to provide design services for Summers Road improvements. The proposed design will widen the road to 40', provide curb and gutter, and improve the area's drainage.

### 2. FINDINGS/CURRENT ACTIVITY

The Summers Road paving and drainage improvements project was advertised in October 2008 and bids were opened on October 21, 2008. Four bids were received (see attached bid tabulations) with Shallow Ford Construction Co., Inc. providing the lowest total bid at \$1,393,494.40. The engineer's estimate of probable costs for the project was approximately \$1,640,000.00.

The bid includes the following items:

- Base Bid – Summers Road Improvements – \$1,226,435.65
- Alternate #1 – 11<sup>th</sup> Street Sidewalk Improvements - \$18,030.00
- Alternate #2 – South Park Hike and Bike Trail – \$24,490.00
- Alternate #3 – Grimes Crossing Improvements – \$124,538.75

### 3. FINANCIAL IMPACT

Sufficient funding exists through street and drainage encumbrances, 2008 Tax Notes, and Street Department operating funds.

**4. ACTION OPTIONS/RECOMMENDATION**

City staff and Hearn Engineering recommend that Council authorize the City Manager to execute an agreement with Shallow Ford Construction for Summers Road paving and drainage improvements in the amount of \$1,393,494.40.

STATE OF TEXAS §

## CITY/OWNER AGREEMENT

COUNTY OF CORYELL §

### KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT is entered into by the CITY OF COPPERAS COVE, TEXAS, a home-rule municipality hereinafter "CITY", whose address is 507 South Main Street, Copperas Cove, TX 76522 and JWC INC, a Texas Corporation, whose address is PO Box 727 Copperas Cove, TX 76522

**WHEREAS**, Tonkowa Village, Phase 1 is subject to occasional flooding as a result of offsite storm water runoff; and,

**WHEREAS**, the CITY OF COPPERAS COVE & JWC INC desire to improve drainage conditions associated with the Tonkowa Village development.

**WHEREAS**, the benefit of these improvements is to the City of Copperas Cove, JWC INC, and the general public; and,

| **WHEREAS**, the parties to this agreement wish to provide for the protection of the rights and interests of the respective parties and to document for posterity a record of their agreement so that the public interest of the citizens of the City of Copperas Cove is well served;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF**, the mutual covenants and obligations herein expressed, the parties hereto agree as follows:

#### RECITALS

1. Parties. The parties to this City/Owner Agreement (hereinafter the "Agreement") are the City of Copperas Cove, a home-rule municipality, (hereinafter "City"), acting by and through its City Manager, whose address is 507 S. Main, Copperas Cove, TX 76522, and JWC INC, a Texas Corporation, (hereinafter "Owner"), whose address is PO Box 727 Copperas Cove TX 76522.
2. Project. Owner is the former owner of land included in the final subdivision plat of Tonkowa Village, Phase 1 (hereinafter "Project"), more fully described in Exhibit A, attached hereto and incorporated herein for all intents and purposes.

## OBLIGATIONS OF OWNER

3. Improvements. Owner agrees to construct the required drainage improvements described in Exhibit B attached hereto and incorporated herein for all intents and purposes, including any and all necessary site clearing and disposal of debris, and construct a driveway drainage culvert, grade to drain, and driveway repair for the existing single family home owned by Erwin Hunter adjacent to the State Highway 190 right-of-way (collectively the "Improvements"), according to the standards and specifications in effect at the time of construction. Owner agrees to construct and dedicate the improvements as an independent obligation on its part, regardless of City's performance under this Agreement.
4. Compliance with Law. Owner agrees that nothing herein shall negate the applicability of future health and safety regulations which are not currently a part of the laws concerning subdivisions.
5. Easements. Owner agrees to dedicate any and all easements necessary to the Project, which are located on Owner's property including any and all easements or permissions as related to the property owned by Curtis Donaldson. The City of Copperas Cove agrees to obtain any and all easements or permissions as related to the property owned by Erwin Hunter.
6. Conveyance/Dedication. No permanent conveyances will be made associated with these improvements. Any easements or permissions will be temporary and expire upon completion of the Improvements.
7. Warranty. Owner hereby gives express warranty that the Improvements will be constructed in accordance with the City's standards and specifications and shall be free from defects. Owner further indemnifies City for all claims, expenses, and liability arising in connection with any and all defects. This express warranty and indemnification shall be limited to a period of one (1) year after acceptance by City of the last completed Improvement.
8. Inspections. Owner agrees that any and all work performed regarding the Improvement shall be inspected by the City's designated engineer or inspector to ensure the quality of work and materials. The City shall have no duty to inspect the work of any contractor or subcontractor of the Owner except with regard to the improvements and shall have no duty with regard to workplace safety.

## CITY'S OBLIGATIONS

9. Acceptance/Certification. The acceptance of any Improvement, upon completion, is subject to approval of the City's designated engineer. Said approval to be at City's sole discretion and based on an inspection of the improvements and compliance with any applicable standards and specifications.
10. Payment. Upon acceptance of Improvements, the City will pay \$23,750.00.
11. Defects. City shall notify Owner in writing upon discovery of defects in the Improvements. Owner shall remedy defects within five (5) days after receiving notice of such from City. City may in its sole discretion grant additional time for remedy of defects where required by nature of the defect, provided that Owner commences work within five (5) days after receiving notice as described above and continues diligently to complete the repair work.

## GENERAL TERMS AND CONDITIONS

12. Specifications. It is understood among the parties that the technical requirements and specifications for the Project shall be in accordance with those established by the City's designated engineer. It is further understood that design, surveying, equipment, materials, labor, and any other items necessary for the Improvements shall be provided by Owner and are subject to approval by City's designated engineer.
13. Objectives. In the negotiation and acceptance of any term or condition, the parties hereby agree that the objectives to be fulfilled are the development of the Improvements so that the public interests of the City of Copperas Cove will be well served.
14. Binding Agreement. The terms and conditions set out in this Agreement shall be binding upon the parties hereto, and upon the heirs, successors, executors, administrators, personal representatives, and assigns of Owner and City.
15. Governing Law. In any dispute between the parties, it is hereby agreed that the laws of the State of Texas shall control.
16. Effective Date. This Agreement is effective upon signature by the last party to sign it.
17. Failure to Cure Defects. If Owner fails to remedy defects within five (5) days or within additional time granted by City, City may take any and all

action to perform the work to remedy defects, including contracting with another party for the repair work or using City maintenance crews to perform the repair work, as City deems appropriate. Owner shall reimburse City for costs of remedying defects or alternatively, City may draw upon the Owner's security described above.

18. Default. The following occurrences shall constitute defaults on the part of the Owner:
  - (1) Owner's failure to cure defects within the time period prescribed;
  - (2) Owner's insolvency, appointment of receiver, or filing of a voluntary or involuntary bankruptcy petition; or
  - (3) The commencement of a foreclosure proceeding against the Project property, or a conveyance in lieu of foreclosure.
  
19. Rights Upon Default. Upon default by Owner, City reserves all remedies available at law or in equity, including, but not limited to: (1) an action to recover damages for breach of this Agreement; (2) an action to seek specific performance; (3) an action to seek injunctive relief; and (4) an action to rescind this Agreement and final plat approval. City shall be entitled to recover all expenses and reasonable attorney's fees in the event of litigation. All remedies provided by this Agreement are cumulative of rights provided at law or in equity.
  
20. Waiver. City waives none of its rights with respect to this Agreement unless that right is expressly waived in writing herein. Nothing herein shall constitute an implied waiver of City's sovereign immunity.
  
21. Severability. If any provision of this Agreement is held by the courts to be illegal or unenforceable, that provision shall be severed from the Agreement and shall not render invalid the remaining provisions of this Agreement.
  
22. Entire Agreement The provisions herein constitute the full extent of the Agreement concerning Project Improvements among the parties, and no parole evidence shall be allowed to contradict the terms hereof. Any amendment to or modification of this Agreement shall be by the written, mutual consent of the parties hereto.
  
23. Assignment. No obligation contained herein shall be transferred or assigned without the written, mutual consent of the parties hereto.
  
24. Attorney's Fees. Should any party hereto bring suit in court to enforce the terms hereof, it is agreed that the losing party or parties shall pay to the successful party or parties costs and reasonable attorney's fees. If relief is granted to all parties, each will bear its own costs in their entirety.

25. Independent Contractor. Neither the Owner nor its employees are considered to be employees of the City for any purpose whatsoever. The Owner is considered as an independent contractor at all times in the performance of this Agreement. The Owner has no power or authority to act for, represent, or bind the City in any manner.
26. Indemnification. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless City, and the officers, directors, employees, agents, and consultants of City 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 under this agreement, 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 scope of the agreement itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Owner, any SubOwner, 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. While City may have the right under this Contract to observe or otherwise review the work, progress and operations of the Owner, it is expressly understood and agreed that such observation shall not relieve the Owner from any of its covenants and obligations hereunder.

In any and all claims against City or any of their respective consultants, agents, officers, directors, or employees by any employee (or the survivor or personal representative of such employee) of Owner, any SubOwner, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work under this Contract, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Owner or any such SubOwner, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2008, in duplicate originals.

**CITY OF COPPERAS COVE**  
507 South Main  
Copperas Cove, TX 76522

**JWC INC**  
PO Box 727  
Copperas Cove, TX 76522

BY: \_\_\_\_\_  
Andrea M. Gardner, City Manager

BY: \_\_\_\_\_  
Jimmy Clark, President

**ATTEST:**

\_\_\_\_\_  
Jane Lees, City Secretary

**ACKNOWLEDGMENT CERTIFICATE**

STATE OF TEXAS       §  
COUNTY OF CORYELL   §

THIS AGREEMENT was signed and acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2008, by Andrea M. Gardner, City Manager, acting on behalf of the City of Copperas Cove, a home rule municipality.

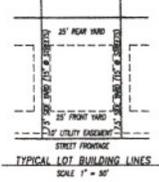
\_\_\_\_\_  
Notary in and for the State of Texas

**ACKNOWLEDGMENT CERTIFICATE**

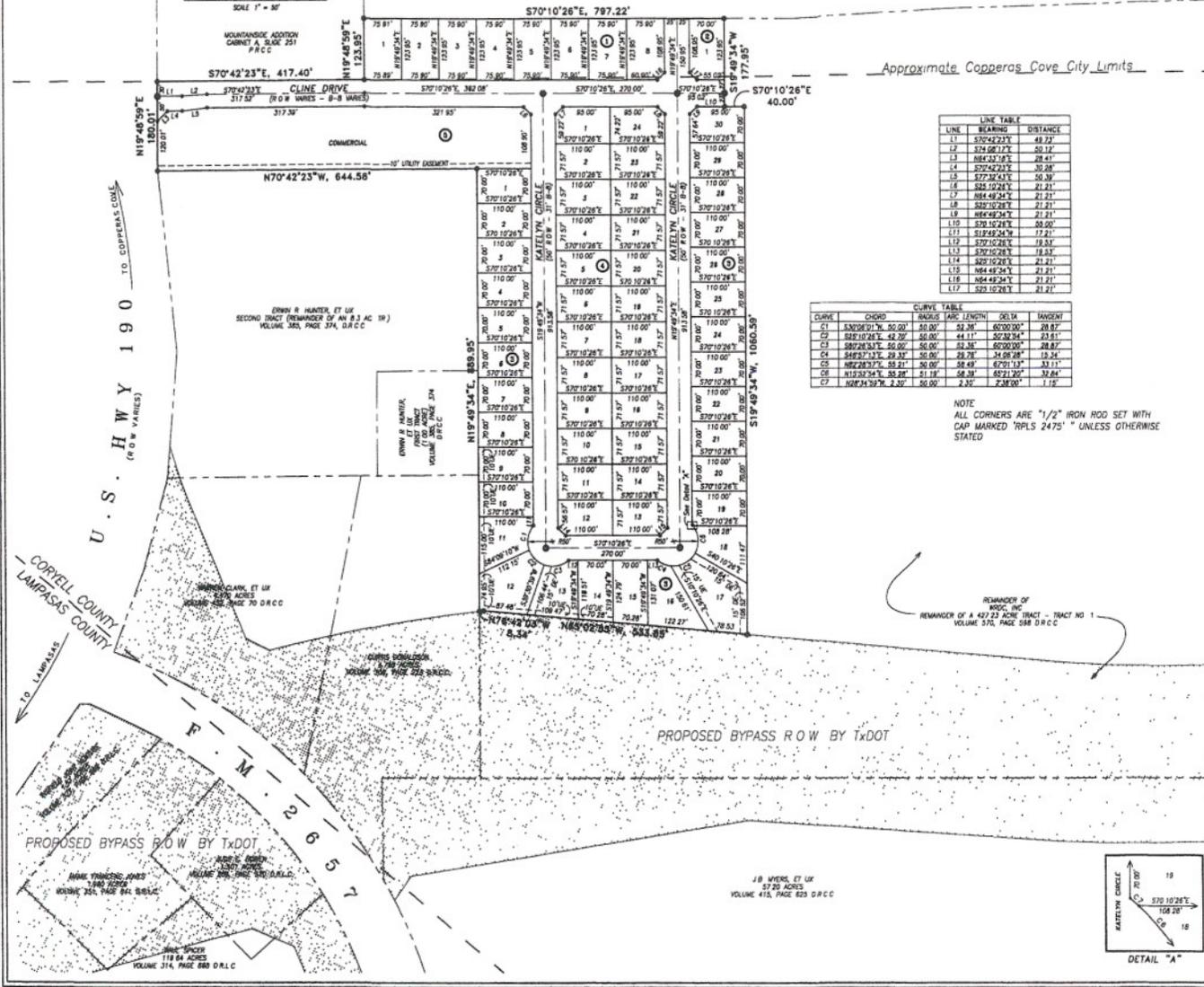
STATE OF TEXAS       §  
COUNTY OF CORYELL   §

THIS AGREEMENT was signed and acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2008, by Jimmy Clark, president of JWC INC.

\_\_\_\_\_  
Notary in and for the State of Texas



KELLEY ELECTRONIC FEATURES CORP  
30.31 ACRES  
VOLUME 576, PAGE 818 DRCC



Approximate Copperas Cove City Limits

LINE	BEARING	DISTANCE
L1	S70°42'23"E	49.23'
L2	S74°08'17"E	50.12'
L3	N62°32'17"E	28.41'
L4	S72°42'23"E	30.96'
L5	S77°32'43"E	50.39'
L6	S85°32'20"E	21.21'
L7	N84°48'24"E	21.21'
L8	S82°10'28"E	21.21'
L9	N86°48'24"E	21.21'
L10	S70°10'28"E	50.00'
L11	S18°48'24"E	17.21'
L12	S70°10'28"E	18.51'
L13	S70°10'28"E	18.51'
L14	S82°10'28"E	21.21'
L15	N84°48'24"E	21.21'
L16	N84°48'24"E	21.21'
L17	S82°10'28"E	21.21'

CURVE	CHORD	CURVE TABLE	ANGLE	DELTA	MARKED	
C1	S32°02'01"E	50.00'	52.34"	1.620000'	28.87'	
C2	S82°10'28"E	42.20'	44.11"	52.3234'	23.81'	
C3	S82°10'28"E	50.00'	52.34"	6.020000'	28.87'	
C4	S82°10'28"E	28.32'	28.78"	21.09284'	12.24'	
C5	N82°28'37"E	55.21'	50.00"	58.49"	67.9113'	31.11'
C6	N12°32'54"E	55.21'	51.19"	58.38"	62.2120'	32.84'
C7	N82°28'37"E	2.30'	50.00"	2.29"	2.28000'	1.12'

NOTE  
ALL CORNERS ARE 1/2" IRON ROD SET WITH CAP MARKED 'RPLS 2475' UNLESS OTHERWISE STATED

KNOW ALL MEN BY THESE PRESENTS, that WDC INC, whose address is P.O. Box 640, COPPERAS COVE, TEXAS 78022, being the sole owner of that certain 18.195 acre tract of land in Coryell County, Texas, part of the A.S. Tabor Survey, Abstract No. 1547, which is more fully described in the dedication of TONKAWA VILLAGE, PHASE I as shown by the plat hereof, attached hereto, and make a part hereof, and approved by the City Council of Copperas Cove, Coryell County, Texas, and WDC INC, does hereby cede TONKAWA VILLAGE, PHASE I, as an addition to the City of Copperas Cove, Coryell County, Texas, and hereby dedicates to said city of streets, easements, roads, areas and other shown on said plat, the same to be used as public thoroughfares and for the installation and maintenance of public utilities when and as authorized by the City of Copperas Cove. The utility easements shown on said plat are dedicated to said city for the installation and maintenance of any and all public utilities, which the city may install or permit to be installed or maintained.

For WDC INC,  
Dustin Dewitt  
Dustin Dewitt, President

STATE OF TEXAS  
COUNTY OF CORYELL

Before me, the undersigned, a Notary Public in and for said County and State, on the day personally appeared Dustin Dewitt, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the same for the purposes and consideration therein stated.

GIVEN UNDER MY HAND AND SEAL, this 15th day of June, 2002

Sue M. Burton  
Notary Public State of Texas

STATE OF TEXAS  
COUNTY OF CORYELL

My Commission Expires \_\_\_\_\_

APPROVED this 15th day of June, 2002, by the Planning and Zoning Commission of the City of Copperas Cove, Coryell County, Texas

James Hillman  
Chairman, Planning Commission

Dan R. Hill  
Secretary, Planning Commission

APPROVED this 21st day of May, 2002, by the City Council of the City of Copperas Cove, Coryell County, Texas

Robert D. Mount  
Mayor, City of Copperas Cove

Paucella J. Russell  
Attest City Secretary

APPROVED this 17th day of July, 2002 by the County Commissioners of Coryell County, Texas

John Hill  
County Judge

KNOW ALL MEN BY THESE PRESENTS  
THAT I, Victor D. Turley, Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon shall be properly placed, under my personal supervision, in accordance with the subdivision regulations of the City of Copperas Cove, Texas

Victor D. Turley  
Victor D. Turley  
Registered Professional Land Surveyor

TAX CERTIFICATE  
The Coryell County Tax Office, the taxing Authority for all entities in Coryell County, Texas does hereby certify that there are currently no delinquent taxes or owing on the property described by this plat

Dated this 2nd day of July, A.D. 2002

Barbara Thompson  
Coryell County Tax Office

FILED FOR RECORD this 2nd day of July, 2002 A.D. in  
Cabinet B, Side 543 of the Plat Records of Coryell County, Texas

FILED FOR RECORD  
AT JLOCKLOCK, AM  
JUL 02 2002  
Juliana Thompson  
County Clerk, Coryell Co., Texas

151134 TONKAWA VILLAGE PHASE I  
64 LOTS, 5 BLOCKS  
18.195 ACRES  
OUT OF AND A PART OF THE A.S. TABOR SURVEY, ABSTRACT NO. 1547  
AN ADDITION TO THE CITY OF COPPERAS COVE, CORYELL COUNTY, TEXAS

TURLEY ASSOCIATES, INC.  
ENGINEERING - PLANNING - SURVEYING  
CONSTRUCTION MANAGEMENT  
301 N. 3rd St.  
Temple, Texas  
E-MAIL: VTURLEY@AOL.COM  
(254) 773-2400  
(254) 773-3998

TONKAWA VILLAGE, PHASE I  
64 LOTS, 5 BLOCKS  
18.195 ACRES  
OUT OF AND A PART OF THE A.S. TABOR SURVEY, ABSTRACT NO. 1547  
AN ADDITION TO THE CITY OF COPPERAS COVE, CORYELL COUNTY, TEXAS

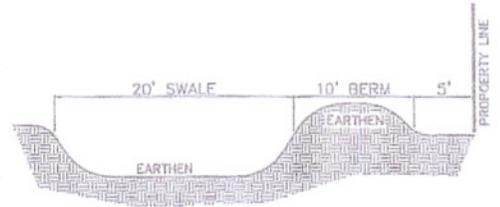
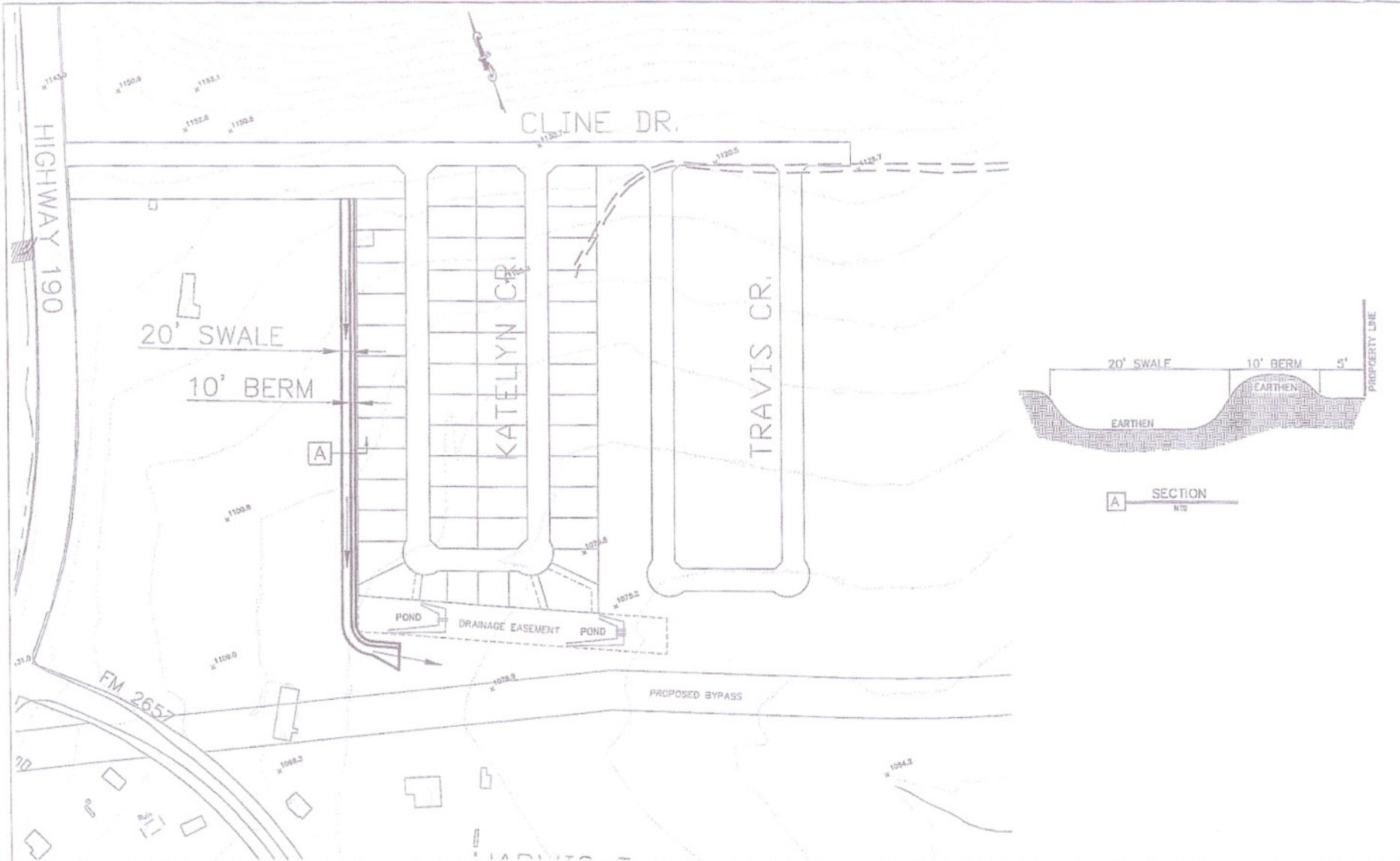
OWNER / DEVELOPER  
WDC INC  
COPPERAS COVE, TEXAS 78022

REVISIONS


Date: June 10, 2002  
Drawn By: M.L.S.  
Reference: 10923-D

FB/LB:  
Job Number: 01-344  
Sheet 1 of 25  
Computer: 01344-PH-I-1.mxd

10970-D  
DRAWING NUMBER



**A** SECTION  
N/S



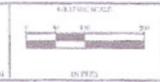
**PRELIMINARY**  
FOR REVIEW ONLY

REV	DESCRIPTION	DATE	BY

THE CLIENT'S  
USE OF THIS PLAN IS LIMITED TO THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY OTHER USE OF THIS PLAN WITHOUT THE WRITTEN CONSENT OF W&A IS PROHIBITED. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

THE SOLE AGENT OF THE ENGINEER FOR THE PROJECT IS:  
W&A, L.L.C.  
10000 N. LOOP WEST, SUITE 100  
DALLAS, TEXAS 75243  
PHONE: 972.440.1111  
WWW.WALKERWIEDERHOLD.COM

**WALKER, WIEDERHOLD, & ASSOCIATES, L.L.C.**  
CIVIL ENGINEERING  
W&A'S



CITY OF COPPERAS COVE  
DRAINAGE IMPROVEMENTS  
SWALE & BERM

# City of Copperas Cove City Council Agenda Item Report

November 3, 2008

## Agenda Item No. I-10

Contact – Wesley Wright, P.E., City Engineer, 547-0751

wwright@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action authorizing the City Manager to execute an agreement with JWC, Inc. for Katelyn Circle drainage improvements in the amount of \$23,750.**

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### 1. BACKGROUND/HISTORY

Homes and property within the area of Tonkowa Village have been subject to repeated flooding. Much of the flooding is due to offsite runoff from Hwy. 190 and upstream properties.

### 2. FINDINGS/CURRENT ACTIVITY

City staff has worked with the project design engineer, adjacent landowners, existing homeowners, as well as the home builder to determine the cause of the problem and reach an acceptable solution.

The proposed solution entails construction of an earthen berm and drainage swale to intercept storm water runoff from Hwy 190 and the upstream developments before it enters Tonkowa Village. The swale will discharge south of the Tonkowa development into existing detention ponds.

The project design engineer has provided in-kind surveying and engineering services and the builder will be responsible for providing all construction services. Mr. Erwin Hunter, the adjacent property owner, was generous to grant permission for the swale to be located on his property at no charge.

### 3. FINANCIAL IMPACT

The City of Copperas Cove's proposed cost sharing amount is \$23,750 and will be funded through the October 2008 Tax Notes.

### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends that Council authorize the City Manager to execute an agreement with JWC, Inc. for Katelyn Circle drainage improvements in the amount of \$23,750.

# AGREEMENT FOR THE PROVISION OF LIMITED PROFESSIONAL SERVICES

**Design Firm:** Hearn Engineering, Inc.  
3000 Joe DiMaggio Blvd., Ste. 25  
Round Rock, TX 78665  
Date: \_\_\_\_\_

**Client:** City of Copperas Cove  
P.O. Box 1449  
Copperas Cove, Tx 76522  
Project No.: \_\_\_\_\_

## Project Name/Location:

Bradford Drive Realignment Project

## Scope/Intent and Extent of Services:

The project includes the realignment of a 750 linear foot section of Bradford Driver to permit construction of a new railroad crossing in line with Spur Drive.

### PRELIMINARY

\$3,500

- A. PRELIMINARY ENGINEERING
  - 1) Gather available information on the existing utilities including, but not limited to the following: existing utility system maps (water, wastewater, telephone, gas, electric, cable); existing digital topography; existing City construction plans and Right-of-Way maps; existing easement maps and documents;
  - 2) Compile information into a base map on the computer.
  - 3) Walk alignment to verify information on base map.
- B. TOPOGRAPHIC SURVEY
  - 1) Survey and calc alignments using the benchmarks provided by the City.
  - 2) Produce contour map
- C. PRELIMINARY DESIGN
  - 1) Meet with City to discuss the preferred alignments and transitions.
  - 2) Prepare preliminary plan / profile drawings of the proposed improvements.
  - 3) Coordinate utility relocation as necessary.
  - 4) Develop preliminary opinion of probable cost.
  - 5) Submit to City for review.

### FINAL DESIGN AND BIDDING

- A. FINAL DESIGN / CONSTRUCTION DOCUMENT PREPARATION \$6,500
  - 1) Prepare final construction plans including plan/profile drawings and detail sheets.
  - 2) Prepare bid proposal with quantities.
  - 3) Prepare specifications.
  - 4) Submit plans and specifications to City for review.
  - 5) Revise plans to incorporate City comments.
  - 6) Assemble bid documents with contract documents from City Legal Department.
  - 7) Develop final opinion of probable cost.
  - 8) Prepare description and sketch of property to be acquired for right of way (one tract).
- B. BIDDING PROCESS \$3,000
  - 1) Provide twenty sets of plans (ledger size) and bid documents for distribution from the City.

- 2) Assist the City in preparing the Notice to Bidders, City will be responsible for advertising.
- 3) Attend pre-bid conference at the City.
- 4) Prepare and distribute necessary addendums.
- 5) Assist the City in the bidding, evaluation, and recommendation of award on the project.

CONSTRUCTION SERVICES (Billed as Required)

\$4,000

A. CONSTRUCTION ADMINISTRATION

- 1) Conduct pre-construction conference.
- 2) Review submittals for conformance to plans and specifications.
- 3) Perform periodic site visits to monitor and document that work conforms to plans and spec's.
- 4) Conduct progress meetings as necessary.
- 5) Process monthly pay request.
- 6) Process any change orders in accordance with the City's guidelines.
- 7) Promptly address and perform design modifications required to minimize project delays.
- 8) Conduct final inspection of project with the City's inspector and Project Manager.
- 9) Provide the City with recommendation of final acceptance once all punch list items have been addressed.

ADDITIONAL SERVICES

Hourly

- 1) Provide Easements
- 2) Attend Public Hearings.
- 3) Provide Expert Testimony.
- 4) Provide Construction Administration beyond original contract time.
- 5) Attend meetings with County, State, or Federal agencies.

Fee Arrangement:

The fee for this work is a not to exceed amount of \$17,000.00. Work will be invoiced monthly.

Special Conditions:

The design and construction of the railroad crossing will be by the railroad company. The approach to the crossing from the north will be designed by TxDOT.

**TERMS AND CONDITIONS**

The firm shall perform the services outlined in this agreement for the stated fee arrangement.

**Access to Site:**

Unless otherwise stated, the Firm will have access to the site for activities necessary for the performance of the services. The Firm will take precautions to minimize damage due to these activities, but have not included in the fee the cost of restoration of any resulting damage.

**Dispute Resolution:**

Any claims or disputes made during design, construction or post-construction between the Client and Firm shall be submitted to non-binding mediation. Client and Firm agree to include a similar mediation agreement with all contractors, subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between parties. Each party shall be responsible for their own costs of mediation. Should litigation arise, venue will be in Coryell County.

**Billings/Payments:**

Invoices for the Firm's services shall be submitted, at the Firm's option, either upon completion of such services or on a monthly basis. Invoices shall be due and payable upon receipt, at 3000 Joe DiMaggio Blvd. Suite 25, Round Rock, Texas, 78664. Payment is past due 30 days after the invoice date. If questions regarding the invoice amount are not brought to the attention of the Firm within 21 days of the invoice date, the invoice shall be considered accepted by the Client. If the invoice is not paid within 45 days, the Firm may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service.

**Late Payments:**

Accounts unpaid 30 days after the invoice date may be subject to a monthly service charge of 1.5% (or the maximum legal rate) on the then unpaid balance. In the event any portion or all of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

**Certifications, Guarantees and Warranties:**

The Firm shall not be required to execute any document that would result in their certifying, guaranteeing or warranting the existence of conditions whose existence the Firm cannot ascertain.

**Limitation of Liability:**

The firm shall not be liable for acts or omissions by the client , its employees, or its contractors.

**Termination of Services:**

This agreement may be terminated by the Client or the Firm should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay the Firm for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

- A. FOR CAUSE. The occurrence of any one or more of the following events will justify termination for cause:
  1. Firm's persistent failure to per-form the Work in accordance with the Contract (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment);
  2. Firm's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Firm's violation in any substantial way of any provisions of the Contract;
  4. The Client fails to pay the firm in a timely manner;
  5. The Client fails to provide information pertinent information to the firm that would affect work covered under this agreement;

If one or more of the events identified above occur, the agreement maybe terminated after giving a seven day written notice of its intent.

Notwithstanding the right to terminate for cause, Firm's services will not be terminated if Firm 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.

- B. FOR CONVENIENCE. The Client and Firm may terminate this Agreement for convenience in whole or in part at any time, without cause, by giving at least thirty (30) days notice, in writing, to the respective party. Upon termination pursuant hereto, CONTRACTOR shall account for and properly present to the CITY all claims for amounts due, charges, costs, fees and expenses and the Client pay the Firm all amounts due for work completed up to time of such termination which are undisputed, less payments of compensation previously made.

**Ownership of Documents:**

All documents produced by the Firm under this agreement shall remain the property of the Firm until receipt of final payment, and may not be used by the Client for any other endeavor without the written consent of the Firm. If evidence of the existence or release of hazardous substances or other occurrences or information required by law or regulation to be reported are revealed to Client as a result of our company's performance of services under this Agreement, it shall be the responsibility of Client to contact the appropriate Federal, State or local authorities.

**Rate Schedule**

Principal	\$180.00/Hr.
Professional Engineer	\$170.00/Hr.
Professional Surveyor	\$150.00/Hr.
Graduate Engineer	\$ 95.00/Hr.
Project Coordinator	\$ 75.00/Hr.
Survey Crew	\$125.00/Hr.
CADD Technician/Survey Technician	\$ 80.00/Hr.
Clerical	\$ 75.00/Hr.
Mileage	\$0.485/Mi. (Or current Federal Rate)
Reproduction and Supplies	Cost + 10%



# City of Copperas Cove City Council Agenda Item Report

November 3, 2008

## Agenda Item No. I-11

Contact – Wesley Wright, P.E., City Engineer, 547-0751

wwright@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action authorizing the City Manager to enter into an Agreement with Hearn Engineering for professional services related to the Bradford Drive extension in the amount of \$17,000.**

---

### 1. BACKGROUND/HISTORY

The existing railroad crossing at Olive Street, which provides access to Bradford Oaks Estates, is in poor condition and grades in the area are excessive. City staff has worked with TxDOT and BNSF Railroad to determine a safer and more desirable location.

### 2. FINDINGS/CURRENT ACTIVITY

City staff, TxDOT, and BNSF Railroad recommend and support relocating the existing crossing at Olive Street by extending Bradford Drive north and west to intersect with FM 1113 at Spur Drive.

In conjunction with an Ordinance calling for the closing of the Olive Street railroad crossing, the agreement provides for surveying, design, bidding, and construction management services necessary for the extension of Bradford Drive.

### 3. FINANCIAL IMPACT

The cost of the agreement is \$17,000 and will be funded through the October 2008 Tax Notes.

The overall estimated construction of the Bradford Drive extension is estimated at approximately \$230,000 which will also be funded through the October 2008 Tax Notes.

### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends authorizing the City Manager to enter into an Agreement with Hearn Engineering for professional services related to the Bradford Drive extension in the amount of \$17,000.

STATE OF TEXAS §

## CITY/OWNER AGREEMENT

COUNTY OF CORYELL §

### KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT is entered into by the CITY OF COPPERAS COVE, TEXAS, a home-rule municipality hereinafter "CITY", whose address is 507 South Main Street, Copperas Cove, TX 76522 and HCN PARTNERS, a Texas General Partnership, whose address is 1300 W. Stan Schlueter Loop, Killeen, TX 76542.

**WHEREAS**, the CITY OF COPPERAS COVE is authorized by law to approve subdivision plats within its corporate limits and its extraterritorial jurisdiction; and,

**WHEREAS**, HCN PARTNERS, a Texas partnership, has submitted and obtained final plat approval of the House Creek North Subdivision, Phase Three, by the City Council of Copperas Cove; and,

**WHEREAS**, City ordinances require the completion of various improvements in connection with the development of the subdivision to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions; and

**WHEREAS**, in order to provide for the development, the owner has to construct a City street (Ashley Drive) to service the new development, which street is required by the City to be twelve (12) feet wider than normally required. To make a complete project, the owner needs to continue construction of Ashley Drive, from the east line of House Creek North, Phase Two just east of the intersection of Ashley with Griffin Drive to the eastern boundary of Phase Three, as shown on the final plat of House Creek North Subdivision, Phase Three; and

**WHEREAS**, the benefit of this street is to the parties, the City, and others tying into the street; and,

**WHEREAS**, the City's purposes in entering into this subdivision improvement agreement are to encourage development in an equitable manner by all benefiting parties, and to minimize the City's costs associated with limited extensions initiated solely by a private party's interest in expansion; and

**WHEREAS**, the parties to this agreement wish to provide for the protection of the rights and interests of the respective parties and to document for posterity a record of their agreement so that the public interest of the citizens of the City of Copperas Cove is well served;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF**, the mutual covenants and obligations herein expressed, the parties hereto agree as follows:

RECITALS

1. Parties. The parties to this City/Owner Agreement (hereinafter the "Agreement") are the City of Copperas Cove, a home-rule municipality, (hereinafter "City"), acting by and through its City Manager, whose address is 507 S. Main, Copperas Cove, TX 76522, and HCN PARTNERS, a Texas General Partnership, (hereinafter "Owner"), whose address is 1300 W. Stan Schlueter Loop, Killeen, TX 76542 .
2. Project. Owner is the owner of land included in the final subdivision plat of House Creek North Subdivision, Phase Three (hereinafter "Project"), more fully described by metes and bounds in Exhibit A, attached hereto and incorporated herein for all intents and purposes.

OBLIGATIONS OF OWNER

3. Improvements. Owner agrees to construct the required street described in Exhibit B, attached hereto and incorporated herein for all intents and purposes (collectively the "Improvement"), according to the standards and specifications in effect at the time of construction. Owner agrees to construct and dedicate the improvements as an independent obligation on its part, regardless of City's performance under this Agreement.
4. Compliance with Law. Owner agrees that nothing herein shall negate the applicability of future health and safety regulations which are not currently a part of the laws concerning subdivisions.
5. Easements. Owner agrees to dedicate any and all easements necessary to the Project, which are located on Owner's property.
6. Conveyance/Dedication. Owner agrees to dedicate to the City all the water and sewer lines, storm drains and streets in said Project. Any and all dedications will not be effective until the City takes formal action to accept the dedication(s) by letter of acceptance. Upon formally accepting the dedication, City shall maintain same at its expense as part of the public ways of the City within the City's limits. The following are specifically excluded from conveyance or dedication and are expressly excluded from warranty: None.
7. Warranty. Owner hereby gives express warranty that the Improvements will be constructed in accordance with the City's standards and specifications and shall be free from defects. Owner further indemnifies City for all claims, expenses, and liability arising in connection with any

and all defects. This express warranty and indemnification shall be limited to a period of one (1) year after acceptance by City of the last completed Improvement.

8. Inspections. Owner agrees that any and all work performed regarding the Improvement was or shall be inspected by the City's designated engineer or inspector to ensure the quality of work and materials. The City shall have no duty to inspect the work of any contractor or subcontractor of the Owner except with regard to the improvements and shall have no duty with regard to workplace safety at House Creek North Subdivision, Phase Three.

#### CITY'S OBLIGATIONS

9. Acceptance/Certification. The acceptance of any Improvement, upon completion, is subject to approval of the City's designated engineer.
10. Payment. Upon acceptance of House Creek North Subdivision, Phase Three, the City will pay \$54,603.68 for the described twelve (12) feet of pavement including base and subgrade preparation. To make a complete project, the owner needs to construct Ashley Drive including the curb and gutter and full width of the street.
11. Defects. City shall notify Owner in writing upon discovery of defects in the Improvements. Owner shall remedy defects within thirty (30) days after receiving notice of such from City. City may in its sole discretion grant additional time for remedy of defects where required by nature of the defect, provided that Owner commences work within thirty (30) days after receiving notice as described above and continues diligently to complete the repair work.

#### GENERAL TERMS AND CONDITIONS

12. Specifications. It is understood among the parties that the technical requirements and specifications for the Project shall be in accordance with those established by the City's designated engineer. It is further understood that designs for the Project shall be provided by Owner and are subject to approval by City's designated engineer.
13. Objectives. In the negotiation and acceptance of any term or condition, the parties hereby agree that the objectives to be fulfilled are the development of the Project and the orderly development in all the areas in its vicinity capable of development by reason of its location, topography, and pressure planes, subject to reasonable engineering efforts, so that the public interests of the City of Copperas Cove will be well served.

14. Binding Agreement. The terms and conditions set out in this Agreement shall be binding upon the parties hereto, and upon the heirs, successors, executors, administrators, personal representatives, and assigns of Owner and City.
15. Governing Law. In any dispute between the parties, it is hereby agreed that the laws of the State of Texas shall control.
16. Effective Date. This Agreement is effective upon signature by the last party to sign it.
17. Failure to Cure Defects. If Owner fails to remedy defects within thirty (30) days or within additional time granted by City, City may take any and all action to perform the work to remedy defects, including contracting with another party for the repair work or using City maintenance crews to perform the repair work, as City deems appropriate. Owner shall reimburse City for costs of remedying defects or alternatively, City may draw upon the Owner's security described above.
18. Default. The following occurrences shall constitute defaults on the part of the Owner:
  - (1) Owner's failure to cure defects within the time period prescribed;
  - (2) Owner's insolvency, appointment of receiver, or filing of a voluntary or involuntary bankruptcy petition; or
  - (3) The commencement of a foreclosure proceeding against the Project property, or a conveyance in lieu of foreclosure.
19. Rights Upon Default. Upon default by Owner, City reserves all remedies available at law or in equity, including, but not limited to: (1) an action to recover damages for breach of this Agreement; (2) an action to seek specific performance; (3) an action to seek injunctive relief; and (4) an action to rescind this Agreement and final plat approval. City shall be entitled to recover all expenses and reasonable attorney's fees in the event of litigation. All remedies provided by this Agreement are cumulative of rights provided at law or in equity.
20. Waiver. City waives none of its rights with respect to this Agreement unless that right is expressly waived in writing herein. Nothing herein shall constitute an implied waiver of City's sovereign immunity.
21. Severability. If any provision of this Agreement is held by the courts to be illegal or unenforceable, that provision shall be severed from the Agreement and shall not render invalid the remaining provisions of this Agreement.

22. Entire Agreement The provisions herein constitute the full extent of the Agreement concerning Project Improvements among the parties, and no parole evidence shall be allowed to contradict the terms hereof. Any amendment to or modification of this Agreement shall be by the written, mutual consent of the parties hereto.
23. Assignment. No obligation contained herein shall be transferred or assigned without the written, mutual consent of the parties hereto.
24. Attorney's Fees. Should any party hereto bring suit in court to enforce the terms hereof, it is agreed that the losing party or parties shall pay to the successful party or parties costs and reasonable attorney's fees. If relief is granted to all parties, each will bear its own costs in their entirety.
25. Independent Contractor. Neither the Owner nor its employees are considered to be employees of the City for any purpose whatsoever. The Owner is considered as an independent contractor at all times in the performance of this Agreement. The Owner has no power or authority to act for, represent, or bind the City in any manner.
26. Indemnification. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless City, and the officers, directors, employees, agents, and consultants of City 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 under this agreement, 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 scope of the agreement itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Owner, any SubOwner, 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. While City may have the right under this Contract to observe or otherwise review the work, progress and operations of the Owner, it is expressly understood and agreed that such observation shall not relieve the Owner from any of its covenants and obligations hereunder.

In any and all claims against City or any of their respective consultants, agents, officers, directors, or employees by any employee (or the survivor or personal representative of such employee) of Owner, any SubOwner, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work under this Contract, or anyone for whose acts any of them may be liable, the indemnification obligation shall

not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Owner or any such SubOwner, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts

Executed this 29th day of OCTOBER, 2008, in duplicate originals.

**CITY OF COPPERAS COVE**  
507 South Main  
Copperas Cove, TX 76522

**HCN PARTNERS**  
1300 W. Stan Schlueter Loop  
Killeen, TX 76542

BY: \_\_\_\_\_  
Andrea M. Gardner, City Manager

BY:   
Michael Emmons, Partner

**ATTEST:**

\_\_\_\_\_  
Jane Lees, City Secretary

**ACKNOWLEDGMENT CERTIFICATE**

STATE OF TEXAS §  
COUNTY OF CORYELL §

THIS AGREEMENT was signed and acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2008, by Andrea M. Gardner, City Manager, acting on behalf of the City of Copperas Cove, a home rule municipality.

\_\_\_\_\_  
Notary in and for the State of Texas

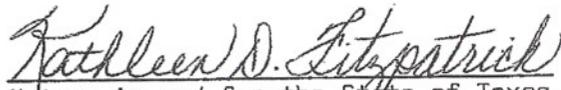
**ACKNOWLEDGMENT CERTIFICATE**

STATE OF TEXAS §  
COUNTY OF BELL §

THIS AGREEMENT was signed and acknowledged before me on this 23rd day of OCTOBER, 2008, by Michael Emmons, a Partner in HCN Partners,

property owner



  
Notary in and for the State of Texas

## HCN Partnership LTD

1300 W. Stan Schlueter Loop  
Killeen, Texas 76549  
(254) 634-1893

9/15/2008

Wesley,

I took the time to get the general contractor to give me the breakdown of the road itself as follows:

Ashley Drive Total Square Yards of Asphalt Area is 10,040 s.y.  
The middle 12' area is 2,152 s.y.  
Remaining area is 7,888 s.y.  
Below is the breakdown of additional costs as per your request.

**12' Wide Strip in Middle (2,152 S.Y.)**

Additional Subgrade Prep (2,152 s.y.)	\$2,281.12
Additional Limestone Base (1,028 tons)	\$9,766.00
2" Asphalt Paving (2,152 s.y.)	\$18,162.88
1/2" Additional Asphalt Paving at Remaining Width (7,888 s.y.)	\$16,643.68
	\$46,853.68

I then went to our engineer and they helped me estimate the storm water and design for Ashley Drive as well

Additional Engineering requirements for Ashley	\$5,300.00 estimate
Additional lengths of utilities crossing under Ashley	\$2450.00

Bringing us to a total reimbursement of	\$54,603.68
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Please let me know what else you need to take to council for this reimbursement.

Thank you

Mike Emmons

# City of Copperas Cove City Council Agenda Item Report

November 3, 2008

## Agenda Item No. I-12

Contact – Wesley Wright, P.E., City Engineer, 547-0751

wwright@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action authorizing the City Manager to execute an agreement with HCN Partners for the reimbursement of costs associated with the widening of Ashley Road in the amount of \$54,603.68.**

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### 1. BACKGROUND/HISTORY

During the plat and plan review for the House Creek North development, City staff determined it to be in the best interest of the City to increase the width of Ashley Road, a major collector street within the development. Staff requested the developer to increase the roadway from the minimum required width of 48' to 60'. Council has previously approved similar reimbursements for House Creek North Phase 1 (\$43,223.55) and Phase 2 (\$38,220.30).

### 2. FINDINGS/CURRENT ACTIVITY

House Creek North, Phase 3 has recently been accepted and included an extension of approximately 1,600 linear feet of Ashley Road. HCN Partners has requested reimbursement of \$54,603.68 for additional pavement, utility, and engineering costs associated with widening Ashley Road.

### 3. FINANCIAL IMPACT

The Capital Improvement Street budget contains \$45,658.34 encumbered to fund this reimbursement. The remaining funds will be paid through the Street Department operating budget.

### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends that Council authorize the City Manager to execute an agreement with HCN Partners for the reimbursement of widening Ashley Road in the amount of \$54,603.68.

**City Street Closure Ordinance**

**CITY OF COPPERAS COVE**

507 S. Main Street

P.O. Box 1449

Copperas Cove, Texas 76522

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE CALLING FOR THE CLOSING OF THE RAILROAD CROSSING  
LOCATED ON OLIVE STREET, RAILROAD MILEPOST 256.38

IN THE CITY OF COPPERAS COVE, TEXAS

WHEREAS, The BNSF Railway Company, the Texas Department of Transportation and the City of Copperas Cove, Texas have joined together to consolidate redundant and unnecessary street/railroad crossings; and

WHEREAS, the City of Copperas, Texas met in regular session on November 3, 2008, and there discussed and approved the railroad crossing closure at Olive Street in the City Limits of Copperas Cove, Texas;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY OF COPPERAS COVE, TEXAS, that the OLIVE STREET (DOT No. 024552H) crossing be permanently closed to vehicular traffic and vacated at the time the City places appropriate end-of-road treatment on both of the roadway approaches at a minimum distance of 50 feet from nearest rail and removes both roadway approaches up to the track.

In lieu of installing permanent end-of-road barriers, the City may re-establish the natural parallel ditch line.

The City will coordinate removal of roadway approaches with BNSF Roadmaster Joe Wagner at office: 325-643-7267 in order for BNSF to provide the required flagging for notification of train operations.

In exchange for this crossing closure, the Texas Department of Transportation and The BNSF Railway Company will install one 40-foot concrete crossing surface and mast flashing lights with gates at the new crossing known as Bradford Drive (DOT No. 024132D), located at railroad milepost 256.05.

Passed and approved this 3rd DAY OF November, 2008.

\_\_\_\_\_  
(Print Name) - Mayor Pro Tem

\_\_\_\_\_  
(Signature) – Mayor Pro Tem

ATTEST: \_\_\_\_\_

# City of Copperas Cove City Council Agenda Item Report

November 3, 2008

## Agenda Item No. I-13

Contact – Wesley Wright, P.E., City Engineer, 547-0751

wwright@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action upon adopting an Ordinance calling for the closing of the railroad crossing located on Olive Street.**

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### 1. BACKGROUND/HISTORY

The existing railroad crossing at Olive Street, which provides access to Bradford Oaks Estates, is in poor condition and grades in the area are excessive. City staff has worked with TxDOT and BNSF Railroad to determine a safer and more desirable location.

### 2. FINDINGS/CURRENT ACTIVITY

City staff, TxDOT, and BNSF Railroad recommend and support relocating the existing crossing at Olive Street by extending Bradford Drive north and west to intersect with FM 1113 at Spur Drive.

In order to accomplish this, BNSF Railroad regulations require adoption of an Ordinance calling for the closing of the crossing located on Olive Street.

### 3. FINANCIAL IMPACT

There is no direct cost associate with this Ordinance. However, by adopting this Ordinance, the City of Copperas Cove will be committing to the crossing relocation resulting in the following potential costs:

- Design of the new crossing – estimated cost \$17,000
- Construction of new crossing – estimated cost \$230,000
- ROW acquisition – Staff will request a donation from the landowner

A total of \$247,000 has been included with the October 2008 Tax Notes to fund the costs associated with this relocation.

### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends adopting an Ordinance calling for the closing of the railroad crossing located on Olive Street.

**ORDINANCE NO. 2008-44**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, APPROVING THE ATTACHED PERSONNEL POLICIES AND PROCEDURES OF THE CITY OF COPPERAS COVE BY REPEALING THE CURRENT PERSONNEL POLICY, NO. 313, (SICK LEAVE) AND REPLACING THE EXISTING POLICY WITH A REVISED PERSONNEL POLICY, NO. 313, (SICK LEAVE) AND RATIFYING THE REMAINING SECTIONS OF THE PERSONNEL POLICIES AND PROCEDURES MANUAL; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS,** The City of Copperas Cove has not updated this ordinance since October 21, 2008.

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

**Section 1.**

That the Personnel Policies and Procedures Manual dated September 1, 2006, hereinafter set forth and included with this Ordinance as Exhibit "A" is hereby amended by repealing the current personnel policy, No. 313, (Sick Leave) and replacing the existing policy with a revised personnel policy, No. 313, (Sick Leave) correctly shown by the attached Exhibit "A";

**Section 2.**

That the remaining sections of the said Personnel Policies and Procedures Manual are hereby ratified, and shall remain in full force and effect;

**Section 3.**

That any additions, deletions or other amendments to the Personnel Policies and Procedures Manual shall be made in a manner similar to process by which this manual is originally approved and only after compliance with the Texas Open Meetings Act and approved by the City Council of the City of Copperas Cove.

**Section 4.**

That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

**Section 5.**

That this ordinance shall be effective November 3, 2008.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE. TEXAS**, this 3rd day of November 2008, such meeting held in compliance with the Open Meeting Act (Texas Government Code, Chapter 551.001 et.seq.), at which a quorum was present and voting.

---

Robert L. Reeves, Mayor Pro Tem

**ATTEST:**

---

Jane Lees, City Secretary

**APPROVED AS TO FORM:**

---

Charles E. Zech, City Attorney

**Exhibit “A” SICK LEAVE  
Policy #313**

November 2008

Sick leave is paid time away from work due to an employee’s illness or injury that prevents him/her from working, for visits to the doctor or dentist, and to care for certain family members who are ill or injured. Employees who are unable to work due to illness or injury or other situations covered by this policy must immediately notify the appropriate supervisor in accordance with the procedures established by their department.

When possible, employees are expected to schedule planned medical appointments in a manner that minimizes disruption of workflow. Further, employees must use sick leave for its intended purpose.

Eligibility. All regular full-time employees begin accruing paid sick leave during their first full pay period of employment. Part-time, temporary, and seasonal employees do not accrue sick leave. Regular full-time employees who are in their initial evaluation period may not use paid sick leave. Sick leave shall accrue at the end of the first full pay period of employment, but an employee shall not be allowed to use any accrued sick leave until he/she has successfully completed his/her initial employment evaluation period.

Accrual Rate. 3.70 hours of sick leave will be credited to regular full-time employees each pay period. Sick leave balances will be accumulated not to exceed 960 hours. Employees will be charged for the actual time missed.

Retiring Employees. 50% of unused sick leave will be paid to employees who retire with 20 years or more of physical continual service with the City of Copperas Cove and, at the time of separation, collect a TMRS monthly retirement check.

Authorized Use of Sick Leave. Accrued sick leave may be used for absences due to the employee’s own personal illness, accident or injury that prevents him/her from working, or absences when the employee is needed to care for a member of his or her immediate family who is ill or injured, excluding caring for a spouse that gave birth to a child (this falls under the section below). For purposes of this policy, “immediate family” is defined as: current spouse, children, and employee’s parents. Sick leave may also be used by employees/immediate family for scheduled doctor and dentist appointments.

Authorized Use of Sick Leave to Care for a Spouse/Childbirth. A maximum of 120 sick leave hours (180 hours for shift Fire/EMS employees) may be used to care for a spouse who gives birth to a child unless longer care is needed as a result of a serious health condition as defined by the FMLA. Sick leave hours for this purpose must be used with 20 days of the birth. An employee may be entitled to longer absences as defined by the FMLA, however accrued vacation leave, comp time and personal time can be used or leave without pay if those balances are exhausted.

Use of Other Leave. If approved by the Department Director (and in the case of Department Directors, by the City Manager), accrued vacation leave, compensatory time,

**Exhibit “A” SICK LEAVE  
Policy #313**

November 2008

personal leave, or leave of absence without pay may be used by an employee who has successfully completed his/her initial evaluation period if the employee has no accrued sick leave. Official holidays observed by the City while an employee is on approved paid sick leave will be treated as a paid holiday, rather than a day of sick leave, if the employee is eligible for the paid holiday.

Documentation. Supervisors shall closely monitor use of sick leave. Employees requesting paid sick leave must complete a Leave Request Form and submit it to their supervisor for approval. An employee must present satisfactory proof of illness/injury whenever the employee uses sick leave for 3 or more consecutive workdays, and at any other time the employee requests use of paid sick leave if requested by the City. An employee may also be required to present satisfactory proof of family relationship and/or satisfactory proof of a family member's illness if the employee wishes to use accrued sick leave to care for a sick family member. If the employee fails to present such proof in a timely manner, use of sick leave will be disallowed and no other paid leave may be used for the absence. Abuse of sick leave will likely result in discipline up to and including termination of employment.

A supervisor shall be responsible to notify the Human Resources Department when an employee is absent due to illness for five (5) consecutive work days so the time may be evaluated for family and medical leave status.

The supervisor may require verification of the circumstances surrounding ANY use of sick leave; or require periodic medical reports concerning the employee's status and availability to return to work. The supervisor and/or human resources department may contact the physician at any time regarding any clarification he/she may have regarding medical reports. Department heads are responsible for maintaining and enforcing sick leave control within their departments.

Misuse of Sick Leave

The misuse of the sick leave benefit is grounds for disciplinary action up to and including termination. The misuse or abuse of sick leave is characterized by the examples below:

1. Misrepresenting the need to use sick leave.
2. Falsifying healthcare provider notices or reports.
3. Frequently using sick leave before or after holidays, following a payday, and/or weekends.
4. Using sick leave as soon as it has accrued.
5. Any patterns in absenteeism. The City of Copperas Cove defines a pattern as frequent, predictable and observable employee actions that repeat itself over time.
6. The number of incidents an employee has incurred has disrupted the workflow in the department and caused the department to incur

**Exhibit “A” SICK LEAVE  
Policy #313**

November 2008

unscheduled overtime/comp time because other employees have to carry the extra workloads. (This example excludes leave taken per the FMLA)

Family and Medical Leave Act Leave. Any absence, which qualifies for both Family and Medical Leave Act leave and sick leave, will typically be counted as both.

No Payment For Unused Sick Leave. Upon termination, resignation or other separation from employment, no payment will be made for unused sick leave, other than retirement. If, however, an employee dies while in the line of duty to the City, payment will be made for unused sick leave to either the employee's estate or the beneficiary, as designated by the employee. The amount of payment will be calculated using the employee's rate of pay at the time of death.

Outside Employment. Employees that are on approved City of Copperas Cove sick leave may not work a second job while on sick leave, even if they have written authorization from their Department to work a second job. The only exception to this policy must be obtained in writing from the Department Director and the Human Resources Department.

Failure to Report Absence/ Abuse of Sick Leave. Supervisors closely monitor use of sick leave. It is anticipated that employees using paid City sick time for their own illness/injury or that of a family member will use their sick leave time to recuperate or care for their family member. Brief limited errands, trips to the doctor, hospital stays/visits, or similar absences that are not in conflict with the reason for the employee's absence from work which take the employee away from the home are acceptable, but other personal pursuits during paid sick leave will generally be considered an abuse of this policy. Abuse of sick leave, including use of sick leave for anything other than an illness, injury, or doctor/dentist appointment as provided for in this policy, will likely result in immediate disciplinary action, up to and including termination of employment, and may also render the employee ineligible for paid sick leave benefits. Similarly, employees who fail to timely report an absence or tardiness due to illness, injury, or doctor/dentist appointment may be disqualified from using sick leave for their absence.

**IF AN EMPLOYEE FAILS TO COME OR CALL INTO WORK FOR ONE DAY (24 HOURS) A "NO CALL, NO SHOW" WILL BE DECLARED AND THE EMPLOYEE WILL BE SUBJECT TO TERMINATION.**

Workers' Compensation. Sick leave may not be used to cover absences covered by workers' compensation when the employee is being compensated from the workers' compensation carrier.

Well – pay benefit.

The well-pay incentive program is designed to reward employees for good attendance by annually converting a portion of their unused sick leave into “leave hours”.

**Exhibit “A” SICK LEAVE  
Policy #313**

November 2008

All full time employees who have completed 12 months of employment with the City and have not received a final warning or disciplinary suspension within the preceding 12 months are eligible to participate in the well-pay program. Sick days used will not include paid time that employees that have been out on an approved FMLA leave of absence during the calendar year.

The annual conversion of sick leave to “leave hours” is based on the amount of sick leave used from January 1 through December 31. Eligible employees must submit the “Sick Leave Conversion” form to Human Resources in the time specified annually. Human Resources shall notify employees that are eligible. The effective date of the conversion shall be the February 1<sup>st</sup> of each year and employees shall have February 1<sup>st</sup> to January 31<sup>st</sup> of the following year to utilize the “leave hours” for that year or the time will be forfeited.

Sick leave shall be converted to “leave hours” based on the following chart:

Sick Days Used from 01/01 to 12/31	Eligible Sick Hours for Conversion to Leave Hours
0 days – 3 days taken (up to 24 hours)	80 sick hours to 40 leave hours
More than 3 days (over 24 hours)	Not eligible

Leave Hours Definition: Earned benefit intended to provide time away from the work environment to pursue activities that will promote the well being of the individual.

Leave Hours are not paid upon termination of employment.

Sick Leave Pool.

The Sick Leave Pool is a benefit that provides eligible employees with additional sick leave in the event of a catastrophic injury or illness that exhausts all other accrued paid leave. A pool of leave is accumulated through voluntary donations of accrued sick leave from active employees. Employees may not stipulate who is to receive their contributions to the Pool. The Sick Leave Pool shall be administered by the Human Resources Department.

An employee may qualify for leave from the Sick Leave Pool if he/she has experienced a catastrophic injury or illness. A “catastrophic injury or illness” is defined as a severe condition affecting the physical or mental health of the employee which has caused the employee to expend all available paid leave (including but not limited to sick, vacation, holiday, personal leave time, holiday comp and compensatory) and the injury or illness

**Exhibit “A” SICK LEAVE  
Policy #313**

November 2008

has caused the employee to be absent from work at least 240 hours during the immediately preceding twelve months.

An employee must have applied for and received Family and Medical Leave (FMLA) in order to qualify for Sick Leave Pool benefits. While employees must have applied for FMLA leave in order to qualify for Sick Leave Pool benefits, an employee who is taking FMLA leave may or may not be eligible for Sick Leave Pool benefits. The definition of a catastrophic illness or injury under the Sick Leave Pool is more severe than a “serious medical condition” as defined by FMLA.

The sick leave pool will consist of sick leave hours voluntarily donated by City employees. Employees who wish to contribute may donate a combined total of no more forty (40) hours of sick leave per fiscal year to the pool. The donating employee must have a minimum of 80 hours of sick leave remaining in their sick leave balance following donation.

Requests for leave must be made in writing to the Department Director approximately 3 weeks before the employee is expected to exhaust paid leave, and must include supporting documentation of need from the treating physician.

Should an employee’s condition make it impossible for them to submit a request in writing, then a family member may make the submission on their behalf.

Employees are eligible to request the use of leave from the sick leave pool only after they have exhausted all of their own accrued time. Employees may request up to 480 hours leave per catastrophic injury or illness. Leave may be used intermittently as may be needed for on-going treatment. Any sick leave granted under this policy shall run concurrently with any leave an employee is granted under the Family and Medical Leave Act. Employees will not accrue sick and vacation leave while using leave from the Sick Leave Pool.

Participation shall terminate, and the remaining balance of shared leave returned to the pool, if any of the following occurs:

- the participant receives full medical release from treating physician;
- the participant returns to work;
- the participant’s employment is terminated; and
- the employee/participant fails to provide medical documentation as requested by the plan administrator or otherwise violates City policy regarding medical leave.

Employees who would like to donate sick leave hours to the sick leave pool must complete the HR Form, Sick Leave Pool Donation of Hours. The sick leave pool will be

**Exhibit “A” SICK LEAVE  
Policy #313**

November 2008

maintained by Human Resources. Once sick leave is donated to the sick leave pool, employees may not withdraw time from the pool, except as outlined below.

Request for the use of leave from the sick leave pool must be submitted to the Department Director using HR Form, Sick Leave Pool Request of Hours. Department Directors will forward requests through the Director of Human Resources to the City Manager for approval. Approval or denial is solely at the discretion of the City Manager. Employees who have donated sick leave to the sick leave pool will not receive payment for these donated hours upon their separation of employment from the City.

Use of Sick Leave Pool hours will not be considered “hours worked” in the calculation of overtime.

Employees are not eligible to withdraw leave from the Sick Leave Pool when leave is due to an employee’s work-related injury while eligible for workers’ compensation benefits.

Any employee who is absent from the workplace for six consecutive months will be terminated from the City (see City’s Separations Policy #810). No leave of absence may exceed six calendar months for any reason. The six month period does not include approved leave taken under the Family and Medical Leave Act (FMLA). This policy applies to all City of Copperas Cove employees, regardless of the reason(s) for their absence from work.

**APPLICATION FOR SICK LEAVE POOL HOURS**

**Section I: Request for Leave – To be completed by the employee:**

Employee Name: \_\_\_\_\_ SSN: \_\_\_\_\_  
Department: \_\_\_\_\_ Position: \_\_\_\_\_  
Date of Hire: \_\_\_\_/\_\_\_\_/\_\_\_\_ Phone number: \_\_\_\_\_(work) \_\_\_\_\_(home)  
\_\_\_\_\_

I am requesting leave from the Sick Leave Pool due to a catastrophic illness or injury .

Is this a work-related injury or illness? \_\_\_ Yes \_\_\_ No

Please specify how the illness or injury meets the definition of a catastrophic illness or injury as defined in the Sick Leave Pool Policy:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dates and number of hours leave taken for the catastrophic illness or injury: \_\_\_\_\_

\_\_\_\_\_

When do you expect to exhaust all accrued paid leave? \_\_\_\_\_

How many hours are you requesting from the sick leave pool? \_\_\_\_\_

If applicable, what date do you anticipate returning to work? \_\_\_\_\_

I certify the information provided above is complete and true to the best of my knowledge. I understand that sick leave pool hours are granted only for catastrophic illnesses or injuries. A catastrophic injury or illness is defined as a severe condition affecting the physical or mental health which has caused the employee to expend all available paid leave (including but not limited to sick, vacation, holiday, personal leave time, holiday comp and compensatory time) and the injury or illness has caused the employee to be absent from work at least 240 hours during the immediately preceding twelve months. I further understand that I am required to submit updated medical certification every 30 days. If the diagnosis or severity of the condition as described by the physician changes and it no longer meets the criteria for a catastrophic illness or injury, I may be required to return leave to the pool. By signing below, I acknowledge that I have read and received a copy of Policy No. 313, Sick Leave Policy.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**APPLICATION FOR SICK LEAVE POOL HOURS**

**Section II: Patient Release**

Name of Patient: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

As the City of Copperas Cove employee making application for leave from the City of Copperas Cove Sick Leave Pool, a voluntary leave program, due to a catastrophic illness or injury, I authorize any licensed medical practitioner who examines me to release the information from the examination report and any other pertinent facts concerning my condition to the City of Copperas Cove.

Patient Signature/Designated Representative: \_\_\_\_\_ Date: \_\_\_\_\_

**Section III: Medical Certification – To be completed by the physician:**

The City of Copperas Cove Sick Leave Pool grants leave when an employee has a catastrophic illness or injury. The employee listed on the front page has exhausted all of his/her paid leave and has applied to the City of Copperas Cove Sick Leave Pool for leave. Please provide information below on the patient listed above and attach a summary of the patient's condition. The summary should indicate how, if at all, this patient's condition qualifies as catastrophic. Your documentation should include information about the nature of the illness or injury, a recap of all relevant medical history, the type of treatment prescribed, and a prognosis for recovery and ability to return to work. When requested, a copy of their job description will be provided.

Please note that employees may be asked for an update of their condition during this leave period. The maximum amount of leave they may be granted from the Pool is 480 hours per catastrophic illness or injury.

(Please type or print legibly)

Licensed medical practitioner's name: \_\_\_\_\_

Area of Specialization: \_\_\_\_\_

Mailing address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Phone number: \_\_\_\_\_

Date you first examined patient for the illness or injury: \_\_\_\_\_

Can he/she perform his/her regular job? \_\_\_ Yes \_\_\_ No

Date patient will be able to return to work: Full Duty: \_\_\_\_\_

\_\_\_\_\_  
Licensed Medical Practitioner's Signature

\_\_\_\_\_  
Date



**SICK LEAVE POOL**  
**DONATION OF HOURS**

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I, \_\_\_\_\_, wish to donate sick leave hours to the Sick Leave Pool. I understand that once donated, I may not withdraw time from the sick leave pool unless I have met the requirements as outlined in Policy No. 313, Sick Leave.

I further understand that I may not donate a total of more than 40 hours of sick leave per fiscal year. I also understand that I must have a minimum of 80 hours of sick leave remaining in my sick leave balance following donation.

Hours Donated

# Hours Donated

Sick Leave

\_\_\_\_\_

By signing below, I hereby authorize the City of Copperas Cove to deduct the above number of requested hours from my sick leave accrual to be donated to the sick leave pool.

\_\_\_\_\_  
Employee Name (please print)

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

**FOR HUMAN RESOURCES**

Date received: \_\_\_\_\_

Updated Hours into sick leave pool (date): \_\_\_\_\_

Received by: \_\_\_\_\_

\_\_\_\_\_

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-14

Contact – Kelli Sames, Human Resources Director, 542-8922  
ksames@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on Ordinance No. 2008-44, amending Personnel Policy No. 313, Sick Leave.**

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#### 1. BACKGROUND/HISTORY

The City of Copperas Cove currently has in effect Personnel Policy No. 313, Sick Leave. In competing for employees, the City of Copperas Cove looks to the benefits package as one avenue to recruit and retain employees; an indirect benefit reward given to an employee. The Human Resources Department has been in the process of evaluating the sick leave policy. Below are the recommended changes to this policy. In cases where changes are made, City Council's approval is required. This policy is attached for your review.

#### 2. FINDINGS/CURRENT ACTIVITY

The current Sick Leave Policy #313 does not provide for a Sick Leave Pool. Changes to the current policy would provide a benefit to employees who become catastrophically injured or ill and had to use all available paid leave. (i.e. a catastrophic injury or illness is defined as a severe condition affecting the physical or mental health of an employee, which has caused the employee to expend all available paid leave, including sick, vacation, holiday, personal leave time, and compensatory time). For an employee to qualify, the injury or illness must have caused the employee to be absent from work at least 240 hours during the immediately preceding twelve months. Employees may request up to 480 hours leave per catastrophic injury or illness.

All requests to withdraw hours from the Pool are evaluated on a case-by-case basis and will require information/verification from a physician. In addition the Department Director, Human Recourses Director and City Manager will approve the request prior to granting the hours from the Pool.

#### FINANCIAL IMPACT

No direct financial impact. Individual departments will have to plan and adjust personnel schedules accordingly to allow time off for employees utilizing the sick leave pool.

**3. ACTION OPTIONS/RECOMMENDATION**

City staff recommends approval of Ordinance No. 2008-44, amending the personnel policies.



**HOUSING AUTHORITY OF THE CITY OF COPPERAS COVE**

received  
10/2/08 Jles

INEZ V. FAISON  
EXECUTIVE DIRECTOR

701 CASA CIRCLE  
COPPERAS COVE, TEXAS 76522

SANDRA BLOUNT  
PROJECT MANAGER

PHONE 254-547-9449  
FAX 254-547-6012

September 30, 2008

Honorable Mayor Pro Tem Robert Reeves

City of Copperas cove, Texas

Re: Appointment of Commissioners

On September 30, 2008 the terms for Mr. Billy F. Minton, Mr. Loyd Thomas, and Mr. Buddy Southards will expire. They have requested to be re-appointed.

The terms for them will run from October 1, 2008 through September 30, 2008.

Your concurrence with this recommendation is appreciated.

Sincerely,

INEZ V. FAISON

Executive Director

cc: City Secretary

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-15

Contact – Jane Lees, City Secretary, 547-4221  
jlees@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on the appointment of a Commissioner to the Housing Authority of the City of Copperas Cove.**

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#### 1. BACKGROUND/HISTORY

Local Government Code §392.031 Appointment of Commissioners of a Municipal Housing Authority. States: *(a) Each municipal housing authority shall be governed by five, seven, nine or 11 commissioners. The presiding officer of the governing body of a municipality shall appoint five, seven, nine, or 11 persons to serve as commissioners of the authority. An appointed commissioner of the authority may not be an officer or employee of the municipality. Appointments made under this section must comply with the requirements of Section 392.0331, if applicable.*

*(b) A commissioner may not be an officer or employee of the municipality. A commissioner may be a tenant of a public project over which the housing authority has jurisdiction.*

*(c) A certificate of the appointment of a commissioner shall be filed with the clerk of the municipality. The certificate is conclusive evidence of the proper appointment of the commissioner.*

Local Government Code §392.0331 states: *(b) In appointing commissioners under Section 392.031, a municipality with a municipal housing authority composed of five commissioners shall appoint at least one commissioner to the authority who is a tenant of a public housing project over which the authority has jurisdiction.*

A Mayor or Council of the City in which a Housing Authority is located appoints the Commissioners of the Housing Authority. Commissioners (other than the commissioners serving in the Resident Commissioner position) may be re-appointed for as many consecutive terms as the Mayor or Council desires. If a Commissioner's term has expired, he/she continues to serve until re-appointed or replaced.

The only reasons for removal of a Commissioner before the end of his/her term are inefficiency, neglect of duty, or misconduct in office.

According to state law, a Commissioner shall receive no compensation for his/her service, but he/she shall be entitled to the necessary expenses, including out of town travel expenses, incurred in the discharge of his/her duties. Travel reimbursements may be for actual expenses only.

**2. FINDINGS/CURRENT ACTIVITY**

One position for the October 1, 2008 through September 30, 2010 term is currently vacant. There were three (3) individuals seeking re-appointment to the Copperas Cove Housing Authority Board of Directors and the City Council re-appointed Billy F. Minton and Loyd Thomas at the October 21, 2008 Council Meeting. The remaining individual, Buddy Southards, has also requested re-appointment as indicated in the attached letter from Executive Director, Inez Faison.

**3. FINANCIAL IMPACT**

None.

**4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends the City Council appoint one commissioner to the Housing Authority of the City of Copperas Cove to serve beginning November 3, 2008 through September 30, 2010.

**RESOLUTION NO. 2008-39**

**A RESOLUTION ADOPTING THE IDENTITY THEFT PREVENTION PROGRAM FOR THE CITY OF COPPERAS COVE, TEXAS.**

**WHEREAS,** The Federal Trade Commission (FTC), the federal bank regulatory agencies, and the National Credit Union Administration (NCUA) have issued regulation (the Red Flags Rules) requiring creditors to develop and implement written identity theft prevention programs, as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003; and

**WHEREAS,** cities that provide utilities, such as water, sewer, and solid waste are considered creditors; and

**WHEREAS,** the Federal Trade Commission requires the programs to provide for the identification, detection and response to patterns, practices, or specific activities – known as “red flags” – that could indicate identity theft; and

**WHEREAS,** the identity theft prevention program must be approved annually by the City Council; and

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:**

**Section 1.**

That the City of Copperas Cove has complied with the requirements of the Federal Trade Commission, and the identity theft prevention program attached hereto as “Exhibit A,” is hereby adopted as the identity theft prevention program of the City Effective November 3, 2008.

**PASSED, APPROVED, AND ADOPTED** on this 3rd day of November 2008 at a regular meeting of the City Council of the City of Copperas Cove, Texas which meeting was held in compliance with the Open Meetings Act, *Tex. Gov’t Code*, §551.001, et.seq. at which meeting a quorum was present and voting.

---

Robert L. Reeves, Mayor Pro Tem

**ATTEST:**

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Jane Lees, City Secretary

**APPROVED AS TO FORM:**

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Charles E. Zech, City Attorney

CITY OF COPPERAS COVE, TX

Identity Theft Prevention Program

Effective beginning November 3, 2008

## **I. PROGRAM ADOPTION**

The City of Copperas Cove (“City”) developed this Identity Theft Prevention Program (“Program”) pursuant to the Federal Trade Commission’s Red Flags Rule (“Rule”), which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003. 16 C. F. R. § 681.2. This Program was developed for the Utility Department of the City (“Utility”) with oversight and approval of the City Council. After consideration of the size and complexity of the Utility’s operations and account systems, and the nature and scope of the Utility’s activities, the City Council determined that this Program was appropriate for the City’s Utility, and therefore approved this Program on November 3, 2008.

## **II. PURPOSE AND DEFINITIONS**

### **A. Establish an Identity Theft Prevention Program**

To establish an Identity Theft Prevention Program designed to detect, prevent and mitigate identity theft in connection with the opening of a covered account or an existing covered account and to provide for continued administration of the Program in compliance with Part 681 of Title 16 of the Code of Federal Regulations implementing Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003.

### **B. Establishing and Fulfilling Requirements of the Red Flags Rule**

The Red Flags Rule (“Rule”) defines “Identity Theft” as “fraud committed using the identifying information of another person” and a “Red Flag” as a pattern, practice, or specific activity that indicates the possible existence of Identity Theft.

Under the Rule, every financial institution and creditor is required to establish an “Identity Theft Prevention Program” tailored to its size, complexity and the nature of its operation. The Program must contain reasonable policies and procedures to:

1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
2. Detect Red Flags that have been incorporated into the Program;
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
4. Ensure the Program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from Identity Theft.

### **C. Red Flags Rule definitions used in this Program**

**City:** The City of Copperas Cove, Texas.

**Covered Account:** Under the Rule, a “covered account” is:

1. Any account the Utility offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
2. Any other account the Utility offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the Utility from Identity Theft.

**Creditors:** The Rule defines creditors “to include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors.”

**Identifying Information** is defined under the Rule as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific person,” including: name, address, telephone number, social security number, date of birth, government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer’s Internet Protocol address, or routing code.

**Program:** The Identity Theft Prevention Program for the City.

**Program Administrator:** The Director of Financial Services is the Program Administrator for the City.

**Utility:** The Utility is the Utility Department for the City.

### **III. IDENTIFICATION OF RED FLAGS.**

In order to identify relevant Red Flags, the Utility considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft. The Utility identifies the following red flags, in each of the listed categories:

#### **A. Notifications and Warnings From Consumer Credit Reporting Agencies**

##### **Red Flags**

- 1) Report of fraud accompanying a consumer credit report;
- 2) Notice or report from a consumer credit agency of a credit freeze on a customer or applicant;
- 3) Notice or report from a consumer credit agency of an active duty alert for an applicant; and
- 4) Indication from a consumer credit report of activity that is inconsistent with a customer’s usual pattern or activity.

## **B. Suspicious Documents**

### **Red Flags**

1. Identification document or card that appears to be forged, altered or inauthentic;
2. Identification document or card on which a person's photograph or physical description is not consistent with the person presenting the document;
3. Other document with information that is not consistent with existing customer information (such as if a person's signature on a check appears forged); and
4. Application for service that appears to have been altered or forged.

## **C. Suspicious Personal Identifying Information**

### **Red Flags**

1. Identifying information presented that is inconsistent with other information the customer provides (example: inconsistent birth dates, lack of correlation between Social Security number range and date of birth);
2. Identifying information presented that is inconsistent with other sources of information (for instance, Social Security number or an address not matching an address on a credit report);
3. Identifying information presented that is the same as information shown on other applications that were found to be fraudulent;
4. Identifying information presented that is consistent with fraudulent activity (such as an invalid phone number or fictitious billing address);
5. Social Security number presented that is the same as one given by another customer;
6. An address or phone number presented that is the same as that of another person;
7. A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law social security numbers must not be required); and
8. A person's identifying information is not consistent with the information that is on file for the customer.

## **D. Suspicious Account Activity or Unusual Use of Account**

### **Red Flags**

1. Change of address for an account followed by a request to change the account holder's name;
2. Payments stop on an otherwise consistently up-to-date account;
3. Account used in a way that is not consistent with prior use (example: very high activity);
4. Mail sent to the account holder is repeatedly returned as undeliverable;
5. Notice to the Utility that a customer is not receiving mail sent by the Utility;
6. Notice to the Utility that an account has unauthorized activity;
7. Breach in the Utility's computer system security; and
8. Unauthorized access to or use of customer account information.

## Alerts from Others

### **Red Flag**

1. Notice to the Utility from a customer, identity theft victim, fraud detection service, law enforcement or other person that it has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

## **IV. DETECTING RED FLAGS.**

### **A. New Accounts**

In order to detect any of the Red Flags identified above associated with the opening of a **new account**, Utility personnel will take the following steps to obtain and verify the identity of the person opening the account:

### **Detect**

1. Require certain identifying information such as name, date of birth, residential or business address, principal place of business for an entity, driver's license or other identification;
2. Verify the customer's identity (for instance, review a driver's license or other identification card);
3. Review documentation showing the existence of a business entity;
4. Independently contact the customer or business.

### **B. Existing Accounts**

In order to detect any of the Red Flags identified above for an **existing account**, Utility personnel will take the following steps to monitor transactions with an account:

### **Detect**

1. Verify the identification of customers if they request information (in person, via telephone, via facsimile, via email);
2. Verify the validity of requests to close accounts or change billing addresses; and
3. Verify changes in banking information given for billing and payment purposes.

## **V. PREVENTING AND MITIGATING IDENTITY THEFT**

In the event Utility personnel detect any identified Red Flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the Red Flag:

## **Prevent and Mitigate**

1. Continue to monitor an account for evidence of Identity Theft;
2. Contact the customer, sometimes through multiple methods;
3. Change any passwords or other security devices that permit access to accounts;
4. Not open a new account;
5. Close an existing account;
6. Reopen an account with a new number;
7. Notify the Program Administrator for determination of the appropriate step(s) to take;
8. Notify law enforcement; or
9. Determine that no response is warranted under the particular circumstances.

## **Protect customer identifying information**

In order to further prevent the likelihood of identity theft occurring with respect to Utility accounts, the Utility will take the following steps with respect to its internal operating procedures to protect customer identifying information:

1. Ensure that its website is secure or provide clear notice that the website is not secure;
2. Ensure complete and secure destruction of paper documents and computer files containing customer information;
3. Ensure that office computers are password protected;
4. Ensure all computers are backed up properly and any backup information is secured;
5. Keep offices clear of papers containing customer information;
6. Request only the last 4 digits of social security numbers (if any);
7. Ensure computer virus protection is up to date; and
8. Require and keep only the kinds of customer information that are necessary for utility purposes.

## **VI. PROGRAM UPDATES**

This Program will be periodically reviewed and updated to reflect changes in risks to customers and the soundness of the Utility from Identity Theft. At least annually, the Program Administrator will consider the Utility's experiences with Identity Theft situation, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, changes in types of accounts the Utility maintains and changes in the Utility's business arrangements with other entities, consult with law enforcement authorities, and consult with other City personnel. After considering these factors, the Program Administrator will determine whether changes to the Program, including the listing of Red Flags, are warranted. If warranted, the Program Administrator will update the Program or present the City Council with his or her recommended changes and the City Council will make a determination of whether to accept, modify or reject those changes to the Program.

## **VII. PROGRAM ADMINISTRATION.**

### **A. Oversight**

Responsibility for developing, implementing and updating this Program lies with an Identity Theft Committee for the Utility. The Committee is headed by a Program Administrator who may be the head of the Utility or his or her appointee. Two or more other individuals appointed by the head of the Utility or the Program Administrator comprise the remainder of the committee membership. The Program Administrator will be responsible for the Program administration, for ensuring appropriate training of Utility staff on the Program, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, determining which steps of prevention and mitigation should be taken in particular circumstances and considering periodic changes to the Program.

### **B. Staff Training and Reports**

Utility staff responsible for implementing the Program shall be trained either by or under the direction of the Program Administrator in the detection of Red Flags, and the responsive steps to be taken when a Red flag is detected. All Utility staff shall receive training every year or as needed to address any changes in the program. Utility staff are required to provide reports to the Program Administrator on incidents of Identity Theft and to report any compliance issues with the Program and the effectiveness of the Program.

### **C. Service Provider Arrangements**

In the event the Utility engages a service provider to perform an activity in connection with one or more accounts, including but not limited to franchise utility providers, the Utility will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

1. Require, by contract or contract amendment, that service providers have such policies and procedures in place; and
2. Require, by contract or contract amendment, that service providers review the Utility's Program and report any Red Flags to the Program Administrator.

### **D. Specific Program Elements and Confidentiality**

For the effectiveness of Identity Theft Prevention Programs, the Red Flag Rule envisions a degree of confidentiality regarding the Utility's specific practices relating to Identity Theft detection, prevention and mitigation. Therefore, under this Program, knowledge of such specific practices are to be limited to the Identity Theft Committee and those employees who need to know them for purposes of preventing Identity Theft. Because this Program is to be adopted by a public body and thus publicly available, it would be counterproductive to list these specific practices here. Therefore, only the Program's general red flag detection, implementation and prevention practices are listed in this document.

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-16

Contact – Wanda Bunting, Director of Financial Services, 547-4221  
wbunting@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on Resolution No. 2008-39, approving the Identity Theft Prevention Program of the City of Copperas Cove.**

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**1. BACKGROUND/HISTORY**

The Federal Trade Commission (FTC), the federal bank regulatory agencies, and the National Credit Union Administration (NCUA) have issued regulation (the Red Flags Rules) requiring creditors to develop and implement written identity theft prevention programs, as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. The original deadline for the programs to be in place was November 1, 2008 which was extended in October 2008 for another six months.

**2. FINDINGS/CURRENT ACTIVITY**

Utilities have been deemed by the Federal Trade Commission to be creditors for the purpose of the Red Flag Rule. Thus, by extension, cities that provide utilities, such as water, sewer, and solid waste are creditors, or entities that defer payment by billing for services in arrears. In addition, “covered account” for the purpose of having to establish policies is “an account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as utility accounts.

The programs must provide for the identification, detection and response to patterns, practices, or specific activities – known as “red flags” – that could indicate identity theft.

**3. FINANCIAL IMPACT**

None.

**4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends that the City Council approve Resolution No. 2008-39 approving the Identity Theft Prevention Program of the City of Copperas Cove.

**RESOLUTION NO. 2008-41**

**A RESOLUTION ADOPTING THE PURCHASING  
POLICY FOR THE CITY OF COPPERAS COVE, TEXAS.**

**WHEREAS**, Chapter 252 of the Texas Local Government Code, known as the “Purchasing and Contracting Authority of Municipalities,” requires the City to follow specific state laws regarding the procurement of goods and services; and

**WHEREAS**, this Purchasing Policy complies with the requirements established in Chapter 252 of the Texas Local Government Code; and

**WHEREAS**, the attached Purchasing Policy sets procedures and authorizes approval limits relating to the purchase of goods and services while in compliance with the Texas Local Government Code.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL  
OF THE CITY OF COPPERAS COVE, TEXAS:**

**Section 1.**

That the City of Copperas Cove has complied with the requirements of Chapter 252 of the Texas Local Government Code, and the Purchasing Policy attached hereto as “Exhibit A,” is hereby adopted as the Purchasing Policy of the City Effective November 3, 2008.

**PASSED, APPROVED, AND ADOPTED** on this 3rd day of November 2008 at a regular meeting of the City Council of the City of Copperas Cove, Texas which meeting was held in compliance with the Open Meetings Act, *Tex. Gov’t Code*, §551.001, et.seq. at which meeting a quorum was present and voting.

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Robert L. Reeves, Mayor Pro Tem

**ATTEST:**

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Jane Lees, City Secretary

**APPROVED AS TO FORM:**

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Charles E. Zech, City Attorney



City of Copperas Cove

# **Purchasing Policy**

**CITY OF COPPERAS COVE, TEXAS**

**October, 2008**

**PURCHASING POLICY  
CITY OF COPPERAS COVE, TEXAS**

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## PURCHASING POLICY

### CITY OF COPPERAS COVE, TEXAS

#### I. INTRODUCTION

It is the policy of the City of Copperas Cove that the highest quality goods and services will be acquired for the lowest possible price. Purchasing operates in the Finance Department, and is charged with establishing procedures and controls in the purchasing process to comply with all applicable laws and regulations. Furthermore, it is the policy of the City to allow the City Council to make final award on any expenditure exceeding the dollar amount governed by the State competitive bid law, whether the item is subject to bid or not with the exception to the following items that are a part of the Texas Local Government Code, § 252.022:

1. a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality (*Texas Local Government Code*, § 252.022 (1));
2. a procurement necessary to preserve or protect the public health or safety of the municipality's residents (*Texas Local Government Code*, § 252.022 (2));
3. a procurement necessary because of unforeseen damage to public machinery, equipment, or other property (*Texas Local Government Code*, § 252.022 (3));
4. a procurement of items that are available from only one source, such as gas, water, other utility services (*Texas Local Government Code*, § 252.022(7)(C)); All other sole source/proprietary purchases exceeding the amount which, under State law, triggers the competitive procurement process must be approved by Council.

The basic methods for obtaining goods and services are briefly outlined below.

- A. Purchasing Card (P-Card) – The P-Card is used to procure low-value maintenance, repair, and operational expense items. The P-Card can be used with all vendors, local and out of town. The P-Card is not recommended for any vendors that provide services (i.e. professional services, and repair and maintenance services) since these vendors require a 1099 at calendar year end.
- B. Purchase Order – The purchase order is required for all purchases of three thousand dollars (\$3000.00) and up. There are exemptions for the purchase order requirement. Exemptions include utilities, payroll liabilities, travel and training, advertising, subscriptions, and membership dues. The purchase order is a legal contract and gives the vendor authorization to ship the materials, as specified. It

is designed to expedite and control buying for the City. **Purchase orders are not required for payroll liabilities.**

- C. Contract – Contracts are executed for items such as construction projects and professional services. Purchase orders are issued for these types of contracts to encumber funds for the work. All contracts should be reviewed by the City Attorney and the Department Head and reviewed and signed by the City Manager.
- D. Annual Contract – Annual contracts protect pricing for a period of one-year, or more, and are awarded to vendors for supplies, equipment and services routinely required by one or more departments. User departments should issue an annual purchase order to place orders directly with suppliers, eliminating multiple requisitions and processing time.
- E. Maintenance Agreements – The City maintains service agreements with manufacturers and authorized service centers/representatives for items such as air conditioning equipment, copiers, high technology and diagnostic equipment, etc. The procurement of maintenance agreements should function the same as annual contracts in that an annual purchase order should be entered by the user department and payments should be processed against the purchase order using the check request form. All contracts should be reviewed and signed by the City Manager.
- F. Emergency Purchase– At times, circumstances will occur that require obtaining goods or services without following normal purchasing procedures. Under these circumstances, the user department should follow applicable procedures to issue a purchase order the next business day to include supporting documentation of the emergency.
- G. Petty Cash – Any item bought with petty cash cannot exceed \$20.00. User departments make these non-routine, below-minimum purchases directly with the vendor and are reimbursed provided the proper form and receipts are presented to Accounting.

## II. AREAS OF RESPONSIBILITY

- A. Director (of a Functional Area) – A Director is over one or multiple Departments. “Director” level for this policy includes: City Manager, Police Chief, Fire Chief, Director of Financial Services, Director of Public Works, Director of Human Resources, Director of Community Services, City Secretary, Project Director/City Engineer, Director of Development Services.
- B. Department Head – Over one or multiple divisions and report to the Functional Area Director. “Department Head” level for this policy includes: Director of Information Systems, Court Supervisor, Utilities Supervisor, Solid Waste Superintendent, Library Director, Golf Course General Manager, Assistant Director of Public Works, Water Distribution Superintendent, Sewer Collection Superintendent, Chief Building Official.

### III. LEGAL REQUIREMENTS

The following statutes affect the acquisition of goods and services:

- A. Where required by Statute, purchases must be advertised in accordance with the competitive bid process and awarded by the City Council. (*Texas Local Government Code*, § 252.021) The Texas Local Government Code, § 252.041 states, “if the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. The date of the first publication must be before the 14<sup>th</sup> day before the date set to publicly open the bids and read them aloud. If no newspaper is published in the municipality, the notice must be posted at the city hall for 14 days before the date set to publicly open the bids and read them aloud.”
- B. In making an expenditure of \$3,000 or more, the City shall contact at least two (2) historically underutilized businesses on a rotating basis, based upon a list furnished by the State of Texas General Services Commission. (*Texas Local Government Code*, § 252.0215) The list can be obtained at [www.window.state.tx.us/procurement/](http://www.window.state.tx.us/procurement/) for your reference.
- C. "Component," "Separate," or "Sequential" purchases to avoid the competitive bid process are prohibited. (*Texas Local Government Code*, § 252.062)
- “Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase. (*Texas Local Government Code*, § 252.001(2))
  - “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase. (*Texas Local Government Code*, § 252.001(6))
  - “Sequential purchases” means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase. (*Texas Local Government Code*, § 252.001(7))

### IV. GUIDELINES

The following policies are to be adhered to when purchasing goods and services for the City. These policies also apply to the leasing of equipment. Purchase Orders are not required for City payroll liability payments.

- A. Petty Cash \$20.00 or less - Minor items which cost twenty dollars (\$20) or less may be obtained directly from the vendor and the cost reimbursed from petty cash upon presentation of the paid invoices/receipts. With special permission from the Director of Financial Services or City Manager this limit may be increased to handle a particular transaction. In all cases properly detailed and signed petty cash purchase vouchers must be completed and attached to the invoice/receipt for reimbursement. Separating purchases in order to bypass the twenty (\$20) dollar limit or to avoid obtaining a purchase order is strictly prohibited. Departments are encouraged to obtain purchases with P-Card accounts or vendor charge accounts whenever possible.
- B. Purchases \$1499.99 or less - Purchasing of these items may be done at the discretion of the Department Head as necessary where the City Council has appropriated funds for the intended purpose in the current budget. These items will be paid for by processing a check request signed by the Department Head or the designated authority.
- C. Purchases of \$1500.00 and up to \$2,999.99 – Purchasing of these items may be done at the discretion of the Director as necessary where the City Council has appropriated funds for the intended purpose in the current budget. These items will be paid for by processing a check request that must be signed by the Director.
- D. Purchases of \$3,000.00 but less than \$24,999.99 - These purchases require that the department contact at least two (2) historically underutilized businesses, on a rotating basis, based on information provided by the General Services Commission (Texas Local Government Code § 252.0215). If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the department may comment as such on the requisition. Three written quotes are required, even if there are no HUBs available, for purchases of \$3,000.00 up to the amount which, under State law, triggers the competitive procurement process, unless waived by the City Manager upon written request from the department. All quotes must be kept on file by the department and should be included on the requisition for Purchasing to process and for future audit. These purchase order requests must be signed by the Director.
- E. Purchases of \$25,000.00 but less than \$49,999.99 - These purchases require that the department contact at least two (2) historically underutilized businesses, on a rotating basis, based on information provided by the General Services Commission (Texas Local Government Code § 252.0215). If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the department may comment as such on the requisition. Three written quotes are required, even if there are no HUBs available, for purchases of \$3,000.00 up to the amount which, under State law, triggers the competitive procurement process, unless waived by the City Manager upon written request from the department. All quotes must be kept on file by the department and should be included on the requisition for Purchasing to process and for future audit. These purchase order requests must be signed by the Director and the City Manager.

Examples of items that MAY be excluded from the three quote requirement if no HUBs are available and the City Manager approves are:

- Sole source good or service
- Emergency purchase to preserve or protect the resident's health or safety
- Utility payments
- Procurement card payments
- Travel and/or training expenses

- F. Purchases of \$50,000.00 or more – These purchases require the item to be advertised for sealed bids or competitive sealed proposals as provided herein, or purchased through a purchasing cooperative (see Purchases through cooperatives). After bids are received, opened and tabulated, they will be presented to the City Council for approval.

## V. EXEMPTIONS

Exemptions – general exemptions from the competitive bid/proposal process are referenced in the *Texas Local Government Code* § 252.022. The exemptions include:

- A. Purchases through cooperatives. The City is a member of several purchasing cooperatives such as the Texas Comptroller of Public Accounts, the Central Texas Purchasing Cooperative, the Houston-Galveston Area Council of Governments (H-GAC) Purchasing Program, and the Texas Buy Board. The Texas Local Government Code establishes that a purchase (including high technology) under an interlocal contract for cooperative purchasing administered by a commission established such as these satisfies the City's legal requirement to competitively bid the purchase. The City of Copperas Cove will still require at least two quotes when ever possible to compare cooperative pricing. City Council approval must be obtained to make expenditures for which the amount, under State law, triggers the competitive procurement process unless the item maybe purchased through a cooperative and the specific item was approved in the annual budget. The item must be within the approved quantity and amount authorized in the annual budget.
- B. Sole source procurements. Sole source procurements are exceptions to normal purchasing procedures and are permitted only when the required item or service is available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder for that item. "Sole Source" applies where it can be substantiated that a requirement involves a commodity or service provided by only one vendor or contractor which has exclusive rights (patent or copyrights, proprietary interest or secret processes) to the manufacturing of the product or service. Sole Source requirements must withstand the questions of (1) whether the commodity or service is the only one of its kind which can fully satisfy the

requirement, and (2) the commodity is available from one, and only one, source. In this context, “sole” means “the only one.”

- C. Emergency purchases. These purchases are further explained in Section VI.
- D. Professional Services.
- E. Library Materials.
- F. Purchases from other governmental entities.
- G. Exceptions. If the purchase exceeds the amount which, under State law, triggers the competitive procurement process, City Council authorization must be obtained prior to purchasing the item. The only exceptions to this are as follows:
  - 1. a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality’s residents or to preserve the property of the municipality (lgc 252.022.1);
  - 2. a procurement necessary to preserve or protect the public health or safety of the municipality’s residents (lgc 252.022.2);
  - 3. a procurement necessary because of unforeseen damage to public machinery, equipment, or other property (lgc 252.022.3);
  - 4. a procurement of items that are available from only one source, such as gas, water, other utility services (lgc 252.022.7(C)). All other sole source/proprietary purchases exceeding the amount which, under State law, triggers the competitive procurement process must be approved by Council.
  - 5. Payment of monthly payroll liabilities such as health, life, dental, flexible spending and retirement pension.
  - 6. Payment of monthly procurement card statements.
  - 7. Renewal of contracts or agreements already in place per bid or proposal award.

The above referenced exemptions are just a few of the exemptions referenced by State law. For additional assistance, please contact Purchasing.

## VI. EMERGENCY PURCHASES

A. Purchases, which exceed the amount which, under State law, triggers the competitive procurement process and are needed on an emergency basis, must meet one of the qualifications for exempt purchases in the *Texas Local Government Code* § 252.022. However, the three (3) true emergency exemptions, as listed in the above referenced statute are listed below:

- There is a case of public calamity and the prompt purchase of the item(s) is required to provide for the needs of the public or to preserve the property of the City.
- The item(s) is necessary to preserve or protect the public health or safety of the residents of the city.
- The item is made necessary by unforeseen damage to public property.

Purchasing must be contacted about the need for the emergency purchase. If approved, a purchase order will be issued. The user department must prepare proper documentation explaining the need for the purchase and forward to Purchasing the next working day.

B. After normal working hours or on holidays or weekends, emergency purchases may be made by issuing a purchase order the next business day.

## VII. FIXED ASSET GUIDELINES

Capital items not approved in the budget may not be purchased without prior approval from the City Manager either through a budget transfer or memorandum.

A. What is an asset?

According to the City of Copperas Cove Capital Asset Guide, capital assets are real or personal property that have a value equal to or greater than the capitalization threshold for the particular classification of the asset and have an estimated life of greater than one year.

The City has invested in a broad range of capital assets that are used in the City's operations, which include:

- Land and land improvements
- Buildings and building improvements
- Improvements other than buildings
- Infrastructure
- Construction in progress
- Leasehold improvements

- Personal property
  - Furniture and equipment
  - Vehicles, boats and aircraft
  - Other assets
    - 1) Works of art and historical treasures
    - 2) Library books and materials
    - 3) Intangible assets

Purchasing is tasked with monitoring and tracking all asset purchases. All assets valued at \$5,000.00 or greater should be budgeted and purchased out of an 8XXX capital account. Asset sheets should accompany the PO and invoice for these items.

All components of a vehicle such as light bars, graphics, tool boxes, etc. should be budgeted and purchased out of a 8XXX capital account in order to properly account for the asset (vehicle, for example) in its entirety. Asset sheets should accompany the PO and invoice for these items identifying the fleet unit number.

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-17

Contact – Wanda Bunting, Director of Financial Services, 547-4221  
wbunting@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on Resolution No. 2008-41, adopting the Purchasing Policy for the City of Copperas Cove.**

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**1. BACKGROUND/HISTORY**

The Texas 80<sup>th</sup> Legislative Session passed several House Bills and Senate Bills that will modify the municipal procurement processes. Texas Senate Bill 1765, which went into effect on September 1, 2007, raised the competitive requirements bidding threshold from \$25,000 to \$50,000.

**2. FINDINGS/CURRENT ACTIVITY**

As a result of the new law, Staff has changed the monetary approval levels to reflect the change in State Law. Competitive bid processes and purchase order requirement levels were increased to agree with Texas Local Government Code, Section 252. Effective immediately all expenditures \$50,000 and greater not purchased through a purchasing cooperative and pre-approved by City Council through budget adoption will be presented to City Council for approval.

**Approval Levels for City Purchases**

City Council	\$50,000 and Greater
City Manager	\$25,000 to \$49,999.99
Director of a Functional Area / Director of Financial Services	\$1,500 to \$24,999.99
Department Head / Director of Financial Services	Up to \$1,499.99

Procurement may be made where City Council has appropriated funds for the intended purpose in the current budget.

**3. FINANCIAL IMPACT**

None.

**4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends that the City Council approve Resolution No. 2008-41, adopting the Purchasing Policy of the City of Copperas Cove.

**RESOLUTION NO. 2008-42**

**A RESOLUTION ADOPTING THE PROCUREMENT CARD (P-CARD) POLICY FOR THE CITY OF COPPERAS COVE, TEXAS.**

**WHEREAS**, Chapter 252 of the Texas Local Government Code, known as the "Purchasing and Contracting Authority of Municipalities," requires the City to follow specific state laws regarding the procurement of goods and services; and

**WHEREAS**, this Purchasing Policy complies with the requirements established in Chapter 252 of the Texas Local Government Code; and

**WHEREAS**, the attached Purchasing Policy sets procedures and authorizes approval limits relating to the purchase of goods and services while in compliance with the Texas Local Government Code; and

**WHEREAS**, this Procurement Card (P-Card) Policy complies with Purchasing Policy for the City of Copperas Cove.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:**

**Section 1.**

That the City of Copperas Cove has complied with the requirements of Chapter 252 of the Texas Local Government Code, and the Purchasing Policy attached hereto as "Exhibit A," is hereby adopted as the Procurement Card (P-Card) Policy of the City Effective November 3, 2008.

**PASSED, APPROVED, AND ADOPTED** on this 3rd day of November, 2008 at a regular meeting of the City Council of the City of Copperas Cove, Texas which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code*, §551.001, et.seq. at which meeting a quorum was present and voting.

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Robert L. Reeves, Mayor Pro Tem

**ATTEST:**

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Jane Lees, City Secretary

**APPROVED AS TO FORM:**

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Charles E. Zech, City Attorney



# **PROCUREMENT CARD PROGRAM**

## **POLICIES AND PROCEDURES**

Approved by:

_____ Andrea Gardner City Manager	_____ Date
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_____ Wanda Bunting Director of Financial Services	_____ Date
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_____ Tracy Molnes Purchasing Officer / Program Administrator	_____ Date
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**CITY OF COPPERAS COVE**  
**PROCUREMENT CARD (P-CARD) PROGRAM**

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## SECTION I - OVERVIEW

Welcome to the City of Copperas Cove's Procurement Card (P-card) Program. The purpose of the Procurement Card Program is to provide the City with an efficient and controllable method of making small dollar commodity, service, and travel purchases for the benefit of the City. The City will issue cards via JP Morgan Chase Bank. The card will be primarily used in place of petty cash, small regular purchase orders, blanket purchase orders (where sales are made over-the-counter), and emergency purchase orders. The card policy serves as a supplement to the procurement process and is **not** intended to replace current procurement policies and procedures.

### A. Benefits

Users will be able to obtain goods and services faster and easier than ever before. Paperwork and processing time for Accounts Payable and user departments will be sharply reduced. These efficiencies will allow everyone involved to be more effective and focus on the value-added aspects of their jobs.

*Purchases made on the card will be for City business only. The card is **not** a personal line of credit. When in doubt as to whether a purchase is allowable under City policy, the Cardholder should either contact the program administrator before making the purchase, or make payment personally and seek reimbursement from the City afterward. Any out-of-pocket purchase made without authorization is subject to the Finance Director's approval.*

### B. Administration

The Program's Administrator is the Purchasing Officer for the City of Copperas Cove.

### C. Controls

The P-card Program uses internal management controls, as well as features and reports from JP Morgan Chase's Smart Data Online system to manage and audit the process to ensure that procedures are followed. Several reports are available to the City for auditing and monitoring purposes.

Each card has a single transaction limit and monthly limit. If a user exceeds the limit, the transaction will be rejected when the merchant attempts to process it.

### D. Areas of Responsibility

Director (of a Functional Area) – A Director is over one or multiple Departments. "Director" level for this policy includes: City Manager, Police Chief, Fire Chief, Director of Financial Services, Director of Public Works, Director of Human Resources, Director of Community Services, City Secretary, Project Director/City Engineer, Director of Development Services.

Department Head – Over one or multiple divisions and report to the Functional Area Director. "Department Head" level for this policy includes: Director of Information Systems, Court Supervisor, Utilities Supervisor, Solid Waste

Superintendent, Library Director, Golf Course General Manager, Assistant Director of Public Works, Water Distribution Superintendent, Sewer Collection Superintendent, Chief Building Official.

**D. Transaction Limits**

<b>Cardholder Class</b>	<b>Per Transaction</b>	<b>Per Month</b>
<b>Elected Officials</b>		
Mayor/City Council (Card issued to City Secretary)	\$2,999	\$10,000
<b>Management</b>		
City Manager/Directors	\$2,999	\$ 5,000
Directors / Emergency Purchases		\$25,000
Department Heads	\$1,499	\$5,000
Other Supervisory / Approved Personnel	\$1,000	\$3,000

After limit is exceeded, employees must utilize the regular purchase order process or a Director may petition the City Manager for a temporary increase in transaction limits.

**SECTION II – ELIGIBILITY AND GUIDELINES**

**A. P-card Eligibility**

The City Manager will recommend an employee whose position justifies, in cost savings and efficiency within their respective departments/division, the issuance of a P-card.

Employees on probation and temporary employees are not eligible, unless approved by the City Manager.

The following criteria will be considered when assigning a P-card.

- Will the employee’s use of the P-card enhance productivity?
- Will the employee’s use of the P-card reduce paperwork?
- Will the employee utilize the P-card regularly for the purchasing of authorized (budgeted) goods and services?

**B. Acceptable P-card Uses**

P-card use is primarily intended for low-value supplies and services. Examples of the type of purchases the P-card should be used for include:

- Any transaction that does not exceed \$2,999, or the Cardholder’s transaction limit, whichever is less.
- Over-the-counter type retail purchases (ex: Wal-Mart, Office Depot, Office Max, HEB, Home Depot, etc.).

- Petty cash purchases.
- Hotel reservations.
- Registration for seminars.

**Note: All other purchases over \$2,999 are to be made using the standard purchase order requisition process.**

**C. Restrictions**

- Use of this P-card is restricted to authorized employees whose authority is obtained via the Finance Department’s P-card training program.
- The P-card is for official City business only and may not be used for personal purchases.
- P-card purchases are **not to be split** into two (2) or more smaller purchases **or combined** with other P-cards to circumvent the established purchasing limits and policy.
- The P-card **shall not** be used for:
  1. Personal use.
  2. Cash advances.
  3. Cash refunds. Merchandise returns or other adjustments must be applied back to the same card.
  4. Purchases exceeding the assigned dollar limit.
  5. Capital outlay items. (unless prior approval from City Manager or Assistant City Manager)
  6. Bars, taverns, nightclubs, cocktail lounges, alcoholic beverage package stores, beer, wine, and liquor.
  7. Purchases from any source in which the purchaser has a direct or indirect financial interest.
  8. Travel meals (these include meals that will be reimbursed per the City’s per-diem rates, via the submittal of an Expense Report).
  9. Fuel. (Except for rental cars)

**D. Consequences for Failure to Comply with Program Guidelines**

- Temporary/permanent revocation of the P-card. (“Three strikes within a two year period and you’re out”. Your card will be taken for six (6) months and returned under a six (6) month probation period. Any violation within the six (6) month probationary period will result in permanent revocation of the card.)
- Disciplinary measures that may include termination and legal action.

**SECTION III – OBTAINING A P-CARD**

- The Director/Department Head requests a procurement card and meets with the Program Administrator to determine appropriate transaction limits.
- Employee submits a completed signed Procurement Card Application form to the Program Administrator.
- The Card Administrator will forward the Procurement Card Application to appropriate parties for approval for each card requested by the Department.
- The Card Administrator will coordinate with JP Morgan Chase for P-card issuance.

- The card(s) will be sent to the Card Administrator who will then coordinate with Director/Department Head for training.
- After signing the Cardholder's Agreement and completion of the training, the employees will then be authorized to use the P-card.
- To change cardholder's limits a Request to change cardholder limits must be submitted to the City Manager.
- The card will have the cardholders name, department name and account number embossed on it.

## **SECTION IV – DUTIES AND RESPONSIBILITIES**

### **A. Cardholder's Duties And Responsibilities**

- Responsible for immediately reporting any fraudulent use or misapplication of the P-card to the Program Administrator. Misuse of the P-card could lead to revocation of the card or other disciplinary actions, and the Cardholder will be required to reimburse the City for any unauthorized transactions;
- Each Cardholder must acknowledge receipt of the purchasing card, understand the rules of usage, and sign the user agreement;
- Immediately investigate any disputed charges and invoke the disputed charge procedures when necessary;
- If a card is lost or stolen, the cardholder must immediately notify the Program Administrator or JP Morgan Chase;
- Accountable and responsible for their P-card;
- The Cardholder must use only his/her assigned card. Cards must not be loaned to another employee for his/her use;
- Accountable and responsible for adherence to the established limits set for their P-cards;
- Responsible to ensure that their purchases are properly funded;
- Responsible for reconciling the transactions made, preserving the receipts, and forwarding the receipts with the card's cycle statement to the Finance Department following the monthly review period;
- The Cardholder is required to insure that all goods and services purchased with the card have been received, credits received for returned merchandise, and that duplicate billings are not approved;

The P-card is to be used for City business only. **No Personal Use!** Personal purchases will be considered misappropriation of municipal funds, which constitutes a criminal offense and will be referred to the City Manager.

### **B. Director's/Department Head's Duties and Responsibilities**

- Serve as the "Approver" for each direct report and assign an approver for those non-direct report employees in the department. The "Approver" is a supervisory level employee responsible for approving the Cardholder's usage of the purchasing card. The Approver is required to perform a monthly review of the transactions made by his/her Cardholders.
- Responsible to ensure compliance with the City's P-card Program Guidelines.

- Responsible to ensure that only authorized employees utilize the Department's P-card.
- Responsible, in conjunction with the Program Administrator, to determine the single purchase limit amount.
- Upon resignation or termination of employment of a Cardholder, the supervising Department Head shall notify the Program Administrator immediately, and the card shall be turned in to the Program Administrator.
- Responsible for notifying the Program Administrator if a cardholder changes department/divisions by promotion or transfer.

### C. Program Administrator's Duties and Responsibilities

- Maintain a listing of all Authorized Users by Department as well as the associated files.
- Participate in program review and enhancements.
- Coordinate implementation of the P-Card Program throughout the City including cardholders training for employees.
- Authorized signer to approve new accounts, new hierarchy data, or change requests, and act as a liaison between JP Morgan Chase and the Cardholder.
- Responsible for notifying Department Head/Division Director to resolve any problems if the Department's paperwork is not timely processed.
- Conduct random reviews of Departments' Statements of Account to identify purchasing trends that may indicate split P-card purchases intended to circumvent established limits.
- Conduct analyses of purchasing to identify the need to establish annual pricing agreements for repetitively obtained goods or services.
- Provide administrative assistance to the Departments.
  1. Provide copies of the P-card Guidelines to the Director/Department Head and Cardholders.
  2. Provide each Cardholder with a Sales Tax Exemption Form as needed.
  3. Process requests for new cards, changes, and deletions.
  4. Answer questions about the P-card Program and the procedures and policies of JP Morgan Chase.
  5. Assist Departments (as a final step) in resolving billing disputes. **Note:** All questioned items must be communicated in writing within fifteen (15) days of the cycle date when the item originally posted.
  6. Assist Departments if cards are lost or stolen.
  7. Assist Departments in case of fraudulent use of the card.

## SECTION V – MAKING A PURCHASE

When making a purchase via the P-card, the cardholder is to:

- Obtain the best possible price; many vendors offer government discounts – **remember, the City is exempt from sales tax.** If items/services needed require bids, attach informal quote summary sheet to the Procurement Card Use Log printed from the City computer.
- Determine what needs to be purchased and present the P-card to the vendor. For mail, Internet, or phone orders, provide your card number, as requested. Verify that all Internet purchases are done on a secure website.

- Verify the charges (and that tax is not charged) and sign the receipt. **If the receipt does not identify what each amount is for, write it on the receipt.** Be specific – auditors must be able to identify what was purchased. Stock numbers must be clarified.
- All purchase-related documents (i.e., original receipts, sales slips, etc.) must be retained by the Department for reconciliation and turned into the Finance Department.
- If an order is placed by phone, you may not get a receipt – that is okay. Note on the Procurement Card Use Log that the order was placed by phone or mail. Once the receipt or invoice is received forward it to the Finance Department, with a memo explaining that it was an order placed over the phone. If an Internet order is placed make sure to print the screen with the total of the purchase and attach to the log. Once the item is received forward the invoice to the Finance Department with a memo explaining it was purchased over the Internet.
- Have supplier ship according to terms – F.O.B. Destination, which means the vendor pays the freight and they are responsible for ensuring the purchased product(s) are delivered to the City, even though shipping and handling charges may be itemized and charged to the P-card.
- When telephone orders are placed, the Merchants must be provided with complete shipping instructions including address (Department location), Department name, and user name. The Merchant must also be instructed to include in the delivery package a sales receipt, invoice, and/or the charge slip.
- All vendors must have a vendor number. If the vendor does not have a vendor number one must be set-up prior to making the purchase. Please contact the Finance Department to have a vendor set-up.

## **Sales Tax**

As a tax-exempt government agency, the City of Copperas Cove does not pay sales tax. The card will have the State of Texas' logo printed on the front. Cardholders will be provided a copy of the City's tax exemption certificate. Cardholders are then responsible for insuring that the merchant does not include sales tax in the transaction. If tax is included, the Cardholder may be responsible for reimbursing the tax amount to the City. However, sales tax charges at restaurants are difficult to have removed, and will be paid by the City without penalty to the Cardholder.

## **SECTION VI – RECONCILIATION**

The Cardholder's billing cycle ends on the last day of each month and a statement is ready for review typically on the first calendar day of the month (varies slightly depending on the month). Upon completion of the cycle, the Cardholder and Approver will be required to complete a series of steps.

The following are steps to reconcile the Procurement Card Transactions.

1. The Cardholder receives an email advising that the statement is ready for "Review". The five-day review and approval process begins the day the email is sent.
2. The Cardholder goes to the Smart Data website (<http://sdol.jporganchase.com>), enters the appropriate login and password, and accesses the card statement.

3. Select the just completed month's statement and click on the VIEW STATEMENT button.
4. Reconcile all transactions, enter the correct general ledger account number, and a short, but detailed description to the procurement card log.
5. Print a copy of your statement (expense report).
6. The Cardholder now staples the credit card receipts to the statement (expense report), signs the expense report, and submits it to the Cardholder's Approver.
7. The Approver signs off on the statement and forwards the "Approved" statement (expense report) and receipts to the Program Administrator.

**NOTE:** It should be noted that payment to JP Morgan Chase will be accomplished in accordance with its expressed deadlines regardless of whether reconciled reports have been received from the Department.

***Repeated failure by either the Cardholder or Approver to properly reconcile all transactions and Review statements in a timely manner may result in revocation of Cardholder privileges and possible disciplinary action.***

There may be an occasion when a department will purchase an item for another department (example: Information Systems purchases a printer for Solid Waste). The only time this is acceptable is when the purchasing department (Information Systems) has a memo from the department head of the receiving department (Solid Waste) authorizing the purchase.

## **SECTION VII – RESOLUTION OF BILLING PROBLEMS**

- The Cardholder is responsible for settling any disputes, clearing erroneous charges, and requesting credit for returned merchandise directly with the Merchant.
- The Cardholder is responsible for follow-up with the Merchant on any erroneous charges, disputed items, or returns, and to ensure that the proper credit is given on subsequent statements.
- Most billing problems can be resolved promptly in the above manner. If the Department, however, is not able to reach an agreement with the Merchant, the Program Administrator will assist in resolving the dispute.

## **SECTION VIII – DISPUTED CLAIMS**

- In the case of a disputed charge, cardholder should first contact the supplier. Most issues can be resolved between the cardholder and the supplier. If an agreement cannot be reached with the supplier, the next step is to contact the Program Administrator.
- All questioned items must be communicated to JP Morgan Chase within 60 days of the billing cycle date.

## SECTION IX – LOST OR STOLEN CARDS

- Report any lost or stolen cards immediately to the Program Administrator, who will contact JP Morgan Chase. Bank representatives are available 24-hours per day at 1-800-890-0669. JP Morgan Chase will immediately cancel the card and forward a replacement card within seven (7) to ten (10) business days. **(Tell the representative the call is regarding a procurement card. Always obtain the name of the JP Morgan Chase representative to whom you reported the lost or stolen card.)**
- Failure by the Cardholder to report a lost or stolen card in a timely manner (and the card is subsequently used) will result in financial liability to the City. This liability will be charged to the Using Department's budget.

## SECTION X – CANCELLATION

- In the event a Department no longer wishes to participate in the Procurement Card Program, the Card(s) must be turned in to the Program Administrator at which time the Cardholders(s) account will be closed.
- Cardholders' privileges may be canceled at any time. Cards may be revoked for misuse or non-compliance with P-card Program Guidelines

# City of Copperas Cove City Council Agenda Item Report November 3, 2008

## Agenda Item No. I-18

Contact – Wanda Bunting, Director of Financial Services, 547-4221  
wbunting@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on Resolution No. 2008-42, adopting the Procurement Card (P-Card) Policy for the City of Copperas Cove.**

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### 1. BACKGROUND/HISTORY

The Procurement Card (P-Card) Policy was originally implemented in 2006. This policy was only provided to a select few which were primarily Directors. The P-Card Policy has proven to be effective over the past two years.

### 2. FINDINGS/CURRENT ACTIVITY

In an effort to improve efficiency and productivity of City staff, the City Manager would like to expand this program to the next level of employees. The P-Card program will be expanded to select employees at the recommendation of Department Directors and with approval from the City Manager. Due to the extension of the P-Cards to the next level of employees, additional transaction limits were implemented. These limits relate to similar limits in the Purchasing Policy and in Local Government Code, Section 252.

#### Transaction Limits for P-Card Purchases

Cardholder Class	Per Transaction Limit	Per Month Limit
City Council (City Secretary Cardholder)	\$2,999	\$10,000
City Manager / Directors	\$2,999	\$5,000 \$25,000 (Emergency)
Department Heads	\$1,499	\$5,000
Other Supervisory / Approved Personnel	\$1,000	\$3,000

Procurement may be made where City Council has appropriated funds for the intended purpose in the current budget.

**3. FINANCIAL IMPACT**

None.

**4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends that the City Council approve Resolution No. 2008-42, adopting the Procurement Card Policy (P-Card) of the City of Copperas Cove.

**ORDINANCE NO. 2008-45**

**AN ORDINANCE OF THE CITY OF COPPERAS COVE, TEXAS, AMENDING THE CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE V, FINANCIAL PROCEDURES AND FISCAL POLICY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS,** The City of Copperas Cove's Finance Department Staff, City Attorney, Municipal Court Judge, and City staff have studied and reviewed the current Financial Procedures and Fiscal Policy Ordinance; and

**WHEREAS,** The City of Copperas Cove's Finance Department staff, City Attorney, Municipal Court Judge, and City staff have proposed amendments to Chapter 2, Administration, Article V, Financial Procedures and Fiscal Policy Ordinance; and

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

**SECTION 1.**

That the City of Copperas Cove's Code of Ordinances, Chapter 2, Administration, Article V, Financial Procedures and Fiscal Policy is hereby amended, and "Exhibit A" attached hereto is made a part of this ordinance and for all purposes reflects the changes to Chapter 2, Administration, Article V, Financial Procedures and Fiscal Policy, whether amended, added or deleted from the Code of Ordinances, is hereby adopted and incorporated herein as if fully set out.

**SECTION 2.**

That any ordinances or resolutions or part of ordinances or resolutions in conflict with the provisions of this Financial Procedures and Fiscal Policy Ordinance are hereby repealed to the extent of such conflict.

**SECTION 3.**

That should any section, clause, or provision of the Financial Procedures and Fiscal Policy Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.

**SECTION 4.**

That these amendments shall go into effect upon passage.

**PASSED, APPROVED AND ADOPTED** this 3rd day of November 2008, at a regular meeting of the City Council of the City of Copperas Cove, Texas, which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code* §551.001, et.seq., at which meeting a quorum was present and voting.

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Robert L. Reeves, Mayor ProTem

**ATTEST:**

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Jane Lees, City Secretary

**APPROVED AS TO FORM:**

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Charles E. Zech, City Attorney

## ARTICLE V. FINANCIAL PROCEDURES AND FISCAL POLICY\*

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**\*Editor's note:** Art. V of this chapter has been created by the editor to contain provisions related to city finances and fiscal policies.

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### DIVISION 1. GENERALLY

Secs. 2-101--2-111. Reserved.

### DIVISION 2. EMERGENCY EXPENDITURES\*

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**\*Editor's note:** Div. 2 of Art. V sets out the provisions of Ord. No. 96-07, §§ 1--3, adopted March 5, 1996, which were formerly included as sections 2-12--2-14

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#### Sec. 2-111. Policy established.

Sections 2-111--2-113 shall be known as the emergency expenditure policy of the City of Copperas Cove, Texas, and shall be implemented by the City of Copperas Cove, Texas, and its staff and employees according to the terms thereof and as the stated policy of the city, not in contravention of its Code of ordinances, shall not be deemed an amendment thereto, but shall stand alone from such Code as the purchase policy for the city in the circumstances herein described.

(Ord. No. 96-07, § 1, 3-5-96)

**Charter references:** Purchasing procedure, § 8.07.

#### Sec. 2-112. Definitions.

For the purposes of this division, the following terms, phrases, words and their deviations shall have the meaning given herein. When not inconsistent with the context, words so used in the present tense include the future. Words in the masculine gender include the feminine. Words in the plural number include the singular, and words in the singular include the plural.

(a) *Emergency or exempted purchases/expenditures* may include any one or all of the following:

- (1) In the case of a public calamity, the prompt purchase of items is required to relieve the necessity of the municipality's residents or to preserve the property of the municipality.
- (2) The item is necessary to preserve or protect the public health and safety of the residents of the municipality.
- (3) The items are made necessary by unforeseen damage to public property.

~~(b) Normal working hours for the purpose of this division includes any time between 8:00 a.m. to 5:00 p.m., Monday through Friday (when administrative staff is typically available).~~

(Ord. No. 96-07, § 2, 3-5-96)

### Sec. 2-113. Procedures.

- (a) *Qualification.* The purchase must qualify as an emergency purchase under the definition above.
- (b) *Designation.* The designation of emergency purchase indicates a situation of such urgency that the normal purchasing procedure must be modified in the interest of speed, and therefore no competitive bids are required. The authority to designate an emergency rests solely with the city manager.
- ~~(c) Amount. No emergency expenditure may exceed ten thousand dollars.~~
- ~~(cd) Normal working hours.~~ All emergency purchases occurring during normal working hours without a budget appropriation approved by City Council are processed through the finance department as follows:

(1) The appropriate director shall contact the city manager and inform them verbally of the emergency situation. At this time, the city manager may exercise their authority to designate an emergency.

~~(12)~~ A memorandum will be sent to the city manager requesting ~~him~~ them to authorize and/or declare the respective expenditure an emergency for items over ~~one~~ ten thousand dollars ~~(\$1,000.00)~~ (\$10,000). This memorandum should include as much detail of the situation at hand and estimate a total cost of expenditures. An exact copy should be provided to the finance director.

~~(23)~~ Department head and/or director will obtain ~~telephone~~ quotations from a minimum of three (3) vendors for any and all expenditures at or above ~~exceeding~~ one ~~three~~ thousand dollars (~~\$13,000.00~~ \$3,000.00). These quotations shall be documented ~~on an official telephone quote form(s).~~

(4) If the emergency does not allow for steps 2 and 3 above to be completed, with the City Manager's approval, the responsible official of the department shall take whatever steps are necessary to procure needed supplies, services or equipment to relieve the emergency situation.

~~(35) The city manager shall contact all council members and mayor, as available, to make them aware of the emergency situation, and must receive a majority consensus on the expenditure of the funds pertaining to the emergency situation.~~

(46) Department head and/or director will submit the following documentation to finance for including as a consent item on an appropriate council meeting agenda as soon after the expenditure or decision ~~therefor~~ as possible:

- (a) The approval of the city manager designating an emergency expenditure.
- (b) A copy of the original memorandum submitted to the city manager requesting the designation as an emergency.
- (c) Any and all official ~~telephone~~ form(s).
- (d) Completed purchase order requisition form(s).

(57) All invoices pertaining to the emergency shall be handled by the department just as other invoices as set forth in the city's purchasing procedure.

~~(e) Evening, weekends, and holidays. For other than normal working hours, when finance support is unavailable, process emergency expenditures as follows:-~~

~~(1) The appropriate director shall contact the city manager and inform him verbally of the emergency situation. At this time, the city manager may exercise his authority to designate an emergency.~~

~~(2) The responsible official of the using department shall take whatever steps are necessary to procure needed supplies, services or equipment to relieve the emergency situation.~~

~~(3) On the first normal working day following the emergency, the responsible official shall provide a memorandum to the city manager certifying that any purchases involved were necessary because of one of the reasons listed above, and summarizing the full emergency situation and any additional cost estimates. An exact copy of this memorandum will be provided to the finance director.~~

~~(4) All other emergency procedures will be abided by in accordance with subsection 2-14(d)(2) and thereafter.~~

(Ord. No. 96-07, § 3, 3-5-96)

Secs. 2-114--2-120. Reserved.

### **DIVISION 3. FUND BALANCES AND OPERATING PROCEDURES\***

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**\*Editor's note:** Nonamendatory Ord. No. 1996-39, §§ 1--6, adopted Sept. 3, 1996 has been included herein as Div. 3, to Art. V, §§ 2-121--2-126, at the discretion of the editor.

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#### **Sec. 2-121. Title.**

That this ordinance shall be known as the Fund Balance Policy and Operating Reserves Fiscal Policy of the City of Copperas Cove, Texas, and its staff and employees according to the terms thereof and as the stated policy of the City, shall adhere to such a policy.

(Ord. No. 1996-39, § 1, 9-3-96)

#### **Sec. 2-122. Definitions.**

For the purposes of this division, the following terms, phrases, words and their deviations shall have the meaning given herein. When not inconsistent with the context, words so used in the present tense include the future. Words in the masculine gender include the feminine. Words in the plural number include the singular, and words in the singular include the plural.

- (a) *Designated unreserved fund balance.* Net financial resources of a governmental fund that are spendable or available for appropriation, but which have been earmarked by the chief executive officer or the legislative body for some specific purpose.
- (b) *Fund.* A separate fiscal and accounting entity used by governments to segregate resources related to specific activities.
- (c) *Fund balance.* The difference between fund assets and fund liabilities in a governmental or trust fund.
- (d) *Fund type.* One of seven (7) categories into which all individual funds must be classified.
- (e) *Liquidity.* The ability to meet demands for payment on a timely basis.

(f) *Reserved fund balance.* For governmental funds and expendable trust funds, the portion of fund balance that is not available for appropriation because it is either legally restricted (e.g., encumbrances) or not spendable (e.g., long-term receivables). For nonexpendable and pension trust funds, the portion of fund balance that is legally restricted.

(g) *Reserved retained earnings.* Generally, a portion of retained earnings reflecting the excess of restricted assets over related liabilities.

(h) *Retained earnings.* Net income and losses of all prior periods adjusted for transfers and amounts of depreciation charged to contributed capital.

(i) *Unreserved fund balance.* In a governmental or expendable trust fund, the balance of net financial resources that are spendable or available for appropriation. In a nonexpendable or pension trust fund, the portion of fund balance that is not legally restricted.

(Ord. No. 1996-39, § 2, 9-3-96)

**Sec. 2-123. Maintenance of adequate reserves in order to provide several important benefits to the city.**

[The purposes of the fund balance policy and operating reserves fiscal policy shall include:]

- (1) Providing a measure of stability during economic cycles. Adequate reserves to help protect the city against significant tax increases or dramatic budget cuts during periods of low economic activity.
- (2) Interest income from the investment of the cash reserves to provide a significant source of revenue.
- (3) Adequate reserves to provide the foundation for a strong credit rating reducing the cost of long-term borrowing.

(Ord. No. 1996-39, § 3, 9-3-96)

**Sec. 2-124. Fiscal policy for maintaining adequate levels of reserves in the city's general fund, utility funds, and other funds per designation by city council.**

(a) The general fund unencumbered fund balance should be at least twenty-five (25) percent of the general fund annual budget expenditures. This percentage is equivalent to ~~the~~ three (3) months expenditures.

(b) The utility funds and other funds per city council designation should maintain an unencumbered fund balance (working capital) reserve of at least twenty-five (25) percent of the total annual budget expenditures or the equivalent of three months expenditures.

~~(c) Unencumbered cash reserves in excess of the recommended amounts should be designated in a capital improvements reserve fund. The capital improvements reserve fund shall be used for acquisition of major capital outlay, fleet and other acquisitions of a capital improvement nature. Funds may also be transferred from the capital improvements reserve fund to the operating reserve funds when the level of reserves in the operating reserve funds falls below the recommended levels. Disbursements from the capital improvements reserve fund shall be by budget appropriation.~~

(Ord. No. 1996-39, § 4, 9-3-96)

#### **Sec. 2-125. Obtaining the maximum reserves balances as established in section 2-124.**

(a) The City of Copperas Cove shall designate the unencumbered fund balances in the following percentages per the stated funds until the maximum balances, as defined in section 2-124 have been obtained:

- (1) General Fund--No less than fifty (50) percent annually.
- (2) Utility Funds--No less than forty (40) percent annually.
- (3) Other Funds--No less than twenty (20) percent annually.

(b) Upon obtaining the section 2-124 fund balances, this section will not apply.

(Ord. No. 1996-39, § 5, 9-3-96)

#### **Sec. 2-126. No operating deficits.**

Current expenditures will be paid with current revenues. Deferrals, short-term loans, or one time sources will be avoided as budget balancing techniques. Reserves will be used only for emergencies or non-recurring expenditures, except when balances can be reduced because their levels exceed guideline minimums.

(Ord. No. 1996-39, § 6, 9-3-96)

Secs. 2-127--2-130. Reserved.

## **ARTICLE V. FINANCIAL PROCEDURES AND FISCAL POLICY\***

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**\*Editor's note:** Art. V of this chapter has been created by the editor to contain provisions related to city finances and fiscal policies.

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### **DIVISION 1. GENERALLY**

Secs. 2-101--2-111. Reserved.

### **DIVISION 2. EMERGENCY EXPENDITURES\***

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**\*Editor's note:** Div. 2 of Art. V sets out the provisions of Ord. No. 96-07, §§ 1--3, adopted March 5, 1996, which were formerly included as sections 2-12--2-14

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#### **Sec. 2-111. Policy established.**

Sections 2-111--2-113 shall be known as the emergency expenditure policy of the City of Copperas Cove, Texas, and shall be implemented by the City of Copperas Cove, Texas, and its staff and employees according to the terms thereof and as the stated policy of the city, not in contravention of its Code of ordinances, shall not be deemed an amendment thereto, but shall stand alone from such Code as the purchase policy for the city in the circumstances herein described.

(Ord. No. 96-07, § 1, 3-5-96)

**Charter references:** Purchasing procedure, § 8.07.

#### **Sec. 2-112. Definitions.**

For the purposes of this division, the following terms, phrases, words and their deviations shall have the meaning given herein. When not inconsistent with the context, words so used in the present tense include the future. Words in the masculine gender include the feminine. Words in the plural number include the singular, and words in the singular include the plural.

(a) *Emergency or exempted purchases/expenditures* may include any one or all of the following:

- (1) In the case of a public calamity, the prompt purchase of items is required to relieve the necessity of the municipality's residents or to preserve the property of the municipality.
- (2) The item is necessary to preserve or protect the public health and safety of the residents of the municipality.
- (3) The items are made necessary by unforeseen damage to public property.

(Ord. No. 96-07, § 2, 3-5-96)

### **Sec. 2-113. Procedures.**

- (a) *Qualification.* The purchase must qualify as an emergency purchase under the definition above.
- (b) *Designation.* The designation of emergency purchase indicates a situation of such urgency that the normal purchasing procedure must be modified in the interest of speed, and therefore no competitive bids are required. The authority to designate an emergency rests solely with the city manager.
- (c) All emergency purchases without a budget appropriation approved by City Council are processed through the finance department as follows:
  - (1) The appropriate director shall contact the city manager and inform them verbally of the emergency situation. At this time, the city manager may exercise their authority to designate an emergency.
  - (2) A memorandum will be sent to the city manager requesting them to authorize and/or declare the respective expenditure an emergency for items over ten thousand dollars (\$10,000). This memorandum should include as much detail of the situation at hand and estimate a total cost of expenditures. An exact copy should be provided to the finance director.
  - (3) Department head and/or director will obtain quotations from a minimum of three (3) vendors for any and all expenditures at or above three thousand dollars (\$3,000.00). These quotations shall be documented.
  - (4) If the emergency does not allow for steps 2 and 3 above to be completed, with the City Manager's approval, the responsible official of the department shall take whatever steps are necessary to procure needed supplies, services or equipment to relieve the emergency situation.

(5) The city manager shall contact all council members and mayor, as available, to make them aware of the emergency situation.

(6) Department head and/or director will submit the following documentation to finance for including as a consent item on an appropriate council meeting agenda as soon after the expenditure or decision as possible:

(a) The approval of the city manager designating an emergency expenditure.

(b) A copy of the original memorandum submitted to the city manager requesting the designation as an emergency.

(c) Any and all official quotes.

(d) Completed purchase order requisition form(s).

(7) All invoices pertaining to the emergency shall be handled by the department just as other invoices as set forth in the city's purchasing procedure.

(Ord. No. 96-07, § 3, 3-5-96)

Secs. 2-114--2-120. Reserved.

### **DIVISION 3. FUND BALANCES AND OPERATING PROCEDURES\***

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\***Editor's note:** Nonamendatory Ord. No. 1996-39, §§ 1--6, adopted Sept. 3, 1996 has been included herein as Div. 3, to Art. V, §§ 2-121--2-126, at the discretion of the editor.

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#### **Sec. 2-121. Title.**

That this ordinance shall be known as the Fund Balance Policy and Operating Reserves Fiscal Policy of the City of Copperas Cove, Texas, and its staff and employees according to the terms thereof and as the stated policy of the City, shall adhere to such a policy.

(Ord. No. 1996-39, § 1, 9-3-96)

#### **Sec. 2-122. Definitions.**

For the purposes of this division, the following terms, phrases, words and their deviations shall have the meaning given herein. When not inconsistent with the context, words so used in the present tense include the future. Words in the masculine gender include the feminine. Words in the plural number include the singular, and words in the singular include the plural.

- (a) *Designated unreserved fund balance.* Net financial resources of a governmental fund that are spendable or available for appropriation, but which have been earmarked by the chief executive officer or the legislative body for some specific purpose.
- (b) *Fund.* A separate fiscal and accounting entity used by governments to segregate resources related to specific activities.
- (c) *Fund balance.* The difference between fund assets and fund liabilities in a governmental or trust fund.
- (d) *Fund type.* One of seven (7) categories into which all individual funds must be classified.
- (e) *Liquidity.* The ability to meet demands for payment on a timely basis.
- (f) *Reserved fund balance.* For governmental funds and expendable trust funds, the portion of fund balance that is not available for appropriation because it is either legally restricted (e.g., encumbrances) or not spendable (e.g., long-term receivables). For nonexpendable and pension trust funds, the portion of fund balance that is legally restricted.
- (g) *Reserved retained earnings.* Generally, a portion of retained earnings reflecting the excess of restricted assets over related liabilities.
- (h) *Retained earnings.* Net income and losses of all prior periods adjusted for transfers and amounts of depreciation charged to contributed capital.
- (i) *Unreserved fund balance.* In a governmental or expendable trust fund, the balance of net financial resources that are spendable or available for appropriation. In a nonexpendable or pension trust fund, the portion of fund balance that is not legally restricted.

(Ord. No. 1996-39, § 2, 9-3-96)

**Sec. 2-123. Maintenance of adequate reserves in order to provide several important benefits to the city.**

[The purposes of the fund balance policy and operating reserves fiscal policy shall include:]

- (1) Providing a measure of stability during economic cycles. Adequate reserves to help protect the city against significant tax increases or dramatic budget cuts during periods of low economic activity.
- (2) Interest income from the investment of the cash reserves to provide a significant source of revenue.
- (3) Adequate reserves to provide the foundation for a strong credit rating reducing the cost of long-term borrowing.

(Ord. No. 1996-39, § 3, 9-3-96)

**Sec. 2-124. Fiscal policy for maintaining adequate levels of reserves in the city's general fund, utility funds, and other funds per designation by city council.**

- (a) The general fund unencumbered fund balance should be at least twenty-five (25) percent of the general fund annual budget expenditures. This percentage is equivalent to three (3) months expenditures.
- (b) The utility funds and other funds per city council designation should maintain an unencumbered fund balance (working capital) reserve of at least twenty-five (25) percent of the total annual budget expenditures or the equivalent of three months expenditures.

(Ord. No. 1996-39, § 4, 9-3-96)

**Sec. 2-125. Obtaining the maximum reserves balances as established in section 2-124.**

- (a) The City of Copperas Cove shall designate the unencumbered fund balances in the following percentages per the stated funds until the maximum balances, as defined in section 2-124 have been obtained:
  - (1) General Fund--No less than fifty (50) percent annually.
  - (2) Utility Funds--No less than forty (40) percent annually.
  - (3) Other Funds--No less than twenty (20) percent annually.
- (b) Upon obtaining the section 2-124 fund balances, this section will not apply.

(Ord. No. 1996-39, § 5, 9-3-96)

**Sec. 2-126. No operating deficits.**

Current expenditures will be paid with current revenues. Deferrals, short-term loans, or one time sources will be avoided as budget balancing techniques. Reserves will be used only for emergencies or non-recurring expenditures, except when balances can be reduced because their levels exceed guideline minimums.

(Ord. No. 1996-39, § 6, 9-3-96)

Secs. 2-127--2-130. Reserved.

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-19

Contact – Wanda Bunting, Director of Financial Services, 547-4221  
wbunting@ci.copperas-cove.tx.us

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**SUBJECT:** Consideration and action on Ordinance No. 2008-45 amending the City of Copperas Cove's Code of Ordinances, Chapter 2, Administration, Article V, Financial Procedures and Fiscal Policy of the City of Copperas Cove.

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#### 1. BACKGROUND/HISTORY

During the prior fiscal year, City staff was asked to review the City's ordinances and operating procedures. After making that review it was determined that the last substantive update to the Financial Procedures and Fiscal Policy was completed in 1996. Since 1996, several changes including changes in the Texas Local Government Code, advancements in technology, and increases in the costs to provide services occurred.

#### 2. FINDINGS/CURRENT ACTIVITY

During the review process the determination made was to address housekeeping items. Additionally, some major procedural and operating system changes were made. Some of the major changes are:

- Removed the amount that no emergency may exceed since emergencies may vary in size and the City has a Financial Policy and internal procedures in place to control the emergency purchases.
- Removed the language that pertains to the City Manager receiving a majority consensus from Council Members on the expenditure of funds pertaining to the emergency situation since this is in violation of the Texas Open Meetings Act.
- Removed the separation of normal working hours and evenings, weekends, and holidays. One procedure for emergency purchases exists under this ordinance update.
- Removed the unencumbered cash reserve language since a budget amendment is required for the use of any fund balance. If City Council desires to use the fund balance for capital improvements, it would be approved by City Council in a budget amendment.

The above list is not all inclusive; however, does include some of the changes that staff determined to be of the greatest interest to the Council.

As required by Article V. Sec. 5.01. and Sec. 5.02. of the City Charter, the Ordinance has been reviewed by the City Attorney and the Municipal Court Judge.

**3. FINANCIAL IMPACT**

None.

**4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends City Council approve Ordinance No. 2008-45, amending the City of Copperas Cove's Code of Ordinances, Chapter 2, Administration, Article V, Financial Procedures and Fiscal Policy.



Quoted by: Rita Chan  
 Date: 09/22/2008  
 Quote Expiration: 12/21/2008  
 Quote Number: 117289-75119  
 Reference Id: 2033/117289

Pricing Form

Danny Zincke  
 Copperas Cove Parks & Rec Dept  
 Ship To:  
 1206 W. Avenue B  
 Copperas Cove, TX 76522

Bill To:  
 1206 W. Avenue B  
 Copperas Cove, TX 76522

Purchase Order:

Phone: 254-547-9247 Fax: 254-547-4512  
 Email: dzincke@ci.copperas-cove.tx.us

Software	No. Of Licenses	License Cost	Total License Cost	Maint. Fee	Service Hrs.
Activity Registration	1	\$0	\$0	\$ 0.00	16
Facility Reservation	1	\$0	\$0	\$ 0.00	16
League Scheduling	1	\$0	\$0	\$ 0.00	8
Public Access	1	\$0	\$0	\$ 0.00	12

Total Software \$ 0.00  
 Total Annual Maintenance Cost: \$ 0.00

Remote Services	Qty.	Unit Price	Extended Price
Financial Integration	8	\$175	\$ 1,400.00
Services @ \$100/hour	52	\$100	\$ 5,200.00

Total Services	\$ 6,600.00			
Contract Based Revenue	Qty.	Unit Price	Yearly Total	Contract Total
Yearly	1	\$5,000	\$ 5,000.00	\$ 5,000.00

Total Contract Based Revenue \$ 5,000.00 \$ 5,000.00

Quote Summary

Total Software Cost	\$ 0.00
Total Maintenance Cost	\$ 0.00
Total Services Cost	\$ 6,600.00
Total 3rd Party Hardware/Software Cost	\$ 0.00
Grand Total (not including Transaction Fees)	\$ 6,600.00

## GENERAL TERMS

### Transaction Fees

Transactions entered directly by participants through the Website will be assessed the customary service fee charged by Active to online registrants ("Service Charge"), as described below. Transactions entered by a member of the Agency on behalf of a participant will be assessed a Service Charge equal to 1.5% for cash or check, and an additional 2.99% for credit card transactions. Each online registrant will pay the event registration fee charged by Agency plus a Service Charge equal to 6.5% of the registration fee plus \$.50, with a minimum Service Charge of \$2.00. If the registration fee is between \$150 - \$500, the Service Charge will be 3.5% plus \$5.00, and for fees above \$500, the Service Charge will be 2.5% plus \$10.00. We may change the Service Charge at any time and you agree to such change unless you provide us with written objection to such change within 30 days from the date such change is first implemented. We will be responsible for collecting all registration fees charged by you and all Service Charges assessed by us. All registration fees, except Service Charges, are your exclusive property. Any registration fees collected by us will be sent to you twice a month and Service Charges shall be retained by us. You shall guarantee and pay to Active a minimum aggregate Service Charge, whether through offline or online transactions, of \$5,000 per calendar year (the "Minimum Yearly Service Charge"). You shall pay to Active the difference between such Minimum Yearly Service Charge and the actual Service Charges collected by us during such year, which will be billed at the end of each year beginning from the date set forth below. Active shall not be responsible for processing or making any refunds. All credit card refunds processed will be accessed a \$.10 fee charged by Active to you. Active may reimburse itself for any credit card charge backs and associated fees out of registration fees collected by it. In the event such funds are not available, you agree to reimburse Active for any charge backs or refunds.

### Please Note

- Sales taxes, where applicable, are not included and prices are in the currency of the country of installation (subject to change without notice).
- Hardware, operating system, 3rd party software and site preparation are not included unless otherwise noted.
- On-site services are exclusive of airfare.
- On-site services billed in minimum 8 hour daily increments.
- Hardware is covered by Standard Manufacturer's warranty. Equipment that is defective upon arrival will be replaced. RMA process will apply for items after support has indicated there are no alternatives.
- Customer must notify The Active Network in writing of any defective hardware within 7 days of its receipt. Any notices received after 7 days concerning defective hardware will be null and void and will not be accepted for return or replacement by The Active Network.

For existing customers, this quote may be executed by purchase order, however the most recent enforceable Agreement will contain the only commercial terms applicable to such transaction despite such purchase or other order stating otherwise.

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Method of Payment



Invoice me

**GENERAL TERMS**

Purchase Order Number: \_\_\_\_\_

Credit Card

Visa     MasterCard

Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

I hereby Agree to pay the above quote with the stated method.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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**GENERAL TERMS**



**PRODUCT AND SERVICES AGREEMENT**

CUSTOMER INFORMATION			
<b>ORGANIZATION NAME:</b>	Copperas Cove Parks and Recreation	<b>ADDRESS:</b>	1206 W. Avenue B, Copperas Cove, TX 76522
<b>CONTACT NAME:</b>	Danny Zincke	<b>TELEPHONE:</b>	254-547-9247
<b>EMAIL:</b>	dzincke@ci.copperas-cove.tx.us	<b>FAX:</b>	254-547-4512
<b>EFFECTIVE DATE:</b>	October 8, 2008		

OVERVIEW OF AGREEMENT		
This document (the “ <b>Agreement</b> ”) consists of this cover page, the attached Pricing Form attached to the end of this Agreement, the General Terms, and the following Schedules (check all applicable Schedules):		
X	Schedule A:	Hosted Software
N/A	Schedule B:	Licensed Software; Support and Maintenance
	Schedule C:	Third Party Products

**In consideration of the mutual promises and covenants contained in this Agreement, Customer and TAN hereby agree to be bound by this Agreement. By signing below, Customer acknowledges and confirms that it has read the General Terms and all attached Schedules and understands that each forms an integral part of this Agreement.**

CUSTOMER	THE ACTIVE NETWORK, INC. (“TAN”)
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____

The Active Network, Inc., 10182 Telesis Court, Ste. 300, San Diego, California 92121

Telephone: (604) [438 7361], Fax: (604) [432 9708]

## GENERAL TERMS

### GENERAL TERMS: TERMS APPLICABLE TO ALL PRODUCTS AND SERVICES

#### 1. INTERPRETATION

1.1 **Definitions.** For the purposes of interpreting this Agreement, the following terms will have the following meanings:

(a) **“Agreement”** means this Products and Services Agreement, inclusive of all Schedules.

(b) **“Concurrent Use”** means use at the same moment in time to access a given server computer (of any kind) owned or controlled by Customer.

(c) **“Customer”** means the legal entity other than TAN entering this Agreement.

(d) **“Database Server”** means the single server computer upon which the Enterprise Database is resident.

(e) **“Enterprise Database”** means the MSDE, MS SQL Server, or Oracle database files containing customer data and that are accessed by the Licensed Software.

(f) **“Hosted Software”** means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by TAN and are identified in the Pricing Form as licensed (or sublicensed) to Customer by TAN in connection with this Agreement, and which reside on TAN’s servers and are accessible by Customer’s staff or Users via the Internet.

(g) **“Internet Client”** means a remote device capable of using the Internet to access selected Licensed Software on the Internet Server or the Enterprise Database on the Database Server via the Internet Server.

(h) **“Internet Server”** means a single server computer used by Customer which enables access to the Licensed Software by individuals using an Intranet or the Internet, having a minimum configuration as set out in hardware specifications previously described to Customer as applicable to the Licensed Software to be installed and used upon it.

(i) **“IVR Server”** means a single server computer used by Customer for voice-recognition and telephone-based, rather than computer-based, access to the Enterprise Database by Customer’s clients, having a minimum configuration as set out in hardware specifications previously described to Customer as applicable to the Licensed Software to be installed and used upon it.

(j) **“Licensed Software”** means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by TAN and are identified in the Pricing Form as licensed (or sublicensed) to Customer by TAN in connection with this Agreement, and/or which are in the future provided to Customer by TAN under any circumstances unless provided under a separate licensing agreement.

(k) **“Maintenance”** means the provision of error investigation and repair services as set out in section 22.1 and the provision of new Versions and Releases in respect of the Licensed Software all as more particularly set out in the Support and Maintenance Handbook.

(l) **“Module”** means a single module element of Licensed Software listed in the Pricing Form.

(m) **“Online Services”** means services, such as Internet registration, that are enabled by Hosted Software and available to the public via the Internet.

(n) **“Other Services”** means Services other than Pre-Agreed Services acquired by Customer under this Agreement.

(o) **“Payment Server”** means a single server computer used by Customer to process electronic payments from its clients, having a minimum configuration as set out in hardware specifications previously described to Customer as applicable to the Licensed Software to be installed and used upon it.

(p) **“Pre-Agreed Services”** means Services which are expressly listed in the Pricing Form as being acquired hereunder by Customer.

(q) **“Pricing Form”** means the itemized pricing form attached to the Agreement listing the products and services provided by TAN to the Customer under this Agreement

(r) **“Products”** means all Licensed Software, Hosted Software, Third Party products, and other products (including documentation) provided to Customer by or on behalf of TAN.

(s) **“Professional Services”** means any and all types of services which TAN provides, to Customer and/or to other customers of TAN, in the course of TAN’s business, including but not limited to services relating to the installation, implementation, optimization, administration, training and troubleshooting of computers, computer software including the Licensed Software, computer networks, databases, internet-related equipment and applications, but expressly excludes Support and Maintenance.

(t) **“Related Third Party Documentation”** means any end specifications, manuals, instructions, and other materials, and any copies of any of the foregoing, in any medium, related to the Third Party Products and supplied by TAN to Customer with the Third Party Products.

(u) **“Release”** means any release, update, patch, set of revisions, or bug/permanent fix or temporary bypass solution released by TAN to its customers generally during the term of this Agreement, which provides enhancements and/or error corrections to the then-current Version or Release, and where a new Version has been released and no new Release has been released since the release of that Version, that Version will also constitute a Release for the purpose of determining whether Support or Maintenance is available with respect to that Version. New Releases will be denoted by an increase to

## GENERAL TERMS

the version number to the right of the decimal point such as from Release 1.1 to Release 1.2.

(v) **“Services”** means all Professional Services, Support and Maintenance, Online Services, and other services provided to Customer by or on behalf of TAN.

(w) **“Services Table”** means the table of Pre-Agreed services, together with associated costs, shown in the Pricing Form.

(x) **“Software”** means the Licensed Software and the Hosted Software as defined elsewhere in this section.

(y) **“Support”** means the ongoing telephone, email, web-based and dial-in support and problem resolution to assist Customer in the use of the Licensed Software, the Hosted Software, and other services and products of TAN as set out in the Support and Maintenance Handbook.

(z) **“Support and Maintenance Handbook”** means the documents published by TAN setting out the applicable service levels, processes, restrictions, and other particulars of Support and Maintenance provided in respect of the Software and other Services and Products of TAN, as amended from time to time upon notice to Customer.

(aa) **“Support Start Date”** means, for implementations performed by Active, the first day of implementation of the Licensed Software or 90 days following the delivery of the Licensed Software, whichever occurs first, and upon delivery of the Licensed Software for implementations being performed by the customer or a 3<sup>rd</sup> party vendor.

(bb) **“System Utilities”** includes the following: Accounting Processes, Central Login, Log File, Copy Database, Edit Database, Maintain Database, MSDE Tool, Oracle Setup Utility, Query Tool, System Maintenance, Upgrade Database and View Components.

(cc) **“TAN”** means The Active Network as referenced on the first page of this Agreement.

(dd) **“Third Party Products”** means those hardware, firmware and/or software products, provided to TAN by third parties, listed in the Pricing Form, together with all user manuals and other documents accompanying the delivery of the Third Party Products, provided that the Third Party Products shall not include software developed by TAN.

(ee) **“Third Party Products Support”** means assistance to isolate the source of problems and/or to troubleshoot difficulties resulting from sources other than TAN products or services, such as general network support (for example network access, printing, backup & restoration); PC hardware trouble shooting; PC setup, configuration and optimization; network operating system configuration and functionality; basic Microsoft Corporation “Windows” functionality (for example, using File Manager or Explorer), modem configuration & setup; data corruption due to lack of disk space; and loss of supervisor or other password, all as further set out in the Support and Maintenance Handbook.

(ff) **“User”** means a person who accesses and uses any of the Products in any manner whatsoever.

(gg) **“Version”** means a version of the Licensed Software providing a particular functionality, while a new Version of the Licensed Software will provide new/additional functionality and/or improvements to a previous Version. New Versions will be denoted by a change to the version number to the left of the decimal point such as from Version 1.0 to Version 2.0.

(hh) **“Workstation”** means a computer attached to a local or wide-area network (including an Intranet), which accesses the Licensed Software or Enterprise Database.

1.2 **Headings.** The headings contained in this Agreement are inserted for convenience and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

## 2. CHARGES AND PAYMENTS

2.1 **Taxes and Other Charges.** Customer will pay all shipping & handling costs and, unless exempted by law, all applicable sales, use, withholding and excise taxes, and any other assessments against Customer in the nature of taxes, duties or charges however designated on the Services and Products or their license or use, on or resulting from this Agreement, exclusive of taxes based on the net income of TAN. Sales and any other applicable taxes, duties, or any other charges in the nature of taxes and duties are not included unless specifically identified as line items in the Pricing Form.

2.2 **Currency.** Unless otherwise indicated in the Pricing Form, all prices are in the currency of the country in which the Customer is located.

2.3 **Delivery.** Delivery for the Products supplied by TAN under this Agreement will be deemed to have occurred F.O.B. origin.

2.4 **Invoices/Payment.** TAN will provide invoices to Customer for all amounts owing by Customer hereunder. Such invoices are to be provided as indicated in the attached Schedules or Pricing Form, and subsequently due within 30 days from the date of invoice.

## 3. CUSTOMER INFORMATION; CONFIDENTIALITY

3.1 **Customer Information.** In order to assist TAN in the successful provision of services and products to Customer, Customer shall provide to TAN all information relating to Customer’s organization, technology platforms, systems configurations, and business processes and otherwise relating to Customer as is reasonably requested by TAN from time to time.

### 3.2 Confidential Information.

(a) In the performance of or otherwise in connection with this Agreement, one party (“Disclosing Party”) may disclose

## GENERAL TERMS

to the other party ("Receiving Party") certain Confidential Information of the Disclosing Party. Confidential Information" means any information of either party, which is not generally known to the public, whether of a technical, business or other nature (including, but not necessarily limited to: trade secrets, know how, computer program source codes, and information relating to the customers, business plans, promotional and marketing activities, finances and other business affairs of such party); provided that the same is conspicuously marked or otherwise identified as confidential or proprietary information prior to, upon or promptly after receipt by the other party; and provided further that the any software or software application server source code provided by TAN or its licensors shall be deemed to constitute Confidential Information without further designation by TAN. The Receiving Party will treat such Confidential Information as confidential and proprietary of the Disclosing Party and will use such Confidential Information solely for the purposes for which it is provided by the Disclosing Party and will not disclose such Confidential Information to any third party (other than a third party under contract whereby that third party has agreed in writing to keep the Confidential Information confidential).

(b) Exclusions. The obligations under this paragraph will not apply to any: (i) use or disclosure of any information pursuant to the exercise of the Receiving Party's rights under this Agreement; (ii) information that is now or later becomes publicly available through no fault of the Receiving party; (iii) information that is obtained by the Receiving Party from a third party authorized to make such disclosure (other than in connection with this Agreement) without any obligation of secrecy or confidentiality; (iv) information that is independently developed by the Receiving Party (e.g., without reference to any Confidential Information); (v) any disclosure required by applicable law (e.g., pursuant to applicable securities laws or legal process), provided that the Receiving Party will use reasonable efforts to give advance notice to and cooperate with the Disclosing Party in connection with any such disclosure; and (vi) any disclosure with the consent of the Disclosing Party.

#### 4. WARRANTY

**Limited Warranty of Software.** TAN warrants that when utilized by Customer in a manner authorized hereunder, the Software will conform to the functional specifications set out in the user documentation accompanying the Software for ninety (90) days from delivery of the Software ("Warranty Period"). Delivery shall be deemed to have occurred upon TAN's email transmission of an FTP link to Customer permitting download of the Software from TAN's designated online site, or where delivered in the form of physical media, F.O.B. origin. TAN's sole obligation and liability hereunder with respect to any failure to so perform will be to use reasonable efforts to remedy any non-conformity which is reported to TAN in writing by Customer within that Warranty Period. In the event TAN is unable to remedy such non-conformity within a reasonable time using reasonable efforts,

a) in respect to the Licensed Software TAN may refund to Customer the license fee pertaining to the Licensed Software, subject to Customer's return of the Licensed Software, and this Agreement will be automatically terminated, or b) in respect to Hosted Software TAN may refund to Customer the fees paid by the Customer to TAN for Services provided to implement the Hosted Software, and this Agreement will be automatically terminated. All warranty service will be performed at service locations designated by TAN. This Limited Warranty is void if failure of the Software has resulted from accident, abuse or misapplication. Any replacement Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer.

#### 5. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

**5.1 SPECIFIC EXCLUSION OF OTHER WARRANTIES.** THE EXPRESS WARRANTIES SET OUT IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND WHATSOEVER APPLICABLE, EITHER EXPRESS OR IMPLIED BY LAW (IN CONTRACT OR TORT OR OTHERWISE) OR CUSTOM, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, FITNESS FOR PURPOSE, DURABILITY, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY. WITHOUT LIMITING THE ABOVE, TAN DOES NOT WARRANT THAT ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE OPERATION OF PRODUCTS PROVIDED HEREUNDER WILL BE FREE FROM INTERRUPTION OR ERRORS.

**5.2 RESTRICTIONS ON WARRANTY.** TAN HAS NO OBLIGATION TO REPAIR OR REPLACE PRODUCTS DAMAGED BY ACCIDENT OR OTHER EXTERNAL CAUSE OR THROUGH THE FAULT OR NEGLIGENCE OF ANY PARTY OTHER THAN TAN.

**5.3 NO INDIRECT DAMAGES.** WITHOUT LIMITING THE GENERALITY OF SECTIONS 5.1 AND 5.4, IN NO EVENT WILL TAN BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT OR OTHERWISE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

**5.4 LIMITS ON LIABILITY.** IF, FOR ANY REASON, TAN BECOMES LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT OR OTHERWISE), THEN:

## GENERAL TERMS

(a) THE AGGREGATE LIABILITY OF TAN TO CUSTOMER AND ALL OTHER PARTIES IN CONNECTION WITH THE PRODUCTS AND THE SERVICES WILL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT PAID TO TAN HEREUNDER, DURING THE TWO YEARS PRECEDING THE LAST INCIDENT GIVING RISE TO THE LIABILITY; AND

(b) IN ANY CASE CUSTOMER MAY NOT BRING OR INITIATE ANY ACTION OR PROCEEDING AGAINST TAN ARISING OUT OF THIS AGREEMENT OR RELATING TO ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER MORE THAN TWO YEARS AFTER THE RELEVANT CAUSE OF ACTION HAS ARISEN.

**5.5 SEPARATE ENFORCEABILITY.** SECTIONS 5.1 THROUGH 5.4 ARE TO BE CONSTRUED AS SEPARATE PROVISIONS AND WILL EACH BE INDIVIDUALLY ENFORCEABLE.

### 6. RESTRICTIONS

**6.1 U.S. GOVERNMENT RESTRICTED RIGHTS.** The Products are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) (1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (c) (1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is The Active Network, Inc., Suite 300, 10182 Telesis Court, San Diego, California, United States, 92121.

**6.2 Export Restrictions.** The Products may include encryption software or other encryption technologies that may be controlled for import, export, or purposes under the laws and regulations of the countries and/or territories in which the Products are used (“**Applicable Law**”). Customer may not export, re-export, or assist or facilitate in any manner the export or re-export of, any portion of the Products, as determined by Applicable Law under which the Customer operates: (i) to any country on Canada’s Area Control List; (ii) to any country subject to UN Security Council embargo or action; (iii) contrary to Canada’s Export Control List Item 5505; (iv) to countries subject to U.S. economic sanctions and embargoes; and (v) to persons or entities prohibited from receiving U.S. exports or U.S.-origin items. Customer hereby represents and covenants that: (i) to the best of Customer’s knowledge Customer is eligible to receive the Products under Applicable Law; (ii) Customer will import, export, or re-export the Products to, or use the Products in, any country or territory only in accordance with Applicable Law; and (iii) Customer will ensure that Customer’s Users use the Products in accordance with the foregoing restrictions.

**6.3 Third Party Software and Open Source Components.** The Software may contain open source components or other third party software of which the use, modification, and distribution is governed by license terms (including limitations

of liability) set out in the applicable documentation (paper or electronic) or read me files.

### 7. TERMINATION

**7.1 Termination.** This Agreement will terminate:

(a) at the option of either party if the other party materially defaults in the performance or observance of any of its obligations hereunder and fails to remedy the default within 30 days after receiving written notice thereof; and

(b) without limiting (a), at the option of TAN if Customer breaches section 2 of this Agreement, provided that the right of termination will be in addition to all other rights and remedies available to the parties for breach or default by the other.

**7.2 Suspension of Obligations.** If either party should materially default in the performance or observance of any of its obligations hereunder, then, in addition to all other rights and remedies available to the non-defaulting party, the non-defaulting party may suspend performance and observance of any or all its obligations under this Agreement, without liability, until the other party’s default is remedied, provided however that this section will not permit Customer to suspend its obligation to make any payments due for Products or Services that are unrelated to any default alleged against TAN.

**7.3 Return of Materials.** In the event of termination of this Agreement for any reason whatsoever, Customer will immediately (i) return to TAN all physical copies of Products delivered by TAN to Customer or otherwise in Customer’s possession or control, or (ii) if expressly permitted by TAN, destroy all physical copies of the Products not returned to TAN and delete all electronic copies of the Products from its systems and certify in writing to TAN that such actions have all been completed.

### 8. AUDIT AND MONITORING RIGHTS

**8.1** TAN may, upon a minimum of 24 hours written notice to Customer, attend upon Customer’s premises and verify that the Products are being used only as permitted hereby. Such inspections may occur a maximum of twice per calendar year, and will be performed only during Customer’s regular business hours and conducted in a manner as to minimize, to the extent reasonable, interference with Customer’s business. Further, TAN may, using automatic means which do not interfere with the use of the Products by Customer or Users other than as described in this provision, monitor at any time usage of the Products by Customer and or its Users including through monitoring of the number of copies of any particular Module(s) in Concurrent Use.

### 9. INTELLECTUAL PROPERTY RIGHTS

**9.1 Warranty of Title.** TAN warrants that it has all rights necessary to make the grant of license herein by having all right, title, and interest in and to the Products (other than Third Party Products) or as licensee of all such rights from the owner thereof.

## GENERAL TERMS

9.2 **Intellectual Property.** TAN and its licensors shall retain all right, title, and interest in and to the Products and the results of the Services and to all software, trademarks, service marks, logos, and trade names and other worldwide proprietary rights related thereto (“**Intellectual Property**”). Customer shall use the Intellectual Property only as provided by TAN, and shall not alter the Intellectual Property in any way, or act or permit action in any way that would impair TAN’s or its licensors’ rights in its Intellectual Property. Customer acknowledges that its use of the Intellectual Property shall not create in Customer or any other person any right, title, or interest in or to such Intellectual Property. Any goodwill accruing from the use of the Intellectual Property shall inure solely to the benefit of TAN or its licensors, as applicable.

9.3 **Restrictions.** Customer will not any time whether before or after the termination of this Agreement:

- (a) reverse engineer, disassemble, or decompile any Products or prepare derivative works thereof;
- (b) copy, transfer, display, or use the Products except as expressly authorized in this Agreement or in the applicable documentation;
- (c) disclose, furnish, or make accessible to anyone any confidential information received from TAN or make any use thereof other than as expressly permitted under this Agreement, which confidential information is deemed to include the source and executable code of the Software and all related documentation;
- (d) contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or intellectual property rights, title, or interest of TAN in and to any Products; or
- (e) obliterate, alter, or remove any proprietary or intellectual property notices from the Products in physical or electronic forms.

## 10. INDEMNIFICATION

(a) **Indemnified Claims.** Each Party (“Indemnifying Party”) shall fully indemnify, defend and hold harmless the other Party (“Indemnified Party”), and its respective parents, subsidiaries and affiliates and all of the foregoing entities’ officers, directors, employees, agents, contractors and licensees, and their successors and assigns, from and against any and all third party claims, actions, suits, legal proceedings, demands, liabilities, damages, losses, judgments, settlements, costs and expenses, including, without limitation, reasonable attorney’s fees, arising out of or in connection with any alleged or actual that: is based upon the Indemnifying Party’s breach of a representation, warranty or obligation hereunder; (ii) arises out of the Indemnifying Party’s gross negligence or wilful misconduct; (iii) is based upon the Indemnifying Party’s violation of any applicable federal, state or local law or regulation; or (iv) is based upon any claim of infringement of any US or Canadian copyright, patent, trade secret or other

intellectual property rights or similar rights of any third party arising out of any authorized use of any software or products licensed and/or delivered under this Agreement. In the event that a claim of infringement is established with regard to the Licensed Software, Hosted Software or Third Party Products licensed or delivered by TAN under this Agreement, or in TAN’s opinion might be held to infringe as set forth above, TAN shall, at its own expense and option, procure for Customer the right to exercise the rights and licenses granted to Customer under this Agreement or modify the Licensed Software, Hosted Software or Third Party Products such that each affected is no longer infringing. If neither of such alternatives is, in TAN’s opinion, commercially reasonable, the infringing software or product shall be returned to TAN and TAN’s sole liability, in addition to its obligation to reimburse awarded damages, costs and expenses set forth above, shall be to refund the amounts paid to TAN by Customer for such software or product. Notwithstanding the above, and subject to the procedure set forth in section 10(b) below, TAN shall have no liability for any claim of infringement related to any software or product supplied by TAN under this Agreement that arises from: Customer’s unauthorized use of such software or product, Customer’s use of such software or product in combination with any items not supplied by TAN, or any modification by Customer or a third party of any software or product supplied by TAN.

(b) **Indemnification Claims Procedure.** The Indemnified Party shall promptly notify the Indemnifying Party in writing of any Indemnified Claim, specifying the nature of the action and the total monetary or relief sought therein. The Indemnified Party shall cooperate with the Indemnifying Party at the Indemnifying Party’s expense in all reasonable respects in connection with the defense of any such Indemnified Claim or Additional Indemnified Claim. The Indemnifying Party may upon written notice to the Indemnified Party undertake to control and conduct all proceedings or negotiations in connection therewith, assume and control the defense of such Indemnified Claims or Additional Indemnified Claims, and if it so undertakes, it shall also undertake all other required steps or proceedings to settle or defend any such Indemnified Claim or Additional Indemnified Claim, including the employment of counsel which shall be reasonably satisfactory to the Indemnified Party, and payment of all reasonably incurred expenses. Notwithstanding the foregoing, the Indemnified Party has the right to employ separate counsel to provide input to the defense, at the Indemnified Party’s own cost. The Indemnifying Party shall reimburse the Indemnified Party upon demand for any payments made or loss suffered by it at any time after the date of tender, based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or settlement of Indemnified Claims. The Indemnifying Party shall not settle any Indemnified Claim or Additional Indemnified Claim under this section on the Indemnified Party’s behalf without first obtaining the Indemnified Party’s written permission, which permission shall not be unreasonably withheld, and the Indemnifying

## GENERAL TERMS

Party shall indemnify and hold the Indemnified Party harmless from and against any costs, damages and fees reasonably incurred by the Indemnified Party, including fees of attorneys and other professionals, that are attributable to such Indemnified Claims. The Indemnifying Party shall not be responsible for any indemnification obligations arising hereunder pursuant to the terms and conditions of any settlement of an Indemnified Claim by the Indemnified Party unless such settlement was approved by the Indemnifying Party, which approval shall not be unreasonably withheld.

### 11. GENERAL

**11.1 Entire Agreement.** This Agreement, including all attachments and referenced schedules, constitutes the complete and exclusive statement of the agreement between TAN and Customer with respect to the subject matter hereof. It supersedes and replaces all oral or written RFPs, proposals, prior agreements, and other prior communications between the parties concerning the subject matter of this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties, except that TAN may fill future purchase or other orders for further goods or services available under this Agreement and, if TAN does so, the provisions of this Agreement will contain the only commercial terms applicable to such transaction despite such purchase or other order stating otherwise. Any Addendum attached hereto shall form an integral part of this Agreement and, in the event of any inconsistency between these General Terms and any Addendum, the provisions of the Addendum shall prevail.

**11.2 Force Majeure.** Dates or times by which either party is required to perform under this Agreement, excepting the payment of any fees or charges due hereunder, will be postponed automatically to the extent that any party is prevented from meeting them by causes beyond its reasonable control, provided such party promptly notifies the other thereof and makes reasonable efforts to perform.

**11.3 Notices.** All notices and requests in connection with this Agreement will be given to the respective parties in writing and will be deemed given as of the first business day of the notified party following the day the notice is faxed or sent via overnight courier, providing a hard copy acknowledgment of such successful faxed notice transmission or evidence of such couriers, as applicable, is retained. Notice may also be deposited in the mails, postage pre-paid, certified or registered, return receipt requested, and addressed to the parties as indicated on the face of this Agreement or such other address of which the party gives notice in accordance herewith, and receipt of any such notice will be deemed to be effective as of the third business day following such deposit.

**11.4 Governing Law.** This Agreement and performance hereunder will be governed by the laws of the jurisdiction in which the Customer is located as indicated on the face of this Agreement, except that (i) in the case of Louisiana, the laws of California will apply, and (ii) in the case of Québec, the laws of Ontario will apply.

**11.5 Attorney Fees.** In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

**11.6 Non-Assignability.** Neither party may assign its rights or obligations arising out of this Agreement without the other party's prior written consent, except that TAN may assign this Agreement in connection with any sale or security interest involving all or substantially all of its assets or any other transaction in which more than fifty percent of its voting securities are transferred.

**11.7 Term and Survival.** The term of this Agreement shall commence on the Effective Date set out on the cover page hereof and shall continue as set forth in Sections 18.1 or 25.1, as applicable, or until terminated in accordance with Section 7. Sections 1.1, 5, 7.3, 9.2, 9.3, 10, 11, 29.1, and 29.2 of this Agreement, along with all unpaid payment obligations, will survive termination and expiration of this Agreement.

**11.8 No Authority to Bind.** Neither party shall incur any obligations for or in the name of the other party, or have the authority to bind or obligate the other party. Neither party shall make, issue or authorize any statements (whether or oral or written) in contravention of the foregoing.

**11.9 Counterparts.** This Agreement may be executed in separate counterparts and delivered by facsimile or such other electronic means as are available to the Parties. Such counterparts taken together shall constitute one and the same original document.

**11.10 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions shall remain in full force and effect.

**11.11 Cooperative Procurement.** Upon consent by Active, this Agreement may be used for permitted cooperative procurement by any public or municipal body, entity, agency or institution. If so authorized, and in order to forego a related entity RFP or similar competitive bidding process, the Agreement may be extended to such other entities indicated above for the procurement of similar products and/or services provided to Customer herein and at fees in accordance with the Agreement unless separately negotiated between such other entities and Active. Further related entities participating in a cooperative procurement process shall place their own orders directly with Active and will fully and independently administer their use of the Agreement to include such contractual as those entities and Active deem appropriate without direct administration from the original Customer.

**GENERAL TERMS**

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**SCHEDULE A: TERMS APPLICABLE ONLY TO HOSTED SOFTWARE**

**12. HOSTED SOFTWARE**

12.1 TAN will provide Customer with access to hosted versions of the products identified in the Pricing Form and associated Online Services, and TAN hereby grants to Customer a limited, non-exclusive, non-transferable license to use the Hosted Software in accordance with the applicable documentation.

**13. SUPPORT FOR HOSTED SOFTWARE**

13.1 TAN will, during all periods in respect of which Customer has subscribed for Hosted Software, provide Support to Customer (and, where applicable, directly to users of Customer’s own services and products who access the Hosted Software) in accordance with applicable sections of the Support and Maintenance Handbook.

**14. LICENSE AND BRANDING**

14.1 TAN hereby grants to Customer a limited, non-exclusive, non-transferable license to display, reproduce, distribute, and transmit in digital form TAN’s name and logo in connection with promotion of the Online Services only in the manner approved of by TAN during the term of this Agreement. Customer hereby grants to TAN a limited non-transferable license to use, display, reproduce, distribute, adapt and transmit in digital or printed form information provided by Customer relating to its organization, including its name, trademarks, service marks and logo, in connection with the implementation and promotion of the Online Services; provided, however, that such use shall be as necessary to TAN’s performance under this Agreement. Customer will make reasonable efforts to encourage adoption of the Online Services, including displaying TAN’s name and logo or “Powered by Active” logo, in the form supplied by TAN from time to time and in a manner approved by TAN, acting reasonably, in any medium used by Customer to promote its programs or services to prospective participants.

**15. INFORMATION SECURITY AND PRIVACY FOR HOSTED SOFTWARE**

TAN will collect information, including names, addresses, gender, phone numbers, email addresses, birth dates, financial information (for payment purposes) and other such information from individuals using the Online Services as is reasonably required to provide the Services. TAN will store such information on a secure remote server using reasonable safeguards in accordance with TAN’s published online privacy policies and in compliance with all applicable laws, codes of practice, and other legal obligations associated with the collection, use, and disclosure of personal information. Customer may access this information by downloading it from TAN’s servers using a Customer assigned private password

and “login” identifier. Upon request TAN will make such information available to Customer via e-mail, fax or airmail. Customer will be responsible for protecting the privacy and security of any information that Customer retrieves from TAN’s servers and shall prevent any unauthorized or illegal use or dissemination of such information and shall be solely responsible for ensuring compliance with any applicable data and privacy protection laws, codes of practice, and other legal obligations associated with the collection, use, and disclosure of personal information by Customer, including such disclosure to TAN as is necessary for TAN to provide the Services and Products to Customer. Customer and/or its clients shall exclusively own the personal data collected by TAN in connection with the Hosted Software; provided, however, TAN is granted a royalty-free, perpetual, non-exclusive right and license to use, reproduce, distribute and adapt the collected data as is necessary for TAN to perform its obligations under this Agreement, including for purposes of communicating with Customer or Customer’s clients as necessary, fulfilling requests for products and services requested from Customer or Customer’s clients, providing customized content and advertising provided in connection with the Hosted Software, conducting internal TAN research intended to improve the products and services provided by TAN and its affiliates, and to provide anonymous and aggregated reporting of non-individual data for internal and external clients of Customer or TAN. Any use of such data will conform with applicable laws related to personal privacy and best practises around permissive marketing, such as use of “opt-in” and/or “opt-out” notifications and rights.

**16. FEES FOR HOSTED SOFTWARE**

**16.1 Transaction fees.**

- (a) Customer shall pay to TAN the Hosted Software service fees (“**Service Charges**”) set out in the Pricing Form.
- (b) In cases where TAN’s banking or financial partners or similar service providers impose changes in processing costs payable by TAN, TAN reserves the right to modify Service Charges. TAN shall notify Customer at least ninety (90) days in advance of any such changes. Customer agrees to such changes unless Customer provides TAN with written objection to such charges within thirty (30) days from the date such change is implemented. In the event Customer notifies TAN of its objection to the changes as noted above, Customer’s sole remedy shall be to immediately terminate the Agreement as applied to the Hosted Software, subject to payment of any fees due prior to such notice of termination.
- (c) TAN will be responsible for collecting all payments processed through the Online Services and all Service Charges assessed by TAN. All payments are Customer’s exclusive property and will be sent to Customer twice a month while Service Charges shall be retained by TAN.
- (d) If Customer enters transactions at fee amounts less than those actually charged to Customer’s Users, thus reducing or

**GENERAL TERMS**

avoiding applicable Service Charges, such action shall constitute a material breach of this Agreement.

(e) TAN shall not be responsible for processing or making any refunds. All refunds for payments processed will be assessed a \$.10 fee charged by TAN to Customer. TAN may set off against user fees collected by TAN to the amount of any credit card charge backs and associated fees applicable to user transactions and to reimburse itself for any overdue fees owed to TAN by Customer. To the extent that such funds are not available for set off, Customer shall promptly reimburse TAN for any deficiency.

**16.2 Subscription fees.**

Customer shall pay to TAN the Hosted Software subscription fees (“**Subscription Fees**”) set out in the Pricing Form and for the term of this Agreement established in Section 18 below. Customer will be invoiced for their first year Subscription Fees upon the first live operational use of the Hosted Software (“Go-Live Date”), with subsequent annual Subscription Fees being invoiced upon each anniversary of Go-Live Date. Payment will be made Net 30 days from invoice date.

**17. EXCLUSIVITY FOR HOSTED SOFTWARE**

TAN will, during all periods for which Customer has subscribed for Hosted Software, be the sole and exclusive provider to Customer of the Hosted Software and Online Services, or any products or services substantially similar thereto, for the part of Customer’s organization utilizing the Hosted Software and Online Services.

**18. TERM FOR HOSTED SOFTWARE**

18.1 Unless otherwise provided in the Pricing Form, TAN shall provide to Customer, and Customer shall purchase from TAN, the Hosted Software commencing on the Effective Date of this Agreement, and remaining in full force for a period of three (3) years from the Go-Live Date of the Hosted Software (the “**Initial Term**”), with automatic renewals for three (3) year terms (each a “**Renewal Term**”) thereafter until either party gives written notice to terminate the Hosted Software no less than twelve (12) months prior to the end of the Initial Term or Renewal Term, as applicable.

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**SCHEDULE B: TERMS APPLICABLE ONLY TO LICENSED SOFTWARE AND ASSOCIATED SUPPORT AND MAINTENANCE SERVICES**

**19. ACCESS TO SYSTEM AND OTHER CUSTOMER OBLIGATIONS**

19.1 **Access.** Customer will provide, at no cost to TAN:

(a) subject to the security requirements of Customer, 24 hour access to Customer's system via either an always-available telephone circuit or an always available internet connection to enable TAN or its designated representative to perform any of the obligations placed upon TAN by this Agreement; and

(b) subject to the security requirements of Customer, remote dial up/internet access methods approved by TAN to allow TAN to remotely diagnose and correct errors in the Licensed Software and provide other Services.

**19.2 Customer Obligations.** Without limiting any of Customer’s other obligations under this Agreement, Customer will:

(a) use its best efforts to upgrade to any new Release or Version of the Licensed Software as soon as possible after becoming aware of its availability;

(b) ensure that at all times at least one current staff person of Customer has been fully trained on the Licensed Software; and

(c) designate by written notice a single site and single person as the point of contact for telephone or other contact, which site and/or person Customer may change upon 14 days prior notice to TAN.

**20. GRANT OF LICENSES AND LIMITATIONS THEREON**

20.1 TAN hereby grants to Customer a non-exclusive and non-transferable right and license, subject to this Agreement, to install and/or use the Licensed Software, in the manner contemplated in the applicable user documentation, as follows:

(a) **Workstation-Based Modules.** In respect of each Workstation-based Core Module and each Workstation-based Add-on Module, Customer may install and use each Module on Workstations to access the Enterprise Database on the Database Server, provided that the number of copies of any particular Module in use does not exceed the number of licenses granted to Customer therefore as set out in the Pricing Form.

(b) **Server-based Add-on Modules.** Customer may install and use each Server-based Module on as many Workstations as is desired by Customer, and Customer may use and permit use of such Modules by its clients, all without limit to the number of Users or transactions which simultaneously use any such Module, provided however that:

(i) in respect of each TeleReg & Voice Server Module, Customer may install one copy of each Module on one IVR Server, provided that the number of copies of any particular Module in use does not exceed the number of licenses granted to Customer therefore as set out in the Pricing Form, and all such Modules together may be in Concurrent Use not to exceed the number of licenses granted to Customer for TeleReg Lines Modules as set out in the Pricing Form; and

(ii) in respect of each Payment Server Module, such Modules may be in Concurrent Use not to exceed the number of licenses granted to Customer for Point of Sale Modules as set out in the Pricing Form.

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(c) **Server-based On-line (Internet) Modules.** In respect of each Server-based On-line (Internet) Module, Customer may:

- (i) install one copy of each Module on one Internet Server, provided that the number of copies of the Module in use does not exceed the number of licenses granted to Customer therefore as set out in the Pricing Form; and
- (ii) subject to 20(d), permit Users to access and use such Modules to access the Database Server via Internet Clients connecting via a licensed Internet Server, and all such Modules together may be in Concurrent Use not to exceed the number of licenses granted to Customer for Online Client Access Modules as set out in the Pricing Form multiplied by twenty-five (25).

(d) **Cumulative Workstation-based Modules.** In respect of each Cumulative Workstation-based Module, Customer may:

- (i) install one copy of each Module on a single Workstation for each license granted to Customer therefore as set out in the Pricing Form; and
- (ii) permit Users using such licensed Workstation(s) to use such Module(s) provided, for greater certainty, that the Modules may be in Concurrent Use not to exceed the number of licenses granted to Customer therefore as set out in the Pricing Form.

(e) Customer hereby acknowledges that the mechanism utilized by the Licensed Software to control the number of Users or Online Client Access which can simultaneously access and use Server-based On-line (Internet) Modules is based upon the number of Users who have at any time logged into Customer's computer network using their passwords, such that any User so logged into such network in a manner that would enable the User to access and use such Modules will reduce by one the number of Users able to simultaneously access those Modules, regardless of whether or not such User is in fact accessing or using any such Module. Customer hereby waives any claim, and releases TAN from any such claim and from any losses or damages Customer suffers in relation thereto, in connection with the inability of Users to simultaneously access such Modules where such inability is the result of inactive logged-in Users absorbing available login access.

20.2 **Additional Copies.** Customer will not make any copies of the Licensed Software except as necessary for the installation permitted hereby and except for:

- (a) copies of each Module licensed hereunder for training and testing purposes, and
- (b) one copy of each Module licensed hereunder for backup purposes, provided that all electronic copies made include screen displays of TAN's proprietary or intellectual property

notices as recorded on the original copy provided by TAN and Customer affixes a label to each disk, reel, or other housing for the medium on which each physical copy is recorded setting out the same proprietary and intellectual property notices as appear on the unit of Licensed Software from which the copy is made in the same manner as those notices appear on that original copy.

### 21. LICENSED SOFTWARE FEES

21.1 In respect of each Module, Customer shall pay to TAN all applicable Licensed Software fees listed in the Pricing Form upon delivery (as defined in Section 2.3) of the Licensed Software.

### 22. MAINTENANCE SERVICES

22.1 TAN will develop new Releases and new Versions of Licensed Software in accordance with the procedures and other particulars set out in the Support and Maintenance Handbook.

22.2 Provided that Customer continues to subscribe for Support and Maintenance in respect of a particular Licensed Software Product, TAN will provide to Customer, either in physical form by mail or courier or in electronic form via the Internet, new Releases and Versions (and appropriate documentation) for such Licensed Software Products as such Releases or Versions (and documentation) become available.

### 23. EXCLUDED SUPPLIES AND SERVICES

- (a) Without limitation, the following supplies and services are excluded from Support and Maintenance:
  - (b) Services which are required to remedy problems that stem from changes to or defects in system configuration upon which the Licensed Software was initially installed;
  - (c) Services which are required to remedy problems which do not stem from any defect in Licensed Software;
  - (d) Services which are required to remedy problems caused by lack of training of Customer's personnel or improper treatment or use of the Licensed Software;
  - (e) Full report customization service;
  - (f) Any and all hardware support, maintenance or troubleshooting issues, except as described in section 28.1 regardless of the source of such hardware.

### 24. FEES FOR SUPPORT AND MAINTENANCE

24.1 Support and Maintenance services begin on the Support Start Date. The cost for Support and Maintenance services is payable annually in advance and is due in its entirety thirty (30) days from date of TAN's delivered invoice. Customer may elect to specify a preferred alternate Support Renewal Date by so notifying TAN in writing. If an alternate preferred Support Renewal Date is specified, the cost of Support and Maintenance will be prorated from the anniversary of the Support Start Date to the specified Support Renewal Date. Thereafter, the Support and Maintenance fee is payable in

**GENERAL TERMS**

advance on every annual anniversary of the Support Start Date or, if there is a Support Renewal Date, every anniversary of the Support Renewal Date (the applicable anniversary being the “**Support Renewal Date**”). TAN will provide invoices to Customer for all such amounts, such invoices due on the later of (a) the Support Start Date or applicable Support Renewal Date, as applicable, and (b) 30 days from the date of the invoice.

24.2 For the first year of this Agreement commencing with the Effective Date, Support and Maintenance pricing shall be equal to twenty-five percent (25%) of the gross software license fees. Support and Maintenance pricing for all successive years shall be equal to twenty-five percent (25%) of the gross software license pricing charged by TAN for equivalent software as of the date of each such renewal year, provided, however, that any increase in TAN’s annual Support and Maintenance pricing for any renewal year shall not exceed ten percent (10%) of the renewal fees charged in the prior year. Any additional software licensed to Customer by TAN will increase the total gross software license fees upon which Maintenance and Support pricing is based. TAN will provide invoices to Customer for renewal fees up to 60 days prior to expiration of each term.

24.3 The Support and Maintenance fees identified in the Pricing Form are applicable only upon the date of entry into this Agreement, and are subject to change thereafter in accordance with this Agreement’s terms.

24.4 In consideration of the Support and Maintenance provided hereunder, Customer agrees to pay TAN the fees described in the Pricing Form, as modified explicitly pursuant to this Agreement. In the event Customer requires Support and Maintenance for additional Licensed Software, Customer agrees to pay TAN the additional Support and Maintenance fees applicable based upon the fees then in effect, prorated from the date of agreement to acquire such services to the Support Renewal Date.

24.5 Unless the Pricing Form indicates otherwise, the fees charged hereunder are applicable to Support and Maintenance of Licensed Software used with respect to only a single database of Customer data. If Customer, after entering this Agreement, places in service one or more additional databases to be used in relation to the Licensed Software, then for each such additional database, an additional 25% of all gross Licensed Software fees due, exclusive of such extra database fees, will be payable hereunder for Support and Maintenance. Customer will notify TAN as soon as reasonably possible of the installation or use of any such additional database(s).

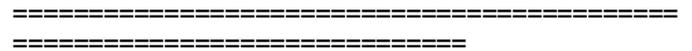
24.6 TAN may terminate and suspend performance of all Support and Maintenance if Customer fails to pay any past due TAN invoice within 30 days of written notice of such failure, in the event of any other material breach by Customer which remains uncured 30 days after notice thereof or if any of the Licensed Software ceases to be subject of a valid Software License Agreement.

24.7 If at any time after Customer has initially licensed any of the Licensed Software from TAN, Customer’s right to receive Support and Maintenance, or comparable services, from TAN under this Agreement or a comparable agreement has lapsed for any reason whatsoever, voluntarily or otherwise, and Customer wishes to receive Support and Maintenance from TAN, Customer will pay to TAN, prior to re-instatement of Support and Maintenance services:

- (a) a reinstatement fee equal to the greater of 50% of the current annual support fee or the sum of the unpaid support fees that would have been payable hereunder had this Agreement been in force during the time in which Support and Maintenance rights had so lapsed to the date of reinstatement, and
- (b) at least one additional year of Support and Maintenance from the date of reinstatement.

**25. TERM FOR SUPPORT AND MAINTENANCE**

25.1 **Term.** TAN shall provide to Customer, and Customer shall purchase from TAN, Support and Maintenance for a period commencing on the Support Start Date and, subject to termination as provided herein, continuing until the following Support Renewal Date or anniversary of the Support Start Date, with automatic renewals for one (1) year terms thereafter until either party gives written notice to terminate Support and the Maintenance no less than ninety (90) days prior to the end of the then-current term, provided however that the fees payable in respect of the Services and the Products may be revised by TAN in accordance with this Agreement.



**SCHEDULE C: TERMS APPLICABLE ONLY TO THIRD PARTY PRODUCTS AND SERVICES**

**26. PURCHASE AND SALE; DELIVERY**

26.1 **Purchase Commitment and Price.** TAN hereby agrees to sell to Customer, and Customer hereby agrees to purchase from TAN, the Third Party Products listed in the Pricing Form in the volumes and at the prices described therein.

26.2 **Delivery.** TAN will ship all or any part of the Third Party Products to Customer as soon as reasonably practicable (or, if the below-described purchase order documentation does not seek immediate shipping, at the time TAN considers reasonable in order to meet the desired delivery date described) after receipt by TAN of a purchase order from Customer specifying the particular Third Party Products sought, the number of such Third Party Products sought, the price payable therefore, and the desired date and location of delivery thereof. Any such purchase order must, at a minimum, reference quantity, description and price.

26.3 **Changes by Customer to Delivery Schedule.** Following delivery by Customer of any purchase order documentation described in section 26.2, no changes by

## GENERAL TERMS

Customer to the shipment schedule described therein will be permitted unless TAN is notified thereof in writing at least ninety (90) days in advance of the delivery date sought in such purchase order documentation.

**26.4 Acceptance of Purchase Orders.** Purchase orders delivered by Customer to TAN in respect of Third Party Products are not binding upon TAN until accepted by TAN in writing. In any case, despite any indication to the contrary contained in any such purchase order documentation, no terms or conditions on purchase order documentation issued by Customer, other than the information required by TAN as set forth expressly in this Agreement, will be binding upon TAN, nor will any such terms or conditions modify or supplement this Agreement in any way, notwithstanding the fact that TAN may accept or otherwise approve such purchase orders. TAN reserves the right to refuse any such purchase order for any reason not contrary to this Agreement, including without limitation pricing differences as described in section 27.2.

**26.5 Additional Third Party Products.** Customer may purchase Third Party Products in addition to those listed in the Pricing Form by issuing additional purchase order documentation as described herein, provided that the supply (or non-supply) of such additional Third Party Products will be subject to this Agreement as though such additional Third Party Products had been included in the Pricing Form on the date of execution of Pricing Form subject to the following:

- (a) the price for such additional Third Party Products is subject to agreement between the parties each in their own absolute discretion, and
- (b) TAN shall have the right to discontinue delivery of such additional Third Party Products upon at least ninety (90) days written notice to Customer without any liability to Customer whatsoever for such discontinuance.

## 27. CHARGES AND PAYMENTS

**27.1 Prices.** The pricing applicable to Third Party Products is as set out in the Pricing Form in the form finally agreed to by the Parties.

**27.2 Pricing Variability.** Customer acknowledges that:

- (a) the prices described in Pricing Form are applicable for six (6) months after the date of execution hereof, and such prices are based upon Customer taking delivery of the full number of any particular Third Party Product listed in Pricing Form in a single shipment
- (b) and Customer hereby agrees that after the expiry of such initial six-month period or, in case of Customer seeking, in a particular shipment, delivery of less than all of the Third Party Products of a particular type listed Pricing Form, the actual prices may be higher. Prior to shipment of any Third Party Products that would be subject to pricing that differs from that described in the Pricing Form, TAN will notify Customer of any such different pricing and Customer will accept such

different pricing, as mutually agreed between Customer and TAN, in writing.

## 28. SUPPORT FOR THIRD PARTY PRODUCTS

28.1 For the purpose of isolating support issues and responsibility in respect of Third Party Products and their interaction with any Products, TAN will provide initial first-tier support, to a maximum of fifteen (15) minutes per support inquiry, for Third Party Products, as further specified in the Support and Maintenance Handbook.

## 29. PROPRIETARY RIGHTS

**29.1 Third Party Proprietary Rights and Indemnity by Customer.** Customer acknowledges that any Third Party Products supplied by TAN hereunder are supplied by TAN as a reseller thereof and that the Third Party Products are subject to the intellectual property rights of the various third party developers and/or manufacturers thereof, as applicable, including without limitation copyright, trade secret, trademark, and patent rights. Customer will maintain in confidence and not use or disclose any and all confidential business or technical information connected with any Third Party Product except as specifically permitted by a party having legal control of such rights, and Customer will defend or settle any claim made or any suit or proceeding brought against TAN insofar as such claim, suit, or proceeding is based on an allegation that any Third Party Product provided to Customer hereunder has been installed, used, or otherwise treated by Customer or any client or customer of Customer in violation of the proprietary rights of any third party or on an allegation that Customer or any client or customer of Customer has disclosed or used any confidential business or technical information connected with any Third Party Product, provided that TAN will notify Customer in writing promptly after the claim, suit, or proceeding is known to TAN and will give Customer such information and assistance as is reasonable in the circumstances. Customer will have sole authority to defend or settle any such claim at Customer's expense. Customer will indemnify and hold TAN harmless from and against any and all such claims and will pay all damages and costs finally agreed to be paid in settlement of such claim, suit or proceeding.

**29.2 Third Party Products which are Software.** Customer acknowledges that the possession, installation and use of all Third Party Products which are software shall be governed by the terms of the software license(s) of the persons other than TAN who possess the rights to control such possession, installation and use.

## 30. WARRANTY

**30.1 Warranty.** TAN warrants to Customer that TAN has the right to deliver the Third Party Products subject to any documentation accompanying such Third Party Products at the time of delivery and/or any licensing mechanisms, physical, electronic or otherwise, included in any Third Party Products that are software.

## GENERAL TERMS

**30.2 Warranties Provided by Third Party Suppliers.** Third Party Products are warranted by the manufacturers thereof in accordance with the warranty statements accompanying delivery of the Third Party Products, and Customer agrees that Customer will rely solely on such Third Party Product warranties and Customer shall make no claim against TAN on account of any warranty, express or implied, which may apply to any Third Party Product.

## GENERAL TERMS

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-2

Contact – Ken Wilson, Director of Community Services, 547-4221  
kwilson@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on authorizing the City Manager to enter into a contract with Active Network to supply online registration and program management software.**

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#### 1. BACKGROUND/HISTORY

During 2007-2008 budget discussions Parks and Recreation staff indicated a need for program management software that would allow for the more effective management of the departments recreation programs, rentals and special events. There was also a desire to allow for online registration of recreation programs.

#### 2. FINDINGS/CURRENT ACTIVITY

In May of 2008 the City of Copperas Cove City Council issued tax notes that included \$15,000 for program management software. Staff has since researched various software package options and has chosen a software package that will allow for online registration as well as provide program management. Active Network will fully integrate with INCODE for accounting purposes. The software also will provide league management, reporting capabilities, marketing tools, and has the ability to add new features as needs arise.

#### 3. FINANCIAL IMPACT

The Active Network software will cost \$6,600 for the software, financial integration, and training. The annual cost for using the software is determined by the total number of registrations with a minimum service charge of \$5,000 per year. Funding for software is in the May 2008 tax notes and the service charges will be paid out of operating funds.

#### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends City Council to authorize the City Manager to enter in to an agreement with Active Network to supply online registration and program management software.

**ORDINANCE NO. 2008-43**

**AN ORDINANCE OF THE CITY OF COPPERAS COVE, TEXAS REPEALING THE CURRENT SIGN REGULATIONS CONTAINED IN THE ZONING ORDINANCE, APPENDIX B OF THE CITY'S CODE OF ORDINANCES AND ADOPTING A NEW SIGN ORDINANCE FOR THE CITY OF COPPERAS COVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS,** the City staff has studied and reviewed the City's current Sign Regulations which are a part of Appendix B of the Code of Ordinances; and,

**WHEREAS,** after studying and reviewing the current Sign Regulations by the City staff, and determining that it was necessary for the current Sign Regulations to be reorganized and rewritten to accommodate new sign technology and for easier utilization and application by citizens, builders, developers, members of the Planning and Zoning Commission and staff, and in the best interest of the City of Copperas Cove; and

**WHEREAS,** the City staff is proposing an amendment to the City's current Sign Regulations; and

**WHEREAS,** City Council finds that it is in the best interest of the City of Copperas Cove to adopt the newly revised Sign Ordinance.

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

**SECTION 1.**

That the current Sign Regulations contained in Chapter 16.5 of the City's Code of Ordinances is hereby amended and the new Sign Ordinance Regulations attached hereto are hereby adopted and incorporated herein.

**SECTION 2.**

That any ordinances or resolutions or part of ordinance or resolutions in conflict with the provisions of this Sign Ordinance are hereby repealed to the extent of such conflict.

**SECTION 3.**

That should any section, clause, or provision of the Sign Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.

**SECTION 4.**

That this Sign Ordinance shall go into effect upon passage.

**PASSED, APPROVED AND ADOPTED** this 3rd day of November 2008, at a regular meeting of the City Council of the City of Copperas Cove, Texas, which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code* §551.001, et.seq., at which meeting a quorum was present and voting.

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Robert L. Reeves, Mayor Pro Tem

**ATTEST:**

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Jane Lees, City Secretary

**APPROVED AS TO FORM:**

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Charles E. Zech, City Attorney



Copperas Cove

# **SIGN REGULATIONS**

*City of Copperas Cove*

October 2008

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# SIGN REGULATIONS

## I. PURPOSE:

Signs use private land near the public rights-of-way to inform and persuade the general public by publishing a message. This section provides standards for the erection and maintenance of private signs. All private signs not exempt as provided below shall be erected and maintained in accordance with these standards. The general objectives of these standards are to promote health, safety, welfare, convenience, and enjoyment of the public, and in part, to achieve the following:

- A. Safety: To promote the safety of persons and property by providing that signs:
  - 1. Do not create a hazard due to collapse, fire, collision, decay or abandonment.
  - 2. Do not obstruct fire fighting or police surveillance.
  - 3. Do not create traffic hazards by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs.
- B. Communications Efficiency: To promote the efficient transfer of information in sign messages by providing that:
  - 1. Those signs which provide messages and information most needed and sought by the public are given priorities.
  - 2. Businesses and services may identify themselves.
  - 3. Customers and other persons may locate a business or service.
  - 4. No person or group is arbitrarily denied the use of the sight lines from the public rights-of-way.
  - 5. Persons exposed to signs are not overwhelmed by the number of messages presented, and are able to exercise freedom of choice to observe or ignore said messages, according to the observer's purpose.
- C. Landscape Quality and Preservation: To protect the public welfare and to enhance the appearance and economic value of the cityscape, by providing that signs:
  - 1. Do not interfere with scenic views.
  - 2. Do not create a nuisance to persons using the public rights-of-way.
  - 3. Do not create a nuisance to occupancy of adjacent and contiguous property by their brightness, size, height or movement.
  - 4. Are not detrimental to land or property values.

## II. ADMINISTRATION:

The provisions of this ordinance shall be administered and enforced by the Building Official and his authorized representative of the City of Copperas Cove.

## III. PERMIT PROCEDURES AND FEES:

- A. Requirements:

No sign shall be erected, constructed, relocated, altered, or substantially repaired except as provided in this ordinance until a permit for such has been issued and the fee paid, except as otherwise provided in this ordinance. All sign construction shall conform to the Building Code, as adopted.
- B. Application for Permits:

All applications for permits shall include a drawing to scale of the proposed sign and all existing signs maintained on the premises and visible from the right-of-way, a drawing of the lot plan or building façade indicating the proposed location of the sign, and sign specifications. Applications shall be made to the Chief Building Official on forms provided by the City.

- C. Permit Issuance:  
A permit shall be issued if the application demonstrates that the sign is in full compliance with the provisions of this ordinance and the Building Code as codified by the City Council. If the Chief Building Official determines that the application is in full compliance with the regulations mentioned in this paragraph the permit shall be issued.
- D. Fee Required:  
Fees for a permit to erect, alter, replace or relocate a sign shall be as provided in the Copperas Cove Fee Schedule.
- E. Repair Permit  
It shall be unlawful for any person to repair or make alterations to any sign requiring a permit without first obtaining a repair permit and making payment of the fee required. Fees for a permit to repair shall be as provided in the Fee Schedule.
- F. Late Fee:  
When a sign is erected, placed or substantially repaired, or work started thereon before obtaining a sign permit, the permit fee shall be doubled. The late fee does not excuse full compliance with the provisions of this ordinance.
- G. Electrical Permit:  
Prior to issuance of a sign permit for a sign in which electrical wiring and connections are to be used, an electrical permit must be obtained according to the existing fee schedule. The electrical inspector shall examine the plans and specifications submitted with the application to insure compliance with the Electrical Code of the City. No sign shall be erected in violation of the Electrical Code.

#### IV. SPECIAL DEFINITIONS:

For the purpose of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section.

1. Appurtenance – a small panel containing single or multiple words, symbols, or devices that serve to add to or become accessory to the content of the main or larger sign. These are typically smaller signs or panels that are mounted adjacent to the main sign on the supporting structure of the main sign.
2. Banner – A flexible roll up sign made of vinyl or cloth intended to be supported by ropes; hung between poles on store fronts usually advertising business or events for a store such as sale or grand opening type messages, also containing words, symbols or logos intended for advertising or attracting attention to a business or event. The intent of a banner is that of a temporary device.
3. Building – Any structure built for the support, shelter, and enclosure or protection of persons, animals, chattels or movable property of any kind.
4. Billboard – the largest off-premises sign permitted under this ordinance, usually leased by the owner for product or service advertising.
5. CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGN (CEVMS) – A sign which permits light to be turned on or off periodically or which is operated in a way whereby light is turned on or off periodically (including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, LED (light emitting diode) sign or digital sign) and which varies in intensity or color. A CEVMS sign does not include a sign located within the right-of-way that functions as a traffic control device and that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) approved by the Federal Highway Administrator as the national standard.
6. Effective Area – The area enclosed by drawing a rectangle of horizontal and vertical lines which fully contain all extremities of the sign drawn to scale, exclusive of its supports. The measurement is to be calculated from a viewpoint which gives the largest rectangle of that kind,

- as the viewpoint is rotated horizontally around the site. The effective area for attached signs shall mean the sum of the areas of the minimum imaginary rectangles enclosing each word attached to any particular façade (see Appendix - Illustration 1).
7. Façade – Any separate face of a building, including parapet walls and vertical offsets, or any part of a building which encloses or covers usable space. Where separate faces are oriented in the same direction, or in the directions within forty-five degrees (45°) of one another, they are to be considered as a part of a single façade.
  8. Flag, Corporate – The official flag of a company including logo flags and special event flags supplied by a parent company.
  9. Flag, National – The flag of the United States of America.
  10. Flag, Spirit – School flags or flags that contain crests, pictures and such but contain no advertising.
  11. Flag, State – The flag of the State of Texas, or the flags of other states in the United States of America, or its protectorates.
  12. Inflatable devices – Devices filled with air or other gasses either sealed or fed with a constant air supply (fan or pressure fed) designed to attract attention to a business or event. These include but are not limited to balloons that are lighter than air and tethered, balloons that are filled with air and anchored or other inflatable devices that are set in motion by a constant air supply (air powered devices).
  13. Luminance – The brightness of a lamp or sign or a portion thereof expressed in terms of foot-candles.
  14. NIT – a unit of luminance also called candela per square meter. Often used to quote the brightness of computer displays, which typically have luminance of 50 to 300 nits (the sRGB specification for computer monitors targets 80 nits). Modern flat-panel (LCD and plasma) displays often exceed 300 nits.
  15. Non-conforming signs - Any sign which does not conform to all provisions of this ordinance shall be a non-conforming sign if it legally existed as a conforming or non-conforming sign, as the case may be, prior to the adoption of this ordinance.
  16. Political Sign– Signs which by their content support or oppose any candidate for public office or any proposition to be voted upon at an election, or which make a political or ideological statement in the nature of constitutionally protected non-commercial free speech.
  17. Portable and/or Display Sign – A sign or display surface temporarily fixed to a standardized advertising or structure which can be regularly moved from its location at period intervals and is not permanently affixed to the real property.
  18. Premises – A lot or unplatted tract, or a combination of contiguous lots or unplatted tracts if the lot or tract, or combination, is under single ownership and is reflected in the plat records of the County.
  19. Sign – Any outdoor structure, sign, display, light device, figure, painting, drawing, message, plaque, poster, billboard, or other thing that is designed, intended, or used to advertise or inform.
  20. Signs by type:
    - a) Attached Sign – a sign attached to, applied on, or supported by, any part of a building (such as a wall or roof) which encloses or covers usable space. (Also called a wall sign.)
    - b) Detached Sign – a sign connected to the ground which is not an attached sign, inclusive of signs on moveable objects, except signs on vehicles which are moving or are parked only temporarily, incidental to their principal use for transportation. (Also termed “pole sign” or “free-standing sign”.
    - c) Device Sign – a flag, hot air balloon, banner, pennant, streamer, or similar device that moves freely in the wind. All wind devices are considered to be signs, and are regulated and classified as attached or detached, by the same rules as other signs. (Also termed “wind device”.)
    - d) Construction Sign – sign or signs indicating the construction contractors or subcontractors constructing upon the site.
    - e) Government Sign - signs which are legally required or necessary to the essential functions of government agencies.

- f) Monument Sign – a free-standing sign having a low profile and made of stone, concrete, metal, routed wooden planks or beams, brick or similar materials. These signs shall be designed to repeat or harmonize with the architecture of the structure of the building it serves.
  - g) Off-Premises Sign – Any sign which is not a premises sign.
  - h) Political Sign – Any type of non-premises sign that refers only to the issues or candidates involved in a political election.
  - i) Premises Sign – a freestanding sign identifying or advertising a business, person, or activity, and installed and maintained on the same premises as the business, person, or activity. (Also called “on-premises sign”.)
  - j) Projected Sign – a sign which extends out or beyond the face of the building more than eighteen inches (18”) with the message or face perpendicular to the face of the building.
  - k) Protective Sign – a sign which is commonly associated with safeguarding the permitted uses of the occupancy, including, but not limited to, “beware of dog”, “no trespassing”, and “no solicitors”.
  - l) Temporary Sign – A sign temporarily supplementing the permanent signs on the premises. Signs indicating a business opening, “For Lease”, or “For Rent” are special purpose signs.
  - m) Traffic Control Sign – A sign which directs vehicular or pedestrian movement within or onto the premises on which the movement control sign is located
  - n) Vehicular Sign – Any sign on any vehicle parked temporarily, incidental to its principal use for transportation.
21. Sign Support – Any pole, post, strut, cable, or other structural fixture or framework necessary to hold and secure a sign, providing that said fixture or framework is not imprinted with any picture, symbol or word using characters in excess of one inch in height, nor is internally or decoratively illuminated.
22. Streamers – Streamers, pendants, flags, reflective tinsel and other devices strung on ropes or wires designed to be strung between buildings or poles.
23. Zoning District, Business or Manufacturing – Any business or manufacturing zoning district designated by the Zoning Ordinance of the City of Copperas Cove.
24. Zoning District, Non-Business – Any zoning district not designated as a business or manufacturing district in accordance with the above definition.

## V. PROVISIONS FOR ALL ZONING DISTRICTS:

### A. Banners

- 1. Banners may be displayed for no more than thirty (30) days.
- 2. No more than two banners per building may be displayed.
- 3. Banners may not exceed twenty-four (24) square feet.
- 4. Banners may only be attached to the main structure or to poles in a taut manner and must be a minimum of 12’ from the bottom of the sign above the ground. Temporary poles and fence posts are prohibited. Poles installed in thick sleeves that are removable would be considered permanent poles provided they have a footing.
- 5. Banners must be professionally made, assembled from professionally-made components, or done in a manner that appears to be professionally made.

### B. Changeable Electronic Variable Message Signs (CEVMS) standards.

- 1. The interval of change between each individual message shall be at least ten seconds, not including the time required for one message to transition to the next. A change of message must be accomplished within two seconds or less.
- 2. The sign shall contain a default mechanism that will freeze the display in a static image if a malfunction occurs.
- 3. The sign may not display light of such intensity or brilliance to cause glare, impair the vision of an ordinary driver, or constitute a nuisance. For purposes of this section, the terms **DAYTIME** and **NIGHTTIME** shall have the meanings set forth in Texas Transportation Code § 541.401, as amended, and light exceeding the following intensity levels (NITS) constitute a nuisance:

<b><i>Intensity Levels (NITS)</i></b>		
<b><i>Color</i></b>	Daytime	Nighttime
Red Only	3,150	1,125
Green Only	6,300	2,250
Amber Only	4,690	1,675
Multiple Colors	7,000	2,500

4. Prior to the issuance of a sign permit, the applicant shall provide written certification from the sign manufacturer that the light intensity has been factory programmed not to exceed 7,000 NITS and that the intensity level is protected from end-user manipulation by password-protected software, or other method satisfactory to the Chief Building Official.
5. The sign shall not:
  - a. Resemble a warning or danger signal;
  - b. Resemble or simulate any lights or official signage used to control traffic in accordance with the current version of the Manual on Uniform Traffic Control Devices, including any revisions, published by the Federal Highway Administration (FHWA); or
  - c. Cause an ordinary driver to mistake the sign for a warning or danger signal.
6. Nothing in this section shall be construed to permit light in violation of Sec. 20-25 of the Copperas Cove Zoning Ordinance, or any other applicable regulation. In addition, to the extent of any conflict this section controls over Section VIII of this ordinance.

**C. Construction Signs**

Temporary construction signs are allowed when complying with the requirements of this ordinance, providing that such signs shall not be erected prior to the issuance of the building permit for the project to which the sign pertains. Construction signs are allowed upon the property upon which the construction is taking place and shall be removed upon release of the property for occupancy or completion of the project. No permit is required for construction signs.

**D. Flags**

1. Any time the American flag is displayed, it will be in accordance with public law 94-344, dated July 7, 1976 and will not be torn, tattered or faded.
2. Spirit flags may be flown with the permission of the City Manager or his/her designee.
3. Corporate flags and flags provided by parent companies may be displayed as long as they are fixed to poles or standards provided on the property. When such flags become tattered or faded, they must be removed or replaced.

**E. Government Signs**

Nothing in this ordinance shall be construed to prevent the display of any signs which are legally required or necessary to the essential functions of government agencies.

**F. Inflatable devices**

1. Lighter than air devices.
  - a. No such device shall be tethered or anchored in or on public right-of-way.
  - b. No such device shall be placed on public property without the written consent of the governing agency.
  - c. Anchorage for any lighter than air device must be adequate to keep the device in the desired location with the anchorage device remaining stationary.
  - d. Lighter than air devices shall not be filled with any explosive or flammable gas.

- e. Lighter than air devices may not remain aloft during hours of darkness unless they are illuminated.
  - f. Lighter than air devices may not be displayed for more than 18 (eighteen) consecutive hours, and for more than 10 (ten) consecutive days.
2. Air filled devices.
- a. No such device shall be tethered or anchored in or on public right-of-way.
  - b. No such device shall be placed on public property without the written consent of the governing agency.
  - c. No device of this type may be filled with any explosive or flammable gas.
  - d. The tethering or anchorage for this type of device shall be such that if part of the tethering or anchorage becomes unattached, the remaining anchorage or tethering will prevent the device from interfering with vehicles or pedestrians or enter onto public or other private property.
  - e. This type of device may be displayed for no more than 10 (ten) consecutive days.
3. Air powered devices.
- a. No such device shall be tethered or anchored in or on any public right-of-way.
  - b. No such device shall be placed on public property without the written consent of the governing agency.
  - c. The tethering or anchorage for this type of device shall be such that if part of the tethering or anchorage becomes unattached, the remaining anchorage or tethering will prevent the device from interfering with vehicles or pedestrians or enter onto public or other private property.
  - d. This type of device may be displayed for no more than 10 (ten) consecutive days.  
This type of device must be located in a place so as to not interfere with any vehicles or pedestrians or enter onto public or other private property if the air supply fails.
- G. Lighted Signs
- Lighted signs shall be allowed in accordance with the following:
- 1. All electrical wiring shall conform to Article 600 of the National Electrical code edition in effect at the time of permit issuance.
  - 2. No single light bulb shall exceed 40 watts.
  - 3. Lighted signs shall not resemble official traffic signals or emergency vehicle lights.
  - 4. Sign lighting shall not move, flash, strobe, blink, rotate, change in intensity, or appear to do any of the foregoing. *Exception:* decorative building lighting, including permitted wall signs, when the same are at least twenty-five (25) feet from the property line along any roadway running contiguous with the premises. Also, lighted signs which indicate time and/or temperature shall be excepted.
  - 5. If any sign lighting, including CEVMS signs, shall be reasonably calculated to constitute a hazard to the safety of motorists operating vehicles at night, such lighting shall be altered or changed to eliminate the hazard whether or not such lighting meets the other provisions of this chapter.
  - 6. No lighted sign shall be erected within one hundred and fifty (150) feet of a residential district unless the lighting is shielded from view of the residential district.
- H. Luminance
- No lighted sign shall be erected within one hundred and fifty (150) feet of a residential district unless the lighting is shielded from view of the residential district. Changeable Electronic Variable Message Signs (CEVMS) must comply with the luminance restrictions contained in paragraph C of section V in this chapter.
- I. Political Signs
- 1. Political signs may be placed upon private real property, as defined in the Local Government Code Chapter 214 section 903, with the consent of the property owner. The signs may be placed without a municipal permit or municipal fee. If the city should provide a charge for the removal of a political sign, this charge shall be no greater than the charge applied for the removal of any other sign of similar size and configuration.
  - 2. A Political Sign cannot:

- a. Have an effective area greater than thirty six (36) square feet;
  - b. Be more than eight feet high;
  - c. Be illuminated; and
  - d. Have any moving elements.
- J. Portable Signs  
Portable signs are not permitted
- K. Protective Signs  
The occupant of a premises may erect not more than two protective signs, in accordance with the following provisions:
  - 1. Each sign must not exceed one (1) square foot in effective area.
  - 2. Detached signs must not exceed two (2) feet in height.
  - 3. Letters must not exceed four (4) inches in height.
- L. Searchlights are permitted but the searchlight permit shall expire one week after the beginning date. The Chief Building Official shall issue no more than four (4) searchlight permits for the same property in one calendar year.
- M. Sign on Fence, Wall, etc.  
No person shall paint a sign or attach a sign, other than a nameplate and address (showing a street number), to the outside of a fence, railing or a wall which is not a structural part of a building, whether or not on the property line. A sign identifying the fence manufacturer, not to exceed one (1) square foot, may be placed on each fence.
- N. Sign on Sidewalk, Street, etc.  
No person shall attach any sign, paper, material, or paint, stencil, or write any name, number (except house or street address numbers) or otherwise mark on or obstruct any sidewalk, curb, gutter, or street.
- O. Sign on Pole, Tree, Etc.  
No person shall attach or maintain any sign upon any public utility pole or other public structure to include trees on public property. .
- P. Signs over Right-of-Way (on premises)  
Except traffic control devices, street signs, or directional signs placed by the City or State, Signs over or in the right-of-way are prohibited except in the downtown District.
- Q. Streamers and pendants.
  - 1. Such devices may only be strung from buildings or poles.
  - 2. No such devices may be nearer to the ground than twelve feet (12').
- R. Any such device that is missing 25% (1/4) of the flags, pendants or tinsel must be removed or replaced.
- S. Traffic and Directional Control Signs  
Traffic control signs may be erected at any occupancy or any premises, other than a single family or duplex premises, may be attached or detached, and may be erected without limit as to number, provided that such signs shall comply with all other applicable requirements of this ordinance. The occupant of a premises who erects a traffic control sign shall comply with the following requirements:
  - 1. Each sign must be stationary and not exceed two (2) square feet in effective area or as required by MUTCD.
  - 2. If a sign is an attached sign, the words must not exceed four (4) inches in height.
  - 3. Each sign must convey a message that directs vehicular or pedestrian movement within or onto the premises on which the sign is located.
  - 4. The signs must contain no advertising but may have company identification or logo.

T. Utility identifications and warning devices.

Utility identification markings on poles or for underground pipe and line warnings do not come under the realm of signage for purposes of this ordinance. Warning and identification devices are exempt from this ordinance and may be located in the Right-Of-Way when used to identify equipment in that Right-Of-Way.

U. Vehicular Signs

Vehicular signs shall conform to the following restrictions:

1. It shall be unlawful to attach any sign to a trailer, skid, or similar mobile structure or vehicle, where the primary use of such structure is to provide a base for such sign or constitute a sign itself. This provision does not restrict the identification signs on vehicles used for any bona fide transportation activity.
2. Signs attached to or upon any vehicle shall be prohibited where any such vehicle is allowed to remain parked in the same location, or in the same vicinity, at frequent or extended periods of time and where the intent is apparent to be one of using the vehicle and signs for purposes of advertising an establishment, service, or product. Vehicles operating under a city franchise shall be excluded from this provision.
3. Signs shall extend no more than twenty-four (24) inches from the top of any vehicle.
4. Exempt signs: Temporary construction trailers on construction sites and advertisement of any company. Emergency vehicle signs are exempt from this ordinance.

VI. BUSINESS DISTRICT SIGN REQUIREMENTS:

A. Detached Signs (on premises):

1. Detached signs are permitted in business zoning districts as provided in this ordinance.
2. Detached signs must be premises signs; off-premises signs may be allowed according to Article VIII, Billboards and Other Off-Premises Signs.
3. Number of Signs – Only one detached sign of any type may be erected on any premises or lot, except that:
  - a. Premises that have more than four hundred fifty (450) feet of frontage along the public right-of-way, other than an alley, may have one (1) additional detached sign for each additional four hundred fifty (450) feet or portion thereof of frontage.
  - b. Properties having frontage on two streets may have two free-standing detached signs, one facing each direction of travel.
4. Design Specifications – Pole signs, advertising both single tenant and multi-tenant users, shall be allowed and shall be governed by the following design standards and regulations:
  - a. Detached signs exceeding ten (10) feet in height but not exceeding twenty (20) feet in height and with an effective area of fifty (50) square feet or less may be located as near as ten (10) feet to the public right-of-way as measured from the closest edge of the sign. Total cross-sectional area shall not exceed three (3) square feet.
  - b. A detached sign of an effective area of one hundred fifty (150) square feet or less may be located as near as fifteen (15) feet to the right-of-way, provided that said sign is a premises sign at least ten (10) feet high, and does not exceed thirty (30) feet in height. In the event of back-to-back signs, the space between signs shall not exceed six (6) feet measured horizontally.
  - c. A detached sign of an effective area of three hundred (300) square feet or less may be located as near as twenty-five (25) feet to the right-of-way or as near as the building setback line specified by the Zoning Ordinance, whichever is further, provided that the sign is at least ten (10) feet high and does not exceed a height of forty (40) feet. Total cross-sectional area shall not exceed nine (9) square feet.
  - d. No detached sign(s) shall exceed three hundred (300) square feet in effective area or forty (40) feet in height except as hereinafter provided in Article VIII for certain detached non-premises signs.

- e. All set backs shall be measured from right-of-way to nearest edge of sign (see Appendix - Illustration 2).
- 5. Multiple Occupants or Establishments
  - a. Detached sign designed to identify multiple establishments and/or advertise multiple occupants within a shopping center, office park or medical center are acceptable but must conform to (4) above.
  - b. Signs for bed and breakfast facilities shall be limited to one (1) on-premises detached sign not exceeding eight (8) square feet.
- 6. Changeable Electronic Variable Message Signs (CEVMS) signs may be used in detached sign applications as follows:
  - a. The change in message capability of CEVMS signs allows one sign to present multiple messages. Therefore, only one sign may be used per parcel or property (whichever is more restrictive) and no additional signs may be attached to a CEVMS sign or CEVMS sign support.
  - b. On premises detached CEVMS signs are limited to one hundred forty four (144) square feet in message area.
  - c. The maximum height of a CEVMS sign, including supporting structure, is 25 feet above nearest grade or street height, whichever is lower.
- 7. Monument Signs are permitted (see Appendix - Illustration 3).

**B. Attached Signs**

Attached signs are permitted in business districts in accordance with the provisions of this ordinance.

- 1. All attached signs must be on-premises signs.
- 2. Maximum Effective Area – Total effective area of attached signs shall not exceed the following:
  - a. An attached sign located at a height up to thirty-six (36) feet or less shall be limited to one (1) square foot of sign area for each linear foot of building frontage on a public street not to exceed one hundred (100) square feet.
  - b. An attached sign located at a height of thirty-six (36) feet or above shall be permitted an increase in maximum effective area. Such increases shall not exceed four (4) square feet in effective area for each additional one (1) foot of height above thirty-six (36) feet, measured from the base of the sign.
- 3. Specifications for Special Purpose Signs – Any premises or any non-residential occupancy may temporarily display one special purpose attached sign on each building façade, limited to eight (8) words with characters equal to or exceeding a height of four (4) inches. The total effective area of the combined signage shall contain no more than fifty (50) square feet.
- 4. Projection from Building Surface – All attached signs and their words shall be mounted parallel to the building surface to which they are attached, and shall project no more than eighteen (18) inches from the surface except as follows:
  - a. Any premises or any non-residential occupancy may erect not more than one attached sign projecting up to a maximum of four (4) feet from a vertical building surface, but not above the roof, provided that the premises or occupancy maintains no detached sign on the premises, and that the sign does not exceed twenty (20) square feet in effective area and that no part of the sign descends closer to site grade than ten (10) feet, nor projects into or over any public right-of-way (see Appendix - Illustration 4).
  - b. On any premises or non-residential occupancy, a sign may be erected at the eaves or edge of the roof or on a parapet or edge of a canopy, provided that the sign is parallel to the façade, and does not project more than four (4) feet from the surface to which it is attached (see Appendix - Illustration 5).
  - c. Notwithstanding any of the above requirements, no building front or wall shall exceed thirty five per cent (35%) of that wall or front in signage including signs attached to windows.

5. Approved metal or wood backing is required for all attached wall or projected signs and shall be adequately anchored.

## VII. PROVISIONS FOR NON-BUSINESS ZONING DISTRICTS

### A. Application of Division

The provisions of this article apply to all signs in any non-business district, and also to signs which are within twenty-five (25) feet of a non-business district boundary.

### B. Special Purpose and Premises Signs

An occupant in non-business zoning districts may erect only special purpose signs, and premises signs, which include movement control signs and protective signs. No sign shall exceed eight (8) square feet.

### C. Detached Premises Signs – Multi-Family

Multi-family premises may have detached signs subject to the following restrictions:

1. Number of signs – Each premises may have no more than one detached premises sign provided however, that premises with more than seven hundred fifty (750) feet of frontage along a public street, other than an alley, may have not more than one additional detached sign for each five hundred (500) feet of additional frontage or fraction thereof. Each premises may display not more than one detached special purpose sign.
2. Setback, effective area, and height – A minimum setback of ten (10) feet is required of all detached signs. A minimum setback of fifteen (15) feet from the public right-of-way is required for signs exceeding ten (10) square feet in effective area or ten (10) feet in height. A minimum setback of twenty (20) feet is required if effective area exceeds twenty (20) square feet. No detached signs shall exceed fifty (50) square feet in effective area and twenty (20) feet in height.

### D. Attached Premises Signs – Multi-Family

Attached signs are permitted for multi-family premises subject to the following restrictions:

1. All attached signs must be premises signs.
2. All signs erected pursuant to this section shall be limited to one (1) per complex per street frontage.
3. All signs and their words shall be mounted parallel to the building surface to which they are attached. No signs or words shall project more than eighteen (18) inches from the surface to which they are attached. Signs shall not be mounted on roofs and shall not project above the roof.

### E. Detached Premises Signs – Single Family or Duplex Residential

A single family or duplex residential premises may display one detached special purpose sign referring to the sale or lease of the premises, and may display detached political signs provided that detached special purpose and political signs must conform to all the restrictions set forth in this section. Detached signs advertising home occupations are prohibited.

### F. Attached Premises Signs – Single Family or Duplex Residential

A single family or duplex residential premises may display one attached sign referring to the sale or lease of the premises. This sign must conform to all restrictions set forth in this section. Attached signs advertising home occupations are not permitted.

## VIII. BILLBOARDS AND OTHER OFF-PREMISES SIGNS

A. Size and Height

1. Maximum sign area for billboards shall be six hundred seventy-two (672) square feet, excluding cutouts, with maximum dimensions of twenty-five (25) feet in height and sixty (60) feet in width. Cutouts may not exceed twenty percent (20%) of the sign's effective area.
2. Maximum sign area for off premises CEVMS signs shall be one hundred forty four (144) square feet. If a CEVMS sign larger than one hundred forty-four (144) square feet is requested, it must meet all requirements of an off-premises billboard sign as well as meeting all CEVMS restrictions on sign characteristics. If a conflict between the billboard and CEVMS sign regulations exists, the more restrictive of the two shall be prescribed.
3. No sign may have more than one side facing a particular direction of travel on the main traveled right-of-way. Signs, which exceed three hundred (300) square feet, may not be stacked or placed side-by-side. If a sign is erected in a back-to-back or "V" type configuration, it cannot be double-faced, but will be limited to only one face for each direction of travel.
4. No off-premises billboard sign shall exceed forty-two and one-half (42 ½) feet in height measured from the top of the sign to the roadway from which it is to be viewed or existing grade, whichever is higher. .

B. Spacing and Location

1. Off-premises signs are allowed only in the following zoning districts:
  - a. B-3 – Local Business District
  - b. B-4 – Business District
  - c. B-5 – Business District
  - d. M-1
  - e. M-2 – Heavy Manufacturing District
2. An off-premises billboard sign may not be erected within two thousand six hundred forty (2,640) feet (1/2 mile) of another off-premises billboard sign nor within eight hundred (800) feet of a CEVMS sign on either side of the roadway and no closer than fifteen (15) feet to the right-of-way.
3. An off-premises CEVMS sign must not be erected within eight hundred (800) feet of another off-premises sign on either side of the roadway and no closer than fifteen (15) feet of the right-of-way.
4. Signs located at an intersection are not in violation of Sections 1, 2, and 3 above if they are on perpendicular streets and are not facing traffic on the same street.
5. For spacing purposes, all measurements shall be made along the nearest edge of the highway or street right-of-way.
6. No off-premises sign may be erected within two hundred (200) feet of any property zoned for any one or two family dwelling.
7. Signs may not be located in such a manner as to cause a vehicle operator to be distracted or confused or to obscure or interfere with official road signs, or hamper an operator's view of merging or intersecting traffic at road and driveway intersections or a road and railroad intersections.
8. Detached non-premises signs shall be located not less than two hundred (200) feet from any intersection involving two (2) or more major thoroughfares, or expressway service roads intersecting major thoroughfares.

C. Other Provisions

1. When a sign, or a substantial part of a sign, is damaged by natural causes, or otherwise destroyed, or taken down, or removed for any purpose other than maintenance operation, it may not be re-erected, reconstructed, or rebuilt except in full compliance and conformance with this ordinance. For purposes of this section, substantial shall mean if the cost of repair exceeds sixty percent (60%) of the cost of a new sign of the same construction and size.
2. Wind loads and structural requirements shall conform to the International Building Code as adopted.
3. All off-premises advertising signs shall be permanently identified with the name of the sign owner or agency in control of the sign. Said identification shall be easily read from the

roadway on which the sign is intended to be read and contain a phone number that will connect to the sign owner or agency in control of the sign.

## IX. GENERAL EXCEPTIONS

- A. The following signs may be erected and maintained under the following exceptions and conditions:
1. Personal Residential Property Sale, Residential Subdivision, and Special Purpose Political Signs.  
Permission is granted as a special privilege for residential dwelling occupants for the erection of one (1) non-illuminated personal real estate property sale sign of each type and special purpose political signs to be erected in the required front yard of dwelling on private property provided that only one of each type of such sign not exceeding three (3) square feet may be erected on the dwelling premises. No permit shall be required. Political signs are permitted on private property with the owner's permission.
  2. Temporary Real Estate Directional Signs  
Off-premises signs are permitted in any District provided each sign does not exceed six (6) square feet.
  3. Real Estate Signs (Nonresidential or undeveloped property)  
Permission is granted to property owners for the erection of a sign to advertise the sale, lease or rent of the property on which the sign is located. Real estate signs for a tract or building shall not exceed thirty-two (32) square feet in total effective area for each street frontage.
  4. Monument Signs (On Premises)
    - a. Monument signs must be built on a monument base as opposed to a pole base. A monument sign may only contain the company or corporation name, logo, address and product or service of the establishment. Such sign may be single or double-faced. Such signs and base shall not exceed seven (7) feet in overall height above the natural or average grade and the actual sign face shall not exceed a total area of forty-eight (48) square feet in area. One monument sign per adjoining street will be allowed. Signs made of plastic or similar materials shall not be considered as monument signs. A minimum, setback of ten (10) feet from the public right-of-way is required.
    - b. Monument signs are permitted in any non-residential or multi-family district and shall conform to the requirements in "a" above. No other detached on-premises signs are allowed.
  5. Temporary Construction / Development Signs  
Permission is granted to developers and remodelers to erect temporary construction signs designed to identify contractors, financier, architects, engineer, and to advertise the coming of a new business on the premises to which the sign pertains. Such signs shall not be erected prior to the issuance of the Building Permit of the project to which the sign pertains, and must be removed prior to the issuance of a Certificate of Occupancy. Such signs shall comply with the provisions of this chapter with the exception that no sign shall contain more than thirty-two (32) square feet in effective area.
  6. Aircraft Traffic Signs  
Aircraft traffic signs or directional beacons are exempt.

## X. OTHER REQUIREMENTS

### A. Contractor registration:

Any contractor, including those performing sign construction operations, within the city limits shall be required to be registered with the city under Chapter Four Article 1, Section 4-7 of the City Code of Ordinances. Upon registration the contractor shall be considered registered with the City.

### B. Surety bond:

1. Before a contractor shall be issued a permit to construct a sign, he or she must first post a surety bond in the amount of five thousand dollars (\$5,000.00). The contractor agrees that a

surety bond will be provided annually to the City no later than thirty (30) days prior to the expiration of the surety bond currently in force.

2. The surety bond shall insure the full and faithful surety by the contractor of all the covenants, terms and conditions of the zoning ordinance, sign ordinance and building code of the City of Copperas Cove and stands as a security for the payment by the contractor of all valid claims by the City.

**B. Indemnification:**

All persons holding a sign construction permit shall agree to indemnify and hold harmless the City of Copperas Cove, its members, agents, officers and employees, their successors and assigns, individually or collectively, from and against all liability for fines, claims, suits, demands, actions or causes of actions of any kind and nature, including, but not limited to, personal injury or death and property damage, in any way arising out of or resulting from any activity or operation of the permit holder.

This indemnification shall include the issuance of the sign contractor's license. The permit holder shall pay all expenses incurred in defending against any such claims made against the City; provided, however, that the license holder shall not be liable for any injury, damage or loss caused by the sole negligence or willful misconduct of the City, its agents or employees. The permit holder and the City shall give prompt and timely notice of any claim made, or suit instituted, which in any way affects or might affect either party.

**C. Revocation and suspension:**

1. Grounds: The building official shall have the authority to suspend or revoke the license of any person who is found guilty of:
  - a. Any fraud or deceit in obtaining such license.
  - b. Securing sign permits in his or her name as a person authorized by law to do sign work and thereafter transferring said permit to a third party without retaining responsibility for construction and maintenance of the permitted sign.
  - c. Gross negligence, incompetence or misconduct in the performance of sign work which is addressed under the provisions of this ordinance.
  - d. If the holder of such license violates any provision of this section relating to the manufacture, installation, maintenance, demolition or repair of any sign.
2. Appeal: The decision of the building official may be appealed to the City Manager by the submission, from the affected persons or parties involved, of a written letter requesting such an appeal. In determining the validity of such charges, the City Manager shall proceed upon the sworn information furnished by any individual who is of sound mind and legal age. The City Manager, whenever the information is sufficient to support further action, shall convene a hearing to investigate the charges further. A copy of the City Manager's order convening the hearing shall be provided to the requesting person or party not less than fifteen (15) days prior to the date of the hearing. The requesting person or party may appear in person or be represented by counsel, or both, and present his or her defense to the City Manager. The City Attorney shall provide counsel to the City Manager. If the requesting person or party pleads guilty, or if the City Manager finds the charges to be true, then the decision of the building official to suspend or revoke the license shall be upheld by the City Manager. The hearing before the City Manager provides the requesting person or party due process with which to resolve the issue.
3. Record: When the City Manager has completed his/her hearing, he/she shall file a record of his/her finding and decision with the City Secretary and forward a certified copy for the finding and decision to the accused.
4. Length of Suspension: Persons may reapply for a sign contractor's license once they have remedied the reasons for which they were suspended.
5. Operating While Suspended or Revoked: It shall be unlawful for any person whose license has been suspended or revoked by the City Manager or Building Official to engage in or do sign work for which a permit is required under this ordinance.

**D. Enforcement and Penalties:**

1. Enforcement: The provisions of this ordinance shall be administered by the Chief Building Official. The Chief Building Official, any Building Inspector or Code Enforcement Officer or any duly authorized person shall have the right to enter upon any premises at any reasonable time for the purpose of making an inspection of buildings or premises necessary to carry out the enforcement of this ordinance.
2. Violation and Penalties: Any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with, or who resists the enforcement of any of the provisions of this ordinance, shall be fined not less than One Dollar (\$1.00) nor more than Two Thousand Dollars (\$2,000.00) for each offense. Each violation of this ordinance shall be deemed a separate offense and each day that a violation exists shall constitute a separate offense. This penalty should not be construed as exclusive, and the City may seek any other remedy available to it, in law or in equity.
3. No Culpable Mental State Required: Except as otherwise provided in this ordinance, proof of a culpable mental state is not required for a conviction of an offense under this ordinance.
4. Injunction: Civil Penalties: The City shall have and retain the right to seek injunctive relief and/or civil penalties against any person, firm or corporation who is in the process of or about to violate any section, paragraph or part of this ordinance. Such right of injunctive relief and/or civil penalties shall exist independent of the other penalty provisions of this ordinance and not in lieu thereof.

**XI. NON-CONFORMANCE AND EXCEPTIONS**

**A. Purpose**

It is the declared purpose of this article that in time, all privately-owned signs shall conform to the provisions of this ordinance and its amendments, no presently illegal sign shall be deemed to have been legalized unless such sign complies with all current standards under the terms of this ordinance and all other ordinances of the City of Copperas Cove. Any sign which does not conform to all provisions of this ordinance shall be a non-conforming sign if it legally existed as a conforming or non-conforming sign, as the case may be. It is further the intent and declared purpose of this ordinance that no offense committed, and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time this ordinance was adopted shall be discharged or affected by such passage, but prosecutions and suits for such offenses, liabilities, penalties or forfeitures may be instituted, and causes presently pending may proceed.

**B. Condemnation**

Notice – Signs adjudged by the Building Official to be structurally unsafe or to be more than sixty (60%) destroyed or dilapidated (based upon reconstruction value) may be condemned. A condemnation letter will be sent to the owner of the property stating that the sign must be demolished within fifteen (15) days of the receipt of the letter. If the sign is not removed within the period allotted, the City may remove the sign at the property owner's expense.

**C. Nuisances**

All of the following signs shall be considered a public nuisance and the City may, without notice, remove and impound any of the following signs:

1. Any sign erected or existing that constitutes a traffic hazard.
2. Any sign erected without a permit, either prior to or after the adoption of this ordinance, if a permit was required.
3. Any sign erected in violation of the provisions of this ordinance.
4. Any sign erected in or over a public right-of-way, either prior to or after the adoption of this ordinance

**D. Removal of Certain Nonconforming Signs, When Required**

A nonconforming sign may be replaced with another sign as long as the area of the existing sign is not exceeded by the new sign.

E. Repair or Renovation of Nonconforming Signs

No non-conforming sign shall be enlarged. Normal periodic maintenance or repair is permitted pursuant to paragraph B above.

F. Recovery of Impounded Signs

Signs impounded from within the street right-of-way may be recovered by the owner within fifteen (15) days of the date written notice received of impoundment by paying a fee as follows:

1. A fee of five dollars (\$5.00) for signs which are thirty two (32) square feet or less in area.
2. A fee of fifty dollars (\$50.00) for signs which are larger than thirty two (32) square feet in area.

G. Disposal of Impounded Signs

Signs not recovered within fifteen (15) days of impoundment may be disposed of by the City in any manner it shall elect.

FINAL COMMENT:

It is not the intention of this ordinance to discourage innovation. It is conceivable that signage proposals could be made that, while not conforming to the criteria of this ordinance, may conform to the intent of this ordinance. Signs that have obvious merit, in not only being appropriate to the particular site or location, but also in making a positive contribution to the visual environment, are encouraged.

# APPENDIX

Illustration 1

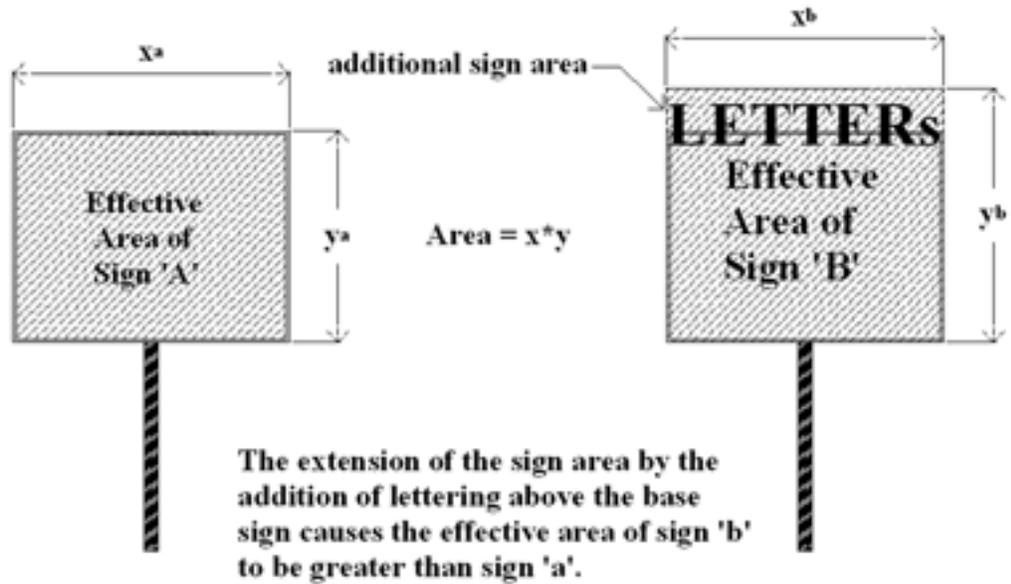


Illustration 2

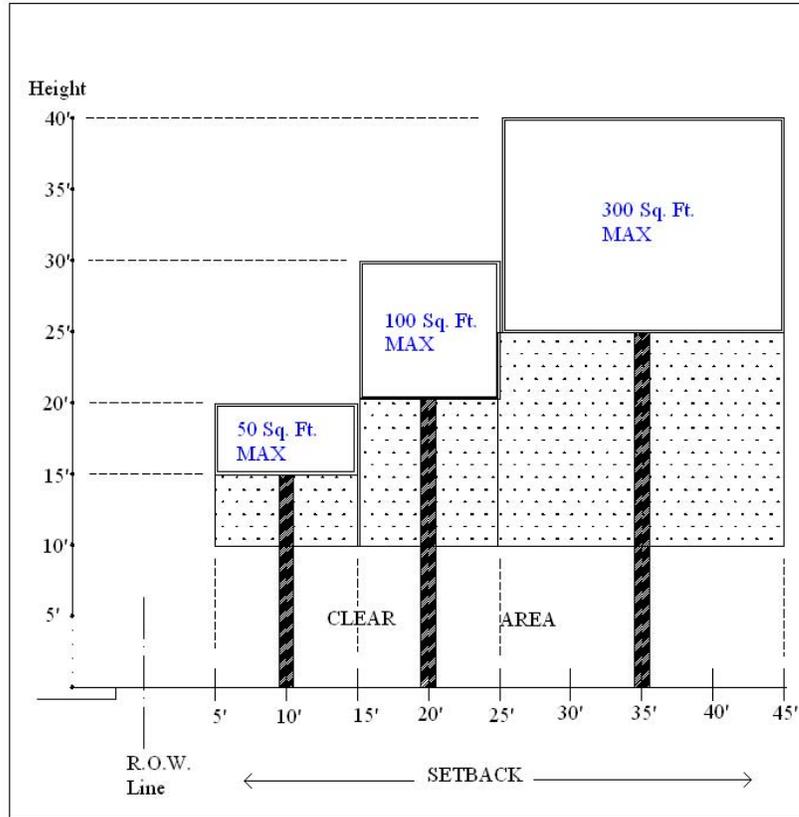


Illustration 3

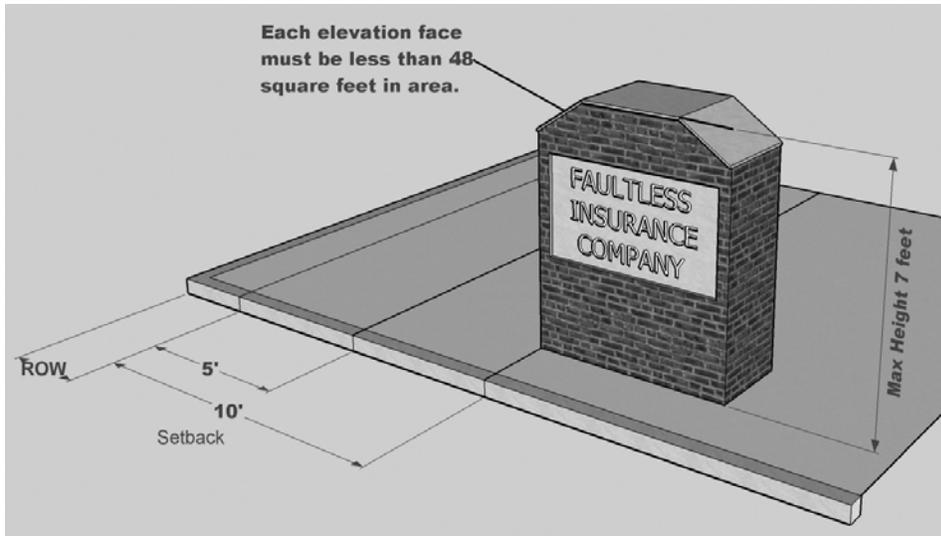


Illustration 4

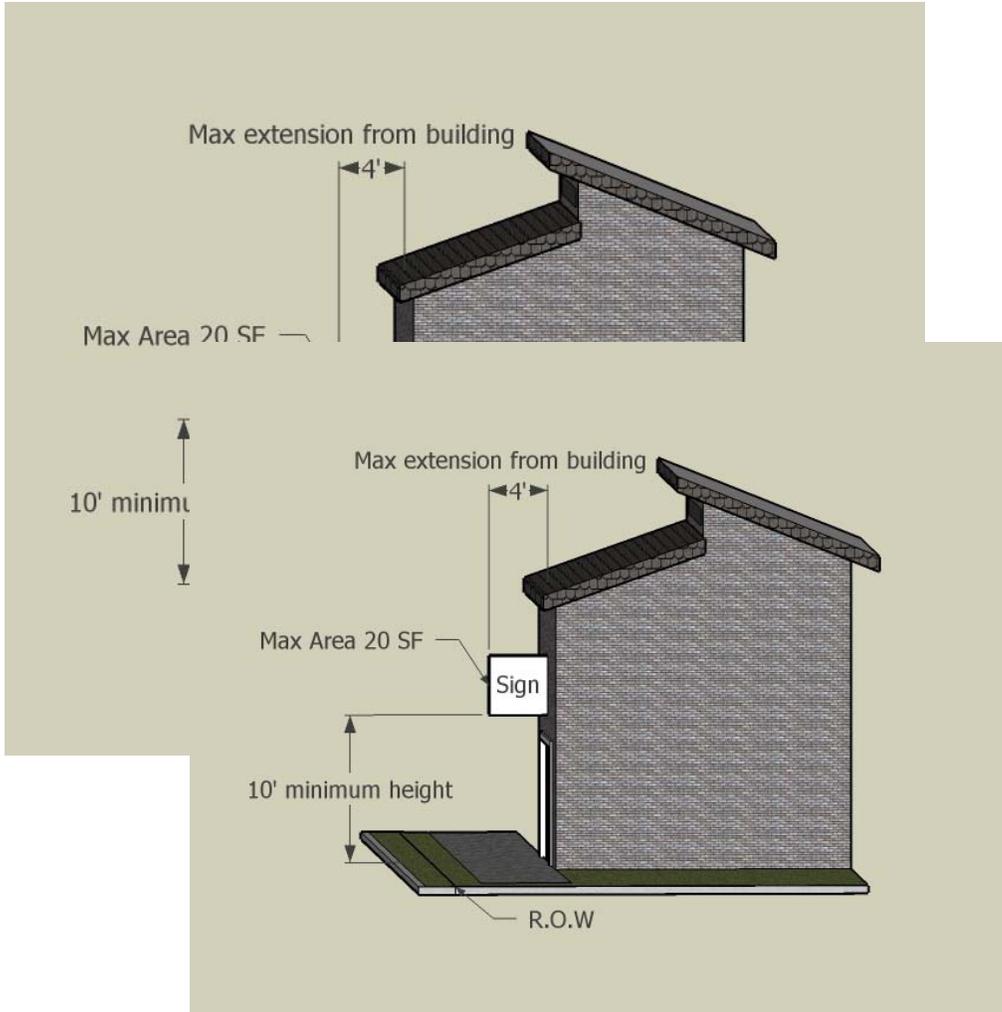


Illustration 5a

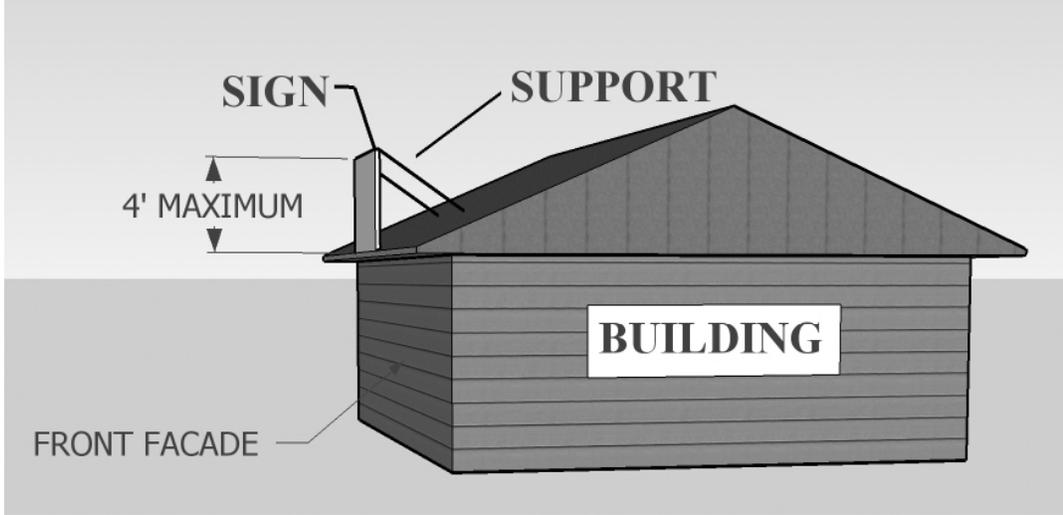


Illustration 5b

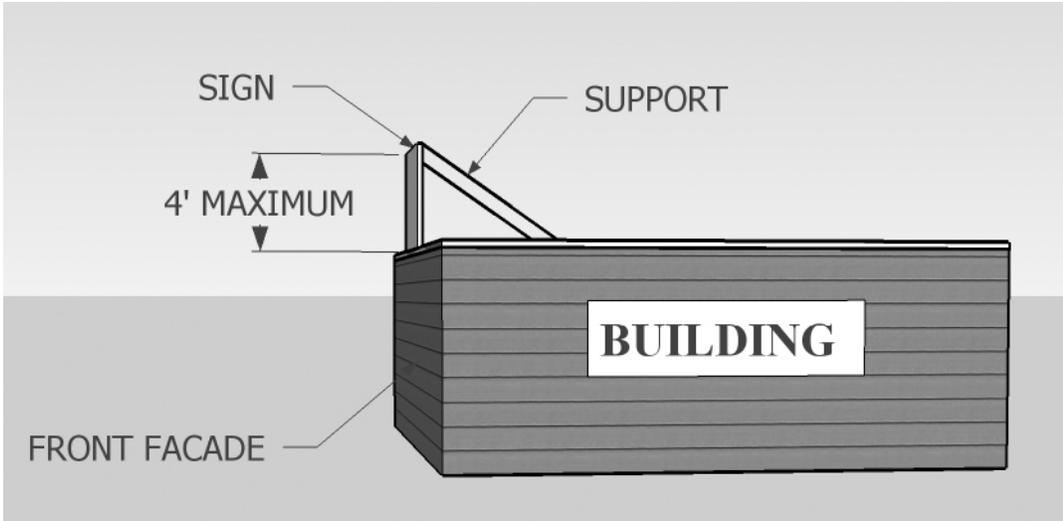
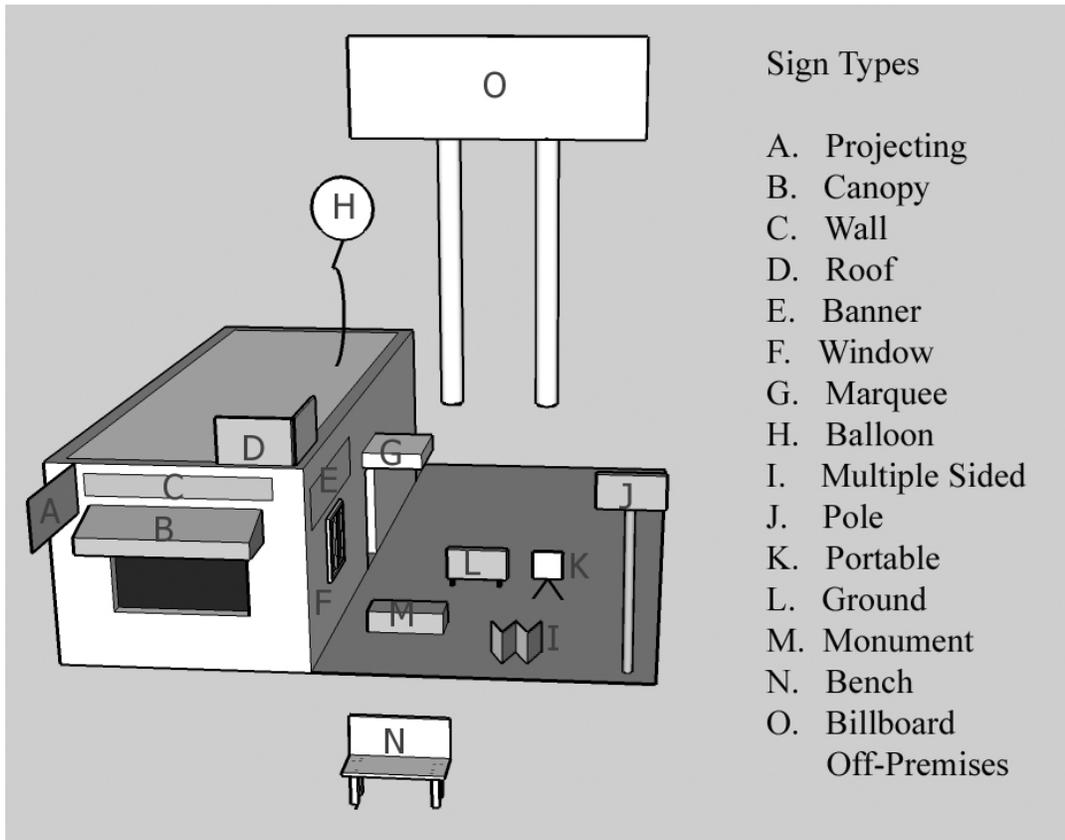


Illustration 6



# **City of Copperas Cove**

## **City Council Agenda Item Report**

**November 3, 2008**

### **Agenda Item No. I-20**

**Contact – Carl Ford, City Planner, 547-4221**  
cford@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and Action on approval of Ordinance No. 2008-43  
adopting new Sign Regulations.**

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#### **1. BACKGROUND/HISTORY**

The current Sign Regulations were removed from the Zoning Ordinance in the year 2002. Since that time new sign technology is being introduced into the sign industry including the use of electronic and digital displays. The proposed amendment to the sign ordinance includes provisions for distance, placement, and sizing of electronic and digital display signs.

#### **2. FINDINGS/CURRENT ACTIVITY**

City staff has been researching the new technology and consulting other city's ordinances to see which regulations should be adopted to maintain control of signs within the city limits. Attached is a copy of the amended Sign Regulations, along with the adopting ordinance, for action as desired by the City Council. A legal review of the proposed revisions to the ordinance was completed by the City's legal counsel.

#### **3. FINANCIAL IMPACT**

N/A.

#### **4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends the City Council review the proposed changes and approve the amended sign ordinance.

STATE OF TEXAS           §  
  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF CORYELL   §

AGREEMENT

This Agreement is made and entered into on this the 3rd day of November 2008, by The Copperas Cove Athletic Officials Association (hereinafter referred to as "CCAOA") and the City of Copperas Cove, a home-rule municipality (hereinafter referred to as "City").

W I T N E S S E T H

**WHEREAS**, the CCAOA is an association organized for the purpose of providing competent officials and scorekeepers for the athletic programs sponsored by the City;

**WHEREAS**, the CCAOA has the resources available to provide the officiating services to the City;

**WHEREAS**, the City's athletic programs are operated and maintained by the City through the Parks and Recreation Department for the benefit of its residents; and

**WHEREAS**, the City Council finds that providing officiating services to the City by CCAOA benefits the area youth and adults;

**NOW, THEREFORE** the City and CCAOA hereby agree as follows:

1.    Competent Officials. CCAOA shall provide competent officials and scorekeepers to officiate the City's athletic programs sponsored by the Copperas Cove Parks and Recreation Department (hereinafter referred to as "CCPARD"). CCAOA further agrees to officiate adult and youth leagues for specific sports that CCPARD may choose.

2.    Fees. The fees to be paid to CCAOA by the City for its officiating services, the number of officials and scorekeepers to be provided by CCAOA for each athletic event, and the fee for the assignment secretary's services are set out in Exhibit "A" attached to this Agreement and made a part of and incorporated in this Agreement for all purposes as if fully set out in this Agreement. The fees for officiating any new sports programs sponsored by CCPARD shall be negotiated between the President of CCAOA and the CCPARD Recreation Superintendent and shall be approved by the City Council of the City of Copperas Cove as an amendment to this agreement.

3.    Scoreboards and Score Books. CCAOA shall gather and consolidate all scoreboard control boxes and score books for each athletic event and shall surrender the control boxes and score books to a representative of CCPARD at the end of the final game of the day.

4. Payment of Fees for Cancellations, Rainouts, Forfeitures and Protest Games.

a. In the event of game cancellations, no fee will be charged by the CCAOA as long as CCPARD either, updates the Youth Sports Hotline (542-2719, 542-2720, 547-9247) or notifies the CCAOA with cancellation information in advance of scheduled games.

b. If CCPARD does not comply with paragraph 4a, CCAOA may invoice CCPARD for all scheduled games.

c. In the event a game is started, then rained out, CCAOA shall be paid for officiating that game.

d. In the event a game is forfeited and CCPARD fails to notify CCAOA two (2) hours prior to the start time of the game, CCAOA shall be paid for officiating that game. If the forfeit is due to insufficient players at game start time and the head coaches desire to play the game, CCAOA shall officiate that game.

e. In the event a game is started, then forfeited due to a rule violation, CCAOA shall be paid for officiating that game.

f. If a protest is upheld that results in any portion of a game being replayed. CCAOA shall officiate the replayed game at no charge. CCAOA shall be paid for officiating the original game only.

g. In the event of a game start time delay of fifteen (15) minutes or more, due to the absence or tardiness of the assigned officials or scorekeeper, CCAOA forfeits any and all fees for that game if it is played. CCAOA shall forfeit any and all fees if the game is rescheduled to a later date due to the absence or tardiness of the officials or scorekeeper.

h. In the event another game is scheduled immediately following the game that was delayed due to the absence or tardiness of the official or scorekeeper scheduled to officiate the prior game, CCAOA shall forfeit any and all fees for the subsequent game if it is played and CCAOA shall forfeit any and all fees if the subsequent game is rescheduled at a later date due to the absence or tardiness of the prior game's official or score keeper.

5. Clinics.

a. *Sports Officials Clinic.* CCAOA shall conduct a Sports Officials Clinic prior to each athletic season. The Clinic shall teach the local rules of each particular sport for which the individual is to officiate.

b. Coaches Clinic. CCAOA shall conduct a preseason Coaches Clinic for all persons desiring to coach a particular sport. This clinic shall inform the participants of the rules for the specific sport for which he or she will be coaching. If a potential coach is unable to attend the preseason Coaches Clinic, CCAOA shall conduct a Coaches Clinic during its Sports Officials Clinic.

6. Officials and Scorekeepers. All officials and scorekeepers provided by CCAOA to the City shall be trained by CCAOA through its Sports Officials Clinic and each official or scorekeeper shall be certified by CCAOA stating that each official or scorekeeper has successfully completed the CCAOA's Sports Officials Clinic. This certification shall be given to CCPARD prior to any official or scorekeeper officiating any City athletic event. Any individual who does not attend or successfully complete the Officials Clinic shall not officiate any CCPARD sport.

7. Copies of Local Rules. CCPARD shall provide a copy of the local rules to CCAOA as soon as they are available. If CCPARD modifies any local rules for a sport, CCPARD shall provide a written copy of the modification to the president of CCAOA within forty-eight (48) hours. CCPARD shall include an explanation of the change and an interpretation of the modification that is not self-explanatory.

8. Duties of Officials. The official(s) shall maintain control and order of the game including coaches and players. The City shall be responsible for keeping each official who is performing his or her duties from potential harm from the coaches and players. The City's responsibility to keep an official from potential harm includes upholding an official's ruling to remove coaches and/or players from the game and the premises of the sporting event.

9. Complaints. Complaints involving an official provided by CCAOA must be submitted in writing to CCPARD within seventy-two (72) hours of the occurrence. CCPARD shall forward a copy of the complaint to CCAOA. Both CCPARD and CCAOA shall review the complaint and reach a decision on corrective action as appropriate. In the event CCPARD and CCAOA cannot reach a mutual agreement as to the complaint, then the president of CCAOA and the CCPARD director shall meet and attempt to reach a decision concerning the complaint. If CCAOA's president and CCPARD director cannot resolve the complaint, CCPARD may suspend any official and/or scorekeeper from working any CCPARD games remaining for that particular sport. CCAOA may submit a written request to CCPARD for reinstatement of the suspended official and/or scorekeeper after the particular sport that the official and/or scorekeeper were officiating has ended.

10. Protested Games. In the event a game is protested, a Protest Committee shall be selected and convened by CCPARD. The Protest Committee shall have a minimum of three (3) members. One (1) member of the Protest Committee may be a CCAOA official, not involved in the protested game. A protested game shall only be replayed if the Protest Committee upholds the protest. The Protest Committee's ruling is final.

11. Initial Term. The term of this Agreement shall be for a period of one (1) year, beginning November 3, 2008 and ending on October 1, 2009 unless terminated earlier by agreement, or by a breach of any terms or conditions of this Agreement by either party.

12. Termination.

a. This Agreement may be terminated by either party upon sixty (60) days written notice to the other party. Within the first thirty (30) days of the sixty (60) day termination period, both parties may attempt to negotiate and correct the problem or problems in order to avoid termination of this Agreement. If the problem or problems are not resolved within the first thirty (30) days of the sixty (60) day termination period, the president of CCAOA and the City Manager may attempt to reach a solution of the problem or problems to prevent the termination of this Agreement. If the problem or problems are not resolved by the sixtieth (60th) day of the written notice of termination, this Agreement shall be null and void.

b. In the event that CCPARD changes its athletic program structure such as, but not limited to, age groups or type of sport, this Agreement shall become null and void only for that portion of the athletic program that was changed. A new Agreement concerning only the modified program shall be negotiated between the parties hereto.

13. Option to Renew. City and CCAOA have the option to renew this Agreement for two (2) consecutive one (1) year terms upon conditions mutually agreed to at that time by the governing bodies or boards of both the City and CCAOA. The option to renew requires the City and CCAOA to endorse the "Option to Renew" portion at the end of the Agreement.

14. Entire Agreement. This Agreement with the attached Exhibit "A" is the entire agreement between the parties hereto and is the sole and only agreement between the City and CCAOA. This agreement incorporates all other written, verbal, express, and implied agreements made between any party or any agent of any party to this Agreement in connection with this Agreement. If any provisions in this Agreement conflict with any provisions in any other instrument, the provisions in this Agreement, including Exhibit "A" shall prevail.

15. Binding Effect. All terms, covenants and conditions contained within this Agreement shall apply to, bind, inure to the benefit of, and be exercised by the parties hereto and their respective heirs, executors, administrators, successors in interest and assigns, except as otherwise expressly provided herein.

16. Amendments. Both parties agree that no amendment, modification or alteration of the terms of this Agreement shall be binding unless reduced to writing, dated subsequent to the date of this Agreement, and duly executed by the parties hereto.

17. Notices. Notices given pursuant to the provisions of this Agreement, or necessary to carry out its provisions, shall be in writing, and delivered personally to the person to whom the notice is to be given, or given by certified or registered mail return receipt requested, addressed to the proper party. The parties' addresses for this purpose are as follows:

City of Copperas Cove  
P. O. Drawer 1449  
Copperas Cove, TX 76522  
Attn: City Manager

Copperas Cove Athletic Officials Association  
707 S. 15th Street  
Copperas Cove, TX 76522  
Attn: President

18. Governing Law and Venue. The parties hereto agree that the laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this lease. Venue for any action involving this Agreement shall be in the courts of Coryell County, Texas.

19. Severability. Each and every covenant and obligation contained in this Agreement is and shall be construed to be a separate and independent covenant and obligation. If any term or provision of this Agreement, or its application to any person or circumstances shall to any extent be held invalid, illegal, or unenforceable, the remainder of this Agreement shall not be affected thereby, and each and every other term and provision shall be enforced to the fullest extent permitted by law as if the invalid, illegal, or unenforceable provision had never been included in this Agreement.

20. Construction and Interpretation. Each party has carefully read this entire Agreement, and understands the meaning and effect of each and every provision contained herein. Each party executes this Agreement freely and voluntarily, and only after first having obtained (or having had a reasonable opportunity to obtain) competent legal advice. The parties thus agree that the construction and interpretation of the terms of this lease the rule of construction that a document is to be construed most strictly against the party who prepared same shall not be applied, it being agreed that the Agreement should be construed fairly and simply and not strictly against either party.

21. Time of the Essence. The parties agree that time is of the essence in the performance of this Agreement.

22. Independent Contractor. It is expressly understood and agreed that the employees, servants and agents of the CCAOA are not employees, servants or agents of the City and that the CCAOA is deemed an independent contractor and the City is in no way responsible for the negligent and intentional acts or omissions of the CCAOA, its employees, officers, volunteers, servants, agents, licensees or invitees.

23. Authorized Signatures. The persons signing this Agreement on behalf of the parties hereto certify that they are duly authorized to sign this Agreement on behalf of said parties.

24. Compliance With Laws. The parties hereto mutually agree to comply with all applicable federal, state and local laws, ordinances, rules and regulations in performance of their obligation pursuant to this Agreement.

25. Discrimination Prohibited. The parties hereto mutually agree to adhere to all federal, state and local laws and regulations prohibiting discrimination. The parties agree that they shall not discriminate against a participant in any of the programs described above because of race, color, religion, national origin, sex, sexual preference, sexual orientation, height, weight or beliefs.

IN WITNESS WHEREOF, the parties have fully executed this Agreement on this the 3rd day of November 2008.

CITY OF COPPERAS COVE

COPPERAS COVE ATHLETIC  
OFFICIALS ASSOCIATION

By: \_\_\_\_\_  
Andrea Gardner, City Manager

By: \_\_\_\_\_  
Mitchell Lofton, President

ATTEST:

ATTEST:

\_\_\_\_\_  
Jane Lees, City Secretary

\_\_\_\_\_  
Samatha Peters, Secretary

**Option to Renew**

IN WITNESS WHEREOF, the parties have opted to renew this Agreement through \_\_\_\_\_, on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

CITY OF COPPERAS COVE

COPPERAS COVE ATHLETIC  
OFFICIALS ASSOCIATION

By: \_\_\_\_\_  
Andrea Gardner, City Manager

By: \_\_\_\_\_  
Mitchell Lofton, President

ATTEST:

ATTEST:

\_\_\_\_\_  
Jane Lees, City Secretary

\_\_\_\_\_  
Samatha Peters, Secretary

IN WITNESS WHEREOF, the parties have opted to renew this Agreement through \_\_\_\_\_, on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

CITY OF COPPERAS COVE

COPPERAS COVE ATHLETIC  
OFFICIALS ASSOCIATION

By: \_\_\_\_\_  
Andrea Gardner, City Manager

By: \_\_\_\_\_  
Mitchell Lofton, President

ATTEST:

ATTEST:

\_\_\_\_\_  
Jane Lees, City Secretary

\_\_\_\_\_  
Samatha Peters, Secretary

## EXHIBIT "A"

### Fee Schedule

<u>Sport</u>	<u># of Officials</u>	<u>Fee Per Official</u>	<u># of Scorekeepers</u>
<b><u>Basketball</u></b>			
Pee wee	1	\$15.00	N/A
Junior	1	\$15.00	1 at \$8.00
Intermediate	2	\$15.00	1 at \$8.00
Senior	2	\$15.00	1 at \$8.00
<b><u>Tackle Football</u></b>			
8-10 Age Group	3	\$27.50	N/A
11-12 Age Group	3	\$27.50	N/A
<b><u>Flag Football</u></b>			
Pee wee	1	\$15.00	N/A
Junior	2	\$15.00	N/A
Intermediate	2	\$15.00	N/A
Senior	2	\$15.00	N/A
<b><u>Soccer</u></b>			
Pee Wee	1	\$15.00	N/A
Junior	2	\$15.00	N/A
Intermediate	2	\$15.00	N/A
Senior	2	\$15.00	N/A
<b><u>Baseball</u></b>			
T-ball	1	\$15.00	N/A
Machine Pitch	1	\$15.00	1 at \$8.00
Senior Midget	2	\$22.50	1 at \$8.00
Freshman	2	\$22.50	1 at \$8.00
Junior	2	\$22.50	1 at \$8.00

Baseball fees based on minimum 1.5 hour games. \$15.00 per plus 7.50 per ½ hour.

### **Softball**

Youth	2	\$15.00	1 at \$8.00
Adult	2	\$15.00	1 at \$8.00

**Assignment Secretary Fee:** \$10.00 will be paid for each two (2) week invoice submitted.

**Protested Game:** Officials and scorekeepers fees shall only be paid for the originally scheduled game of any game, or portion of a game, replayed due to a protest that is upheld by a Protest Committee.

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-3

Contact –Ken Wilson Director of Community Services, 542-2719  
kwilson@ci.copperas-cove.tx.us

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**SUBJECT:** Consideration and action on authorizing the City Manager to enter into an Agreement with the Copperas Cove Athletic Officials Association to provide recreational sports officiating for the Parks and Recreation Department.

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#### 1. BACKGROUND/HISTORY

The City of Copperas Cove and the Copperas Cove Officials Association have benefited from a long standing relationship. The City determined it cost effective to utilize a single association to provide the service of sports officiating for all programs within the Parks and Recreation Department. A single association provides stability and consistency in officiating for the programs provided by the Parks and Recreation Department. The existing agreement was last revised in 2005 and the need for an updated version is necessary to ensure both entities are protected from unforeseen liability issues.

#### 2. FINDINGS/CURRENT ACTIVITY

This agreement defines the terms and conditions of the officials duties and responsibilities. The term of this contract will begin November 3, 2008 and will be for a term of one year. The contract will be reviewed by both agencies in August 2009 for the 2009/2010 agreement. Minimal changes to the existing agreement were necessary. Furthermore, the agreement was reviewed by City staff, the City's legal counsel and the Copperas Cove Athletic Officials Association.

#### 3. FINANCIAL IMPACT

The attached fee schedule shows the cost of service provided for each program and is included in the 2008/2009 Recreational Activities Fund budget.

#### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends that the City Council authorize the City Manager to enter into the attached agreement with the Copperas Cove Officials Association to provide sports officiating for recreational programs of the Parks and Recreation Department.

**AGREEMENT**

This agreement is entered into by and between Tyler Technologies, Inc., hereinafter referred to as COMPANY, located at 5808 4th Street, Lubbock, Texas 79416; and; City of Copperas Cove, TX, hereinafter referred to as CLIENT on, \_\_\_\_\_, 2008.

COMPANY and CLIENT agree as follows:

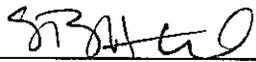
1. COMPANY shall furnish the products and services as described in this Agreement, and CLIENT shall pay the prices set forth in this Agreement.
2. This Agreement consists of this Cover and the following Attachments and Exhibits:
  - Section A Investment Summary (A-G)
  - Section B COMPANY Agreement Terms and Conditions
  - Section C Data Conversion Process Document
3. The License Fees set forth in the Investment Summary are based on defined category levels. Placement within a category is based on the size of the organization serviced and measured by such factors as operating budget, number of employees, number of utility accounts, number of sworn officers, population of the entity, etc.

IN WITNESS WHEREOF, persons having been duly authorized and empowered to enter into this Agreement hereunto executed this Agreement effective as of the date last set forth below.

Client: City of Copperas Cove, TX

Tyler Technologies, Inc.:

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Sales Tax Certificate Number

By:   
\_\_\_\_\_  
Signature  
S. Brett Cate  
\_\_\_\_\_  
Printed Name  
President, INCODE Solution  
\_\_\_\_\_  
Title  
10/3/08  
\_\_\_\_\_  
Issue Date

**Investment Summary**

<b>Prepared for:</b>	City of Copperas Cove, TX	<b>Contract ID # :</b>	2008-0212
<b>Contact Person:</b>	Joseph Pace	<b>Issue Date:</b>	10/3/08
<b>Address:</b>	507 S. Main Copperas Cove, TX 76522	<b>Salesman:</b>	L. Midkiff/ J. Driver
<b>Phone:</b>	(254) 547-5030	<b>Tax Exempt:</b>	Yes / No
<b>Fax:</b>	(254) 452-8935		
<b>Email:</b>	jpace@ci.copperas-cove.tx.us		

Product Service & Equipment	On Signature	On Delivery	As Verified	As Progress Occurs	Totals	Maintenance
<b>Total Applications Software</b>						
License Fees	8,837.50	21,210.00	5,302.50		36,750.00	9,188.00
Less Preferred Customer Discount					(1,400.00)	
<b>Total Professional Services</b>						
On-Site Services				7,250.00	7,250.00	
Project Management				500.00	500.00	
Data Conversion & Assistance				5,000.00	5,000.00	
INCODE Student Center						1,500.00
<b>Totals</b>	<b>8,837.50</b>	<b>21,210.00</b>	<b>5,302.50</b>	<b>12,750.00</b>	<b>48,100.00</b>	<b>10,688.00</b>

Please Note: Travel expenses will be billed as incurred.

	Monthly Fees**
<b>Total Monthly Services</b>	50
Internet Services and Products	
**Please note this is not an Annual agreement, the fees listed herein are monthly fees.	
<b>Totals</b>	<b>50</b>

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-4

Contact – Joseph R. Pace, Municipal Court Supervisor, 542-8934  
jpace@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action to authorize the City Manager to enter into an agreement with Tyler Technologies for the INCODE Municipal Court software purchase in the amount of \$48,100.**

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#### 1. BACKGROUND/HISTORY

During the March 10, 2008 Council/Staff Retreat, the concept and funding options for implementation of a new software system in Municipal Court were presented to the City Council for consideration. As a result of the direction provided by council, funding for transition from the Municipal Court current software program to INCODE (Tyler Technologies) was included in the FY 2009 Proposed Budget.

On September 16, 2008, the FY 2009 Proposed Budget was adopted by the City Council to include funding for the purchase of the INCODE software.

#### 2. FINDINGS/CURRENT ACTIVITY

Since adoption of the FY 2009 Budget, Municipal Court staff obtained a contract from Tyler Technologies (see attached) and began negotiations. Currently, negotiations regarding specific legal matters are ongoing.

#### 3. FINANCIAL IMPACT

Funding exist in the Municipal Court Technology Fund for the purchase.

#### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends the City Council to authorize the City Manager to enter into an agreement between the City of Copperas Cove and Tyler Technologies for the INCODE software, upon agreement of the outstanding legal matters by the City's legal counsel.

SOW for Maintenance Services  
City of Copperas Cove 800 MHz Communications System

This Statement of Work outlines the services and materials that Dailey & Wells Communications will provide to the City of Copperas Cove regarding the maintenance of the Cities 800 MHz Trunked Communications System.

**Summary**

This maintenance contract will be in effect from 1 October, 2008 through 30 September, 2009. Infrastructure maintenance services include Monday through Friday 8 a.m. to 5 p.m. for "Routine Outages" (Minor) and 24x7 support for "System Outages" (Major), travel time, labor and standard parts. Terminal maintenance which includes mobiles, portables and desktop control stations, will be performed at our San Antonio Service Center depot repair and includes shop labor and parts. The cost also includes the annual software service for radio programmer. The total value of this contract is \$45,284.00, invoiced annually in advance.

**Dailey & Wells Responsibilities-**

Respond within 4-6 hours of any minor or major infrastructure outages. The first response will be provided via telephone and a resolution will try to be worked out with the customer and responding technician over the phone. This will also be used as a triage by the technician to help determine parts that may be required for repair. If an outage can not be resolved over the phone then the customer and the responding technician will determine need and urgency for the technician to be on site. Based on this the technician will respond accordingly. Provide the City with an 800 toll free phone number to report any outages. Repair all terminal units received from the city at the San Antonio Service Center in a timely manner and return the units at DWC expense.

**Customers Responsibilities**

Provide Dailey & Wells Communications Technical Staff access to all system sites and equipment locations in a timely manner. Provide Dailey & Wells Communications Technical Staff assistance over the phone in troubleshooting and isolation of problems. Provide a POC from the City that will be responsible to verify and approve any work performed by Dailey & Wells Communications regarding this contract. Ship defective terminal units to the Dailey & Wells Service Center in a timely manner at the Cities expense.

**Equipment Covered**

Only equipment purchased from Dailey & Wells Communications as part of the Cities 800 MHz Trunked Communications System will be covered under this contract. This includes all radio equipment, power systems, microwave radios, T1 multiplexers, system switch and consoles.

**Items Not Covered**

Equipment sites, structures and associated equipment (Generators, HVAC, Propane, Electrical...) will be maintained by and is the responsibility of the City. Portable radio batteries, speaker mic, antennas and accessories along with mobile microphone, and antennas and all fixed location antenna systems.

Dailey-Wells failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.

Any damages that occur based on the above listed items and / or deemed abuse or non standard wear and tear will not be covered under the terms of this agreement. Repairs for these types of damages can be competed on a case by case basis and will be billed back to the customer at DWC prevailing rates.

The laws of The State of Texas shall govern the validity, performance and all matters related to the interpretation and effect of this agreement, and any amendment thereto. A court presiding in Coryell County, Texas shall resolve all legal actions by or against either party.

IN WITNESS WHEREOF, The City of Copperas Cove Texas and Dailey-Wells Communications, Inc. have executed this agreement.

The City of Copperas Cove, Texas

Dailey-Wells Communications, Inc.

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

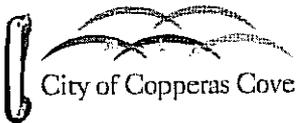
By: \_\_\_\_\_

Title \_\_\_\_\_

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

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_



Purchase Order Request **XX**

Check Request

Advance Ck Req \_\_\_\_\_  
 Partial Pymt \_\_\_\_\_  
 Final Pmt \_\_\_\_\_

**CITY OF COPPERAS COVE**  
 REQUISITION OF GOODS OR SERVICES

Date: 09/17/08

RECEIVED SEP 17 2008

FORWARD CHECK TO:  
 Mail to Payee  
 Return to Department  
 Other \_\_\_\_\_

Vendor Name: Dailey-Wells Communications, Inc	Vendor #: 01-00125	Total / Estimated Cost: \$45,284.00
Address: 3440 E. Houston Street	Contract Name/Number City of Copperas Cove	Purchase Order #:
San Antonio, TX 78219	Vendor Contact:	Bid #:
	Phone #: (210)893-6701	Fixed Asset I.D. #:
	Fax #:	Date Required: <b>ASAP 10/1/08</b>

PLEASE FURNISH THE FOLLOWING SUPPLIES, MATERIALS OR SERVICES WHICH ARE NECESSARY IN THE PROPER AND LEGAL CONDUCT OF MY DEPARTMENT. THIS PURCHASE IS PROPERLY AUTHORIZED BY THE BUDGET AND SUFFICIENT FUNDS ARE AVAILABLE TO PAY FOR THE EXPENDITURES AS PROVIDED FOR UNDER THE STATUTORY PROVISIONS OF THE LOCAL GOVERNMENT CODE OF TEXAS, CONCERNING THE LEGAL EXPENDITURES OF CITY FUNDS, AND IS TO BE CHARGED TO:

ACCOUNT #	INVOICE	DESCRIPTION	QUANTITY	UNIT COST	FREIGHT	TOTAL COST
See Attached Breakdown Sheet		Radio System Maintenance Contract for FY 2008-2009	1	44,484		<del>44,484.00</del>
						45284 <sup>00</sup>
<b>BUDGET EXPENSE FOR FY 2008-2009 FUNDS</b>						

Dept Name: FIRE	Dept #: 44	Prepared By: Gary D. Young	Dept Head/Director Approval <i>[Signature]</i> Robert F. O'Dell, Deputy Chief
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Ship To: Fire Department	FUNDS AVAILABLE <input checked="" type="checkbox"/> YES <input type="checkbox"/> YES/PENDING BUDGET TRANSFER	COUNCIL APPROVED DATE / ITEM #	Assistant Director of Finance <i>[Signature]</i>
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STATE EXACT PURPOSE FOR WHICH MATERIAL WILL BE USED:  
 Maintenance Contract for 800Mhz Radio Communications system which includes, infrastructure, control stations, mobile radios and portable radios

Finance Director

Radio System Maintenance Cost Breakdown by Department

Account	Department	# of radios	% of Responsibility	Cost Per Department
01-4230-4300-4400	Animal Control	5	1.54%	\$696.68
02-4210-5200-4400	Building	4	1.23%	\$557.34
01-4120-2200-4400	City Manager/ACM	2	0.62%	\$278.67
01-4330-7200-4400	Code Enforcement	3	0.92%	\$418.01
02-4425-8401-4400	Compost	1	0.31%	\$139.34
05-4410-7600-4400	Drainage	10	3.08%	\$1,393.35
01-4240-4420-4400	Emergency Management	1	0.31%	\$139.34
01-4170-5100-4400	Engineer	1	0.31%	\$139.34
02-4425-8000-4400	Public Works EOC Desktop	2	0.62%	\$278.67
01-4510-5700-4400	Facility Maint	3	0.92%	\$418.01
01-4240-4400-4400	Fire	92	28.31%	\$12,818.86
09-4310-7402-4400	Golf	2	0.62%	\$278.67
143-4220-4103-4400	Municipal Court	1	0.31%	\$139.34
01-4190-7500-4400	<i>NON Department Unassigned 20 Radios</i>		0.00%	\$0.00
01-4310-5400-4400	Parks	15	4.62%	\$2,090.03
01-4230-4200-4400	Police	110	33.85%	\$15,326.89
01-4410-5300-4400	PW Director	2	0.62%	\$278.67
02-4425-8300-4400	Sewer	15	4.62%	\$2,090.03
03-4430-9500-4400	Solid Waste	19	5.85%	\$2,647.37
01-4410-5300-4400	Streets	17	5.23%	\$2,368.70
02-4425-8100-4400	Utilities	9	2.77%	\$1,254.02
02-4425-8400-4400	Waste Water	1	0.31%	\$139.34
02-4425-8200-4400	Water	10	3.08%	\$1,393.35
Totals		325	100.00%	\$45,284.00

Cost Share Per Radio 0.31%

Actual  
**Cost of Maintenance**  
**\$45,284.00**  
**Type of Maintenance**  
Radio System Maintenance Contr  
FY 2008-2009

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-5

Contact – Mike Baker, Fire Chief, 254-547-2514  
[mbaker@ci.copperas-cove.tx.us](mailto:mbaker@ci.copperas-cove.tx.us)

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**SUBJECT: Consideration and action on authorizing the City Manager to execute a Sales Contract in the amount of \$45,284 between the City of Copperas Cove and Dailey-Wells Communications, Inc. for the purpose of renewing a maintenance contract for the City's 800 MHz EDACS Radio Trunking System manufactured by M/A-Com.**

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#### 1. BACKGROUND/HISTORY

The City purchased a complete 800 MHz radio system December 2, 2003. The radio system consisted of a transmitter site on Freedom Lane and a total of 345 terminal units (portable, mobile and control station radios) at total cost of \$1,731,682.35. City departments utilize the radio system on a daily basis for the operation of their departmental operations. The radio system and radios require annual maintenance and repair to ensure proper operation. Since the initial purchase of the radio system more than 400 maintenance/repair entries have been logged. The repairs range from replacement of missing knobs up to replacement of complete system operating boards. The maintenance contract provides onsite and in house service for our radio system. Although portable and mobile radios can be sent to San Antonio for service, the radio tower site and dispatch facility require a technician to come to Copperas Cove to perform the work. The radio system is the primary communication system used for 911 responses to calls for service by Fire, EMS and Police.

#### 2. FINDINGS/CURRENT ACTIVITY

Attached is the annual renewal of our radio maintenance contract.

The maintenance contract submitted by Dailey-Wells to the City provides:

- Infrastructure Maintenance on site 24X7 with a response commensurate with the service needed.
- Terminal Maintenance for portables, mobiles and control station performed at the service center in San Antonio.
- Annual Software Service for Radio Programming software.

The maintenance contract submitted by Dailey-Wells to the City does NOT provide:

- Service for any buildings, generators, antennas, batteries, speaker microphones, accessories or mobile radio microphones.

Many infrastructure items that would be covered under the Maintenance Agreement can be extremely expensive to replace, some items can be more than \$90,000 to replace if they should fail.

### **3. FINANCIAL IMPACT**

The total cost of the proposed 800 MHz radio system maintenance contract renewal from Dailey-Wells is \$45,284. The City has budgeted \$45,284 for the project. The cost of the maintenance contract would be shared by all departments that use the radio system. Please see the included attachment for breakdown by department. Funding for the project has been secured in the 2008-2009 Annual Budget previously approved by City Council.

### **4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends that the City Council authorize the City Manager to execute a Maintenance Contract in the amount of \$45,284 between the City of Copperas Cove and Dailey-Wells Communications, Inc. for the purpose of renewing a radio system maintenance contract for specified Infrastructure Maintenance, Terminal Maintenance and Programming Software for the City's 800 MHz Radio System manufactured by M/A-Com.



## Product Quotation

Quotation Number: LTN-0025501675

Date: 10/08/2008

Ship to	Bobcat Dealer	Bill To
City Of Copperas Cove copperas cove, TX 76706	Bobcat of Waco, Waco, TX 10075 S. I-35 WACO TX 76706 Phone: (254) 857-3445 Fax: (254) 857-3243 ----- Contact: Jeffrey Johnson Phone: 254-857-3445 Fax: 254-857-3243 Cellular: 254-498-6516 E Mail: jjohnson@clngroup.com	City Of Copperas Cove copperas cove, TX 76706

Description	Part No	Qty	Price Ea.	Total
<b>T320 Bobcat Compact Track Loader</b>	M0039	1	\$43,035.00	\$43,035.00
Selectable Joystick Controls	M0039-R01-C04	1	\$1,677.00	\$1,677.00
A91 Option Package	M0039-P01-A91	1	\$4,825.00	\$4,825.00
Cab enclosure with Heat and AC	Horn			
High Flow Hydraulics	Backup Alarm			
Sound Reduction	Engine Block Heater			
Hydraulic Bucket Positioning	Attachment Control Kit			
Power Bobtach	Cab Accessory Harness			
Deluxe Instrument Panel				
72" Brushcat Rotary Cutter, Standard Flow	7112209	1	\$4,627.00	\$4,627.00
80" C/I Heavy Duty Bucket	6726344	1	\$988.00	\$988.00
--- Bolt-On Cutting Edge, 80"	6718008	1	\$296.00	\$296.00
96" Dozer Blade, 6-Way	7105781	1	\$5,689.00	\$5,689.00
			<b>Total for this Machine</b>	<b>\$61,137.00</b>
<b>Description</b>	<b>Part No</b>	<b>Qty</b>	<b>Price Ea.</b>	<b>Total</b>
Tilt-Tatch	7101600	1	\$1,649.00	\$1,649.00
			<b>Total for these items</b>	<b>\$1,649.00</b>
<b>Total of Items Quoted</b>				<b>\$62,786.00</b>
<b>Quote Total - US dollars</b>				<b>\$62,786.00</b>

**Notes:**

Buy Board number: 268-07

Quoted for Elmer Gothard

All prices subject to change without prior notice or obligation. This price quote supercedes all preceeding price quotes. Customer must exercise his purchase option within 30 days from quote date.

**Customer Acceptance:**

Purchase Order: \_\_\_\_\_

**Authorized Signature:**

**Print:** \_\_\_\_\_ **Sign:** \_\_\_\_\_ **Date:** \_\_\_\_\_



All prices subject to change without prior notice or obligation. This price quote supercedes all preceeding price quotes.  
Customer must exercise his purchase option within 30 days from quote date.

**Customer Acceptance:**

Purchase Order: \_\_\_\_\_

**Authorized Signature:**

**Print:** \_\_\_\_\_ **Sign:** \_\_\_\_\_ **Date:** \_\_\_\_\_



## Product Quotation

Quotation Number: TJD-00672

Date: 10/21/2008

Ship to	Bobcat Dealer	Bill To
City of Copperas Cove	Bobcat of Fort Worth 2727 East Loop 820 South Fort Worth TX 76119-1855 Phone: (817) 654-2202 Fax: (817) 457-9425 ----- Contact: Toby Decker Phone: 817-654-2202 Fax: 817-457-9425 Cellular: 817-597-9010 E Mail: tdecker@clngroup.com	

Description	Part No	Qty	Price Ea.	Total
<b>T320 Bobcat Compact Track Loader</b>	M0039	1	\$59,273.00	\$59,273.00
92 HP Turbo Tier II Diesel engine	Lights, Front & Rear			
Automatically Activated Air Intake Heater	Operator Cab includes: Adjustable Vinyl Suspension Seat,			
Auxiliary Hydraulics	Dome Light, Electrical Power Port, Interior Cab Foam,			
Variable Flow/Maximum Flow	Top & Rear Windows, Parking Brake, Seat Bar, Seat			
Bob-Tach	Belt			
Bobcat Interlock Control System (BICS)	Roll Over Protective Structure (ROPS)			
Engine/Hydraulic Systems Shutdown	SAE-J1040 & ISO 3471			
Instrumentation: Hourmeter, Engine Temperature and Fuel	Falling Object Protective Structure (FOPS)			
Gauges, Warning Lights	SAE-J1043 & ISO 3449, Level I			
Lift Arm Support	Level II is available through Bobcat Parts			
	Tracks, 18 inch Rubber			
	Spark Arrestor Muffler			
	Warranty: 12 months, unlimited hours			
A91 Option Package	M0039-P01-A91	1	\$6,893.00	\$6,893.00
Cab enclosure with Heat and AC	Horn			
High Flow Hydraulics	Backup Alarm			
Sound Reduction	Engine Block Heater			
Hydraulic Bucket Positioning	Attachment Control Kit			
Power Bobtach	Cab Accessory Harness			
Deluxe Instrument Panel				
Factory Installed Selectable Joystick Controls	M0039-R01-C04	1	\$2,395.00	\$2,395.00
Attachments 80" C/I Heavy Duty Bucket	6726344	1	\$1,276.00	\$1,276.00
72" Brushcat Rotary Cutter, Standard Flow	7112209	1	\$5,791.00	\$5,791.00
96" Dozer Blade, 6-Way	7105781	1	\$5,314.00	\$5,314.00
<b>Description</b>	<b>Part No</b>	<b>Qty</b>	<b>Price Ea.</b>	<b>Total</b>
Tilt Tach		1	\$2,316.00	\$2,316.00
Delivery Fee		1	\$175.00	\$175.00
<b>Total of Items Quoted</b>				<b>\$83,433.00</b>
Dealer P.D.I.				<b>\$300.00</b>
Freight Charges				<b>\$1,488.20</b>
Dealer Assembly Charges				<b>\$112.50</b>
Sales total before taxes				<b>\$85,333.70</b>
Quote Total - US dollars				<b>\$85,333.70</b>

**Notes:**

All prices subject to change without prior notice or obligation. This price quote supercedes all preceeding price quotes.  
Customer must exercise his purchase option within 30 days from quote date.

**Customer Acceptance:**

Purchase Order: \_\_\_\_\_

**Authorized Signature:**

**Print:** \_\_\_\_\_ **Sign:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-6

Contact – James A. Trevino, Assistant Director of Public Works, 547-0751  
jtrevino@ci-copperas-cove.tx.us

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**SUBJECT: Consideration and action on the approval to purchase a T320 Bobcat Compact Track Loader from Bobcat of Waco for the amount of \$62,786.**

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#### 1. BACKGROUND/HISTORY

The majority of the City's drainage system is comprised of natural, grass lined channels. The City's drainage system requires periodic maintenance to remove silt buildup and repair of minor erosion. Most of the ditches have very limited access with the easement usually encompassing the full top width of the channel. To provide service requires utilizing small equipment which can be lowered into a channel from the roadway.

#### 2. FINDINGS/CURRENT ACTIVITY

The Drainage Department currently utilizes a 1987 model Bobcat to perform channel maintenance. However, due to the age of the machine and a mechanical breakdown, locating replacement parts is difficult. Additionally, the machine is a wheeled loader which tends to create ruts in the muddy banks of the channels being repaired.

Replacement of the current unit was approved during the 2008-09 budget process. Quotes were received from the Buy Board, Houston-Galveston Area Council (H-GAC) Co-op, and Bobcat of Fort Worth. The lowest purchase price received is through the Buy Board.

#### 3. FINANCIAL IMPACT

Purchase of the Track Loader will be through the Buy Board Co-Op with funding provided through the October 2008 tax note issue.

#### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends the City Council approve the purchase of a T320 Bobcat Track Loader from Bobcat of Waco for the amount of \$62,786.



**CONTRACT PRICING WORKSHEET**  
For Standard Equipment Purchases

Contract No.:

VE03-06

Date Prepared:

10/31/08

*This Form must be prepared by Contractor and given to End User. The H-GAC administrative fee shall be shown in Section F. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.*

Buying Agency:	CITY OF COPPERAS COVE	Contractor:	PHILPOTT MOTORS
Contact Person:	LESLIE L. CHRISTENSEN	Prepared By:	RICHARD HYDER
Phone:	254-547-0751	Phone:	409-727-1451
Fax:	254-547-9851	Fax:	409-724-0934
Email:	<a href="mailto:lchristensen@ci.copperas-cove.tx.us">lchristensen@ci.copperas-cove.tx.us</a>	Email:	<a href="mailto:graeme.smith@philpottmotors.com">graeme.smith@philpottmotors.com</a>
Product Code:	DD	Description:	2009 FORD F-750 (XL) 4x2 SRA

**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** \$ 39,313.00

**B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.**  
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
FLOOR PLAN INSURANCE	\$ 825.57		
LOT INSURANCE	\$ 117.94		
		WTB-17 6 - 8yd DUMP BODY	\$ 8,938.72
FORD F-750 CHASSIS CAB		ALLSTEEL 10ga DUMP BODY, w/HYDRAULIC	
158" WHEEL BASE 80" CAB - AXLE	\$ -	HOIST, CLEARANCE LIGHTS, REFLECTORS,	
76B FRONT TOW HOOKS	\$ 60.00	MUDFLAPS, FSS TRIPLE REAR LIGHTS, BODY	
CUMMINS 200HP ENGINE	\$ -	SAFETY STRUT, BACK-UP ALARM, 1/2 CAB	
ALLISON 2500 5-Spd RDS AUTO TRANS	\$ -	PROTECTOR, PTO PUMP.	
CARB COMPLIANT	\$ -	PAINTED GLOSS BLACK OR WHITE.	
		<b>Subtotal From Additional Sheet(s):</b>	\$ -
		<b>Subtotal B:</b>	\$ 9,942.23

**C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.**  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
PDI CHARGE	\$ 80.00		
		<b>Subtotal From Additional Sheet(s):</b>	\$ -
		<b>Subtotal C:</b>	\$ 80.00
<b>Check:</b> Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).		<b>For this transaction the percentage is:</b>	0%

**D. Other Cost Items Not Itemized Above (e.g. Installation, Freight, Delivery, Etc.)**

Description	Cost	Description	Cost
Delivery charge to Copperas Cove; 300 miles @ \$1.68	\$ 504.00	DIESEL EMISSIONS CHARGE	\$ 5,000.00
		<b>Subtotal D:</b>	\$ 5,504.00

**E. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C+D)** \$ 54,839.23

<b>Quantity Ordered:</b>	1	<b>X Subtotal of A + B + C + D:</b>	\$ 54,839.23	=	<b>Subtotal E:</b>	\$ 54,839.23
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**F. H-GAC Fee Calculation (From Current Fee Tables)** **Subtotal F:** \$ 1,000.00

**G. Trade-Ins / Other Allowances / Special Discounts**

Description	Cost	Description	Cost
		<b>Subtotal G:</b>	\$ -

**Estimated Delivery Date:** 90-120 DAYS **H. Total Purchase Price (E+F+G):** \$ 55,839.23





**CONTRACT PRICING WORKSHEET**  
For Standard Equipment Purchases

Contract No.:

HT-11-07

Date Prepared:

10/17/2008

*This Form must be prepared by Contractor and given to End User. The H-GAC administrative fee shall be shown in Section F. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.*

Buying Agency:	CITY OF COPPERAS COVE	Contractor:	RUSH TRUCK CENTERS OF TEXAS L.P.
Contact Person:	LESLIE	Prepared By:	BOB LAKE
Phone:		Phone:	713-495-6314/800-580-7383
Fax:		Fax:	800-574-6208
Email:	lcristensen@ci.copperas-cove.tx.us	Email:	laker@rush-enterprises.com

Product Code:	FD	Description:	GMC WITH 6-8 YD DUMP BODY LIGHT AUTOMATIC 33,000 GVW
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**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** \$ 29,775.00

**B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.**  
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
FD2 215HP DURAMAX DIESEL	\$ 12,350.00	FD57 12,000 LB FRT AXLE	\$ 650.00
FD32 AIR CONDITIONING	\$ 705.00	FD120 TILT AND CRUISE	\$ 223.00
FD79 152" WB 84" CA	\$ 140.00	FD62 21,000 LB REAR AXLE	\$ 800.00
FD92 80,000 PSI FRAME	\$ 250.00	FD223 60 DAY FLOORING CHARGE	\$ 850.00
FD101 DUAL PASSENGER SEAT	\$ 250.00	FD136 HOT SHIFT PTO FOR AUTO TRANS	\$ 1,250.00
FD 94 REINFORCED FRAME	\$ 450.00	FC200 6-8 YD DUMP BODY	\$ 7,450.00
FD116 AM/FM STEREO	\$ 297.00	FC337 1/2 CAB PROTECTOR	\$ 137.00
FD124 14 PLY FR/REAR TIRES	\$ 850.00	FD290 GROUND OPERATED TARP	\$ 698.00
FD162 DESTINATION CHARGE	\$ 1,150.00	FC367 UNDECK TRUCKS AT BODY CO	\$ 90.00
FD163 MODEL SPECIFIC DIESEL/AUTO	\$ 3,500.00	FD13 AIR BRAKES	\$ 2,500.00
FD42 PROVISIONS FOR POWER TAKE OFF	\$ 457.00		
		<b>Subtotal From Additional Sheet(s):</b>	\$ 714.00
		<b>Subtotal B:</b>	\$ 35,761.00

**C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.**  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		<b>Subtotal From Additional Sheet(s):</b>	
		<b>Subtotal C:</b>	\$ -

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: \$ -

**D. Other Cost Items Not Itemized Above (e.g. Installation, Freight, Delivery, Etc.)**

Description	Cost	Description	Cost
		<b>Subtotal D:</b>	\$ -

**E. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C+D)** \$ 65,536.00

Quantity Ordered:	1	X Subtotal of A + B + C + D:	65536	=	Subtotal E:	\$ 65,536.00
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**F. H-GAC Fee Calculation (From Current Fee Tables)** Subtotal F: \$ 1,000.00

**G. Trade-Ins / Other Allowances / Special Discounts**

Description	Cost	Description	Cost
		<b>Subtotal G:</b>	\$ -

**Delivery Date:** 180 ETA **H. Total Purchase Price (E+F+G):** \$ 66,536.00

**B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in**

Description	Cost	Description	Cost
FD24 12.9 CFM COMPRESSOR	\$ 714.00		
		<b>Subtotal From Additional Sheet(s):</b>	
		<b>total B:</b>	\$ 714.00

# **City of Copperas Cove**

## **City Council Agenda Item Report**

**November 3, 2008**

### **Agenda Item No. I-7**

**Contact – Robert M. McKinnon, Public Works Director, 547- 0751**  
bmckinnon@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on the approval to purchase a Ford F-750, 6-8 yard dump truck from Philpott Motors, Nederland, Texas in the amount of \$55,839.23.**

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#### **1. BACKGROUND/HISTORY**

At the present time the Compost Department transports finished compost to either the Transfer Station or to customers throughout the area via a 1986 Ford modified to haul material, with more than 103,000 miles. The vehicle was transferred from Solid Waste to Compost and its tilt bed is unreliable.

#### **2. FINDINGS/CURRENT ACTIVITY**

The present vehicle has become a maintenance nightmare and on occasion has operational issues during compost delivery. During the 2008-09 budget process, a replacement vehicle was requested and approved, pending the issue of tax notes.

#### **3. FINANCIAL IMPACT**

Tax notes were issued in October 2008 and the truck has been approved for purchase. The vehicle will be purchased using the H-GAC and an approved vendor (Philpott Motors). See H-GAC "Contract Pricing Worksheet" attached.

#### **ACTION OPTIONS/RECOMMENDATION**

City staff recommends the City Council approve the purchase of a Ford F-850, 6-8 yard Dump Truck from Philpott Motors, Nederland, Texas in the amount of \$55,839.23.



**CONTRACT PRICING WORKSHEET**  
For Catalog & Price Sheet Type Purchases

**Contract No.:** GR01-08

**Date Prepared:** 10/22/2008

*This Form must be prepared by Contractor and given to End User. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.*

<b>Buying Agency:</b>	CITY OF COPPERAS COVE	<b>Contractor:</b>	COUFAL PRATER EQUIPMENT
<b>Contact Person:</b>	LESLIE CHRISTENSEN	<b>Prepared By:</b>	MICHAEL SKALA
<b>Phone:</b>	(254) 547-0751	<b>Phone:</b>	(254) 773-9916
<b>Fax:</b>		<b>Fax:</b>	(254) 770-3217
<b>Email:</b>	LCHRISTENSEN@CI.COPPERAS-COVE.TX.US	<b>Email:</b>	MICHAELS@CPETEM.COM

<b>Catalog / Price Sheet Name:</b>	A2
<b>General Description of Product:</b>	JOHN DEERE 5603 MFWD CAB UTILITY TRACTOR 99 ENGINE/82 PTO HP

**A. Catalog / Price Sheet Items being purchased - Itemize Below - Attach Additional Sheet If Necessary**

Quan	Description	Unit Pr	Total
1	6750LV 5603 UTILITY TRACTOR	42267	42267
1	0551 MATERIAL HANDLING PACKAGE	0	0
1	4060 18.4-30 IN. 8PR R1 BIAS TIRES	0	0
1	6455 12.4-24 IN. 8PR R1 BIAS TIRES	0	0
1	7221 DUAL MID SCVS W/ JOYSTICK CONTROL/ 1 REAR SCV	1006	1006
1	2152W MX7 LIFT TYPE ROTARY CUTTER-540 RPM PTO	3405	3405
1	1612 FRONT SAFTEY SHIELD- CHAIN	0	0
1	1712 REAR SAFTEY SHIELD- CHAIN	0	0
1	9010 DUAL TAILWHEEL SUPPORT, HUB AND WHEEL	267	267
			0
			0
<b>Total From Other Sheets, If Any:</b>			
<b>Subtotal A:</b>			46945

**B. Unpublished Options, Accessory or Service items - Itemize Below - Attach Additional Sheet If Necessary**

(Note: Unpublished Items are any which were not submitted and priced in contractor's bid.)

Quan	Description	Unit Pr	Total
			0
			0
			0
			0
<b>Total From Other Sheets, If Any:</b>			
<b>Subtotal B:</b>			0

**Check:** Total cost of Unpublished Options (B) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).

**For this transaction the percentage is:** 0%

**C. Other Allowances, Discounts, Trade-Ins, Freight, Make Ready or Miscellaneous Charges**

HGAC CONTRACT DISCOUNT OF 26.5%	-12440.43
<b>Subtotal C:</b>	-12440.43

**Delivery Date:** 10/28/2008

**D. Total Purchase Price (A+B+C):** 34504.57



**CONTRACT PRICING WORKSHEET**  
For Standard Equipment Purchases

Contract No.:

GR01-08

Date Prepared:

OCT 14 2008

*This Form must be prepared by Contractor and given to End User. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.*

Buying Agency:	CITY OF COPPERAS COVE	Contractor:	LANDMARK EQUIPMENT CO
Contact Person:	JOHN PILGRAM	Prepared By:	RAY WATKINS
Phone:	254 547 8111	Phone:	972-579-9999
Fax:		Fax:	972-579-7871
Email:	<a href="mailto:ccfleet@ci.copperas-cove.tx.us">ccfleet@ci.copperas-cove.tx.us</a>	Email:	<a href="mailto:ray.watkins@landmarkeq.com">ray.watkins@landmarkeq.com</a>

Product Code:	43A10	Description:	NEW HOLLAND T5050 2WD ROPS 80 PTO HP STANDARD EQUIPMENT
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<b>A. Product Item Base Unit Price Per Contractor's H-GAC Contract:</b>	28600
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**B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable**  
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
18.4R30 12.4R24 TIRES	\$400.00		
	\$0.00		
FOUR WHEEL DRIVE	\$6,650.00		
	\$0.00		
	\$0.00		
	\$0.00		
	\$0.00		
	\$0.00		
		<b>Subtotal From Additional Sheet(s):</b>	
		<b>Subtotal B:</b>	7050

**C. Unpublished Options - Itemize below - Attach additional sheet if necessary**  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
SPECIAL DISCOUNT	(\$700.00)		\$0.00
	\$0.00		\$0.00
	\$0.00		
	\$0.00		
		<b>Subtotal From Additional Sheet(s):</b>	
		<b>Subtotal C:</b>	-700

<b>Check:</b> Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	<b>For this transaction the percentage is:</b>	-2%
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<b>D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)</b>			
Quantity Ordered:	1	X Subtotal of A + B + C:	34950
		=	<b>Subtotal D:</b> 34950

<b>E. Other Charges, Trade-Ins, Allowances, Discounts, Etc.</b>			
Description	Cost	Description	Cost
MAKE READY /FACTORY FREIGHT	\$0.00		
		<b>Subtotal E:</b>	0

<b>Delivery Date:</b>	<b>F. Total Purchase Price (D+E):</b>	34950
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# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item No. I-8

Contact – Robert M. McKinnon, Public Works Director, 547- 0751  
bmckinnon@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on the approval to purchase a John Deere 5603 MFWD Cab Utility Tractor with MX7 lift type rotary cutter, from Coufal Prater Equipment, Temple, Texas in the amount of \$34,504.57.**

---

#### 1. BACKGROUND/HISTORY

The Compost Department is required by the Texas Commission on Environmental Quality (TCEQ) to turn under (mix with soil) all sludge that cannot be put into windrows, within 24 hours of receipt. The required process is currently accomplished with a 1976 John Deere tractor, which has major transmission problems with estimated repair costs of \$12,000 to \$15,000. Additionally, there are numerous other repairs needed. The estimated value of the tractor is \$4,500.

#### 2. FINDINGS/CURRENT ACTIVITY

During the 2008-09 budget process a replacement tractor was requested and approved, pending the issue of tax notes.

#### 3. FINANCIAL IMPACT

Tax notes issued in October 2008 will be utilized to purchase the tractor through H-GAC with approved vendor, Coufal Prater Equipment. See H-GAC "Contract Pricing Worksheet" attached.

#### 4. ACTION OPTIONS/RECOMMENDATION

City staff recommends the City Council approve the purchase of a John Deere 5603 MFWD Cab Utility Tractor from Coufal Prater Equipment, Temple, Texas in the amount of \$34,504.57.

 **AIA**<sup>®</sup> Document A121<sup>™</sup>CMc – 2003 and AGC  
**Document 565**

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

**AGREEMENT**

made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_  
*(In words, indicate day, month and year)*

**BETWEEN** the Owner:  
*(Name and address)*

Copperas Cove  
507 S. Main Street  
Copperas Cove, TX 76522

and the Construction Manager:  
*(Name and address)*

Rogers – O'Brien Construction Company, LTD.  
3901 S. Lamar Blvd. Suite 200  
Austin, Texas 78704

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

A new police facility of approximately 33,570 S.F.  
Located directly south of the intersection of Avenue E and South 4<sup>th</sup> in Copperas Cove,  
Texas

The Architect is:  
*(Name and address)*

Brinkley Sargent Architects  
5000 Quorum Drive, Suite 600  
Dallas, Texas 75254

The Owner and Construction Manager agree as set forth below:

**ADDITIONS AND DELETIONS:**

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

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

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

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 RELATIONSHIP OF PARTIES**

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

### **§ 1.2 GENERAL CONDITIONS**

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

## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

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

### **§ 2.1 PRECONSTRUCTION PHASE**

#### **§ 2.1.1 PRELIMINARY EVALUATION**

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

#### **§ 2.1.2 CONSULTATION**

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

#### **§ 2.1.3 PRELIMINARY PROJECT SCHEDULE**

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

#### **§ 2.1.4 PHASED CONSTRUCTION**

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

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### **§ 2.1.5 PRELIMINARY COST ESTIMATES**

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

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

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

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

### **§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS**

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

### **§ 2.1.7 LONG-LEAD-TIME ITEMS**

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

### **§ 2.1.8 EXTENT OF RESPONSIBILITY**

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

### **§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

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

### **§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME**

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

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

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

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

#### **§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE**

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

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

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

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

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

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

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

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

### **§ 2.3 CONSTRUCTION PHASE**

#### **§ 2.3.1 GENERAL**

**§ 2.3.1.1** The Construction Phase shall commence on the earlier of:

- (1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
- (2) the Owner's first authorization to the Construction Manager to:
  - (a) award a subcontract, or
  - (b) undertake construction Work with the Construction Manager's own forces, or
  - (c) issue a purchase order for materials or equipment required for the Work.

### **§ 2.3.2 ADMINISTRATION**

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

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

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

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

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

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

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

### **§ 2.4 PROFESSIONAL SERVICES**

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

### **§ 2.5 HAZARDOUS MATERIALS**

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

## **ARTICLE 3 OWNER'S RESPONSIBILITIES**

### **§ 3.1 INFORMATION AND SERVICES**

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

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

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

### **§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS**

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

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

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

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

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

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

### **§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE**

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

### **§ 3.3 ARCHITECT**

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA® Document B151™-1997, *Abbreviated Standard Form of Agreement Between Owner and Architect* current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described

in B151™-1997, requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

### § 3.4 LEGAL REQUIREMENTS

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

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

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

### § 4.1 COMPENSATION

§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

Compensate shall be a lump sum of \$20,000

*(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)*

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond ( 365 ) days from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

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

### § 4.2 PAYMENTS

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

§ 4.2.2 Payments are due and payable thirty ( 30 ) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon.)*

2.5% per annum

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

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

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## § 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:

For the cost of work as defined in Article 6 and as modified by the Supplemental Conditions and General Conditions of the Contract for Construction, AIA A201-1997, attached hereto as Exhibit A shall be a sum based upon the estimated project budget of \$7,478,000 and a project construction duration of 12 months. The Construction Manager's fee represents 4.0% of the total cost of the work. The cost of the work will be defined once final construction documents have been priced and accepted by the Owner. The Construction Manager's General Conditions shall be equitably adjusted after the bids have been retrieved and accepted by the Owner.

*(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)*

## § 5.2 GUARANTEED MAXIMUM PRICE

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

\$7,478,000

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

## § 5.3 CHANGES IN THE WORK

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

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

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

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

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

### § 6.1.2 LABOR COSTS

- .1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.

#### Classification

#### Name

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)*

- .3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

### § 6.1.3 SUBCONTRACT COSTS

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

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

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

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

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.
- .2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.
- .3 Costs of removal of debris from the site.
- .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office, email and internet charges.
- .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

### § 6.1.6 MISCELLANEOUS COSTS

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

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- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™-1997 or other provisions of the Contract Documents.
- .6 Data processing costs related to the Work.
- .7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.
- .9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

#### § 6.1.7 OTHER COSTS

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

#### § 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

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

- .1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™-1997.
- .2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

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

#### § 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.1.

Init.

- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.
- .6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase Services.
- .8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.
- .9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

### § 6.3 DISCOUNTS, REBATES AND REFUNDS

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

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

### § 6.4 ACCOUNTING RECORDS

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

## ARTICLE 7 CONSTRUCTION PHASE

### § 7.1 PROGRESS PAYMENTS

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

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

§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment to the Construction Manager not later than the 25 day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty-five ( 35 ) days after the Architect receives the Application for Payment.

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

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee

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shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

- .1** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™-1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
- .2** Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- .3** Add the Construction Manager's Fee, less retainage of ( ). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4** Subtract the aggregate of previous payments made by the Owner.
- .5** Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™-1997.

**§ 7.1.8** Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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

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

## **§ 7.2 FINAL PAYMENT**

**§ 7.2.1** Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™-1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of

the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

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

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™-1997 or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

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

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

**§ 7.2.4** If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

## **ARTICLE 8 INSURANCE AND BONDS**

### **§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER**

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™-1997. Such insurance shall be written for not less than as set forth in Section 1.1 of the modified General Conditions, or greater if required by law:

*(Paragraphs deleted)*

**§ 8.1.4** Other coverage:

Refer to the General and Supplemental Conditions of the Contract.

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

*(Paragraphs deleted)*

### **§ 8.3 PERFORMANCE BOND AND PAYMENT BOND**

**§ 8.3.1** The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent ( 100% ) of the Contract Sum.

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

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

### **§ 9.1 DISPUTE RESOLUTION**

**§ 9.1.1** During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™-1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

### **§ 9.2 OTHER PROVISIONS**

**§ 9.2.1** Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™-1997, *General Conditions of the Contract for Construction*.

### **§ 9.2.2 EXTENT OF CONTRACT**

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

### **§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS**

Article 1.6 of A201™-1997 shall apply to both the Preconstruction and Construction Phases.

### **§ 9.2.4 GOVERNING LAW**

The Contract shall be governed by the law of the State of Texas and venue for any disputes shall be in Coryell County.

### **§ 9.2.5 ASSIGNMENT**

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™-1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **§ 9.2.6 SERVERABILITY**

The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability, or effect of the remainder of the Contract Documents.

### **§ 9.2.7 CONSTRUCTION**

This Contract is the joint product of the parties hereto. Each party hereto acknowledges and agrees that it enters into this Contract voluntarily, with advice of counsel, and that each party hereto and their respective counsel have had opportunity to revise and have revised the language of this Contract by negotiation and bargaining, at "arm's length." Consequently, in the construction and/or enforcement of this Contract, or any of its terms, the participation of any party in the drafting of this Contract shall not be construed, in any way, against such party.

### **§ 9.2.8 THIRD PARTY BENEFICIARIES**

This Contract is for the sole benefit of the parties hereto, and is not intended to confer any right, nor is it intended to create any obligation with respect to any party that is not a signatory or party to this Contract.

### **§ 9.2.9 AUTHORITY**

Each signatory hereto represents that it has the authority to execute this Contract on behalf of the respective named party.

### **§ 9.2.10 COUNTERPARTS**

This Contract may be executed in multiple original counterparts, each of which shall be of equal dignity.

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### **§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE**

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

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

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

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

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

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

### **§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE**

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

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

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

§ 10.3 SUSPENSION

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

ARTICLE 11 OTHER CONDITIONS AND SERVICES

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

OWNER: CITY OF COPPERAS COVE

(Row deleted)

(Signature)

Andrea Gardner, City Manager

(Printed name and title)

Date

ATTEST

CONSTRUCTION MANAGER: ROGERS-O'BRIEN  
CONSTRUCTION COMPANY, LTD.

(Signature)

Preston McAfee, President

(Printed name and title)

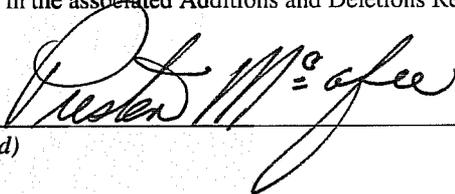
Date

ATTEST

9/9/08

**Certification of Document's Authenticity**  
**AIA® Document D401™ – 2003**

I, Preston McAfee, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:16:20 on 09/09/2008 under Order No. 1000323291\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A121™CMc – 2003 and AGC Document 565 - Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

PRESIDENT

(Title)

9/9/08

(Dated)



# AIA<sup>®</sup> Document A201<sup>™</sup> – 1997

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address):*

A new police facility of approximately 33,570 S.F. located directly south of the intersection of Avenue E and South 4<sup>th</sup> in Copperas Cove, Texas

### THE OWNER:

*(Name and address):*

Copperas Cove  
507 S. Main Street  
Copperas Cove, TX 76522

### THE ARCHITECT:

*(Name and address):*

Brinkley Sargent Architects  
5000 Quorum Drive, Suite 600  
Dallas, TX 75254

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### ADDITIONS AND DELETIONS:

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

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

This document has been approved and endorsed by The Associated General Contractors of America

Init.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

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

#### **§ 1.1.2 THE CONTRACT**

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

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

#### **§ 1.1.7 THE PROJECT MANUAL**

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

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

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

### **§ 1.3 CAPITALIZATION**

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

### **§ 1.4 INTERPRETATION**

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

### **§ 1.5 EXECUTION OF CONTRACT DOCUMENTS**

**§ 1.5.1** The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

### **§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.6.1** The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

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

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

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or

continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

**§ 2.2.4** Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

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

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the

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Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

**§ 3.2.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

**§ 3.2.3** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

### **§ 3.4 LABOR AND MATERIALS**

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

**§ 3.4.2** The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

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

### **§ 3.5 WARRANTY**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **§ 3.6 TAXES**

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

### **§ 3.7 PERMITS, FEES AND NOTICES**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

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

**§ 3.7.3** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**§ 3.7.4** If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.8 ALLOWANCES**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

### **§ 3.9 SUPERINTENDENT**

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

communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

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

**§ 3.10.2** The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

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

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

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

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

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

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

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

**§ 3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

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

### **§ 3.13 USE OF SITE**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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

### **§ 3.15 CLEANING UP**

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

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

### **§ 3.16 ACCESS TO WORK**

**§ 3.16.1** The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

## **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

### **§ 4.1 ARCHITECT**

**§ 4.1.1** The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

### **§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and

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deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

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

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

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

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

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

### **§ 4.3 CLAIMS AND DISPUTES**

**§ 4.3.1** Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 4.3.2** Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

**§ 4.3.3** Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 4.3.4** Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

**§ 4.3.5** Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

**§ 4.3.6** If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

**§ 4.3.7 Claims for Additional Time**

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

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

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

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

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**§ 4.4.1 Decision of Architect.** Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

**§ 4.4.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

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**§ 4.4.5** The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

**§ 4.4.6** When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

**§ 4.4.7** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 4.4.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

#### **§ 4.5 MEDIATION**

**§ 4.5.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**§ 4.5.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

#### **§ 4.6 ARBITRATION**

**§ 4.6.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

**§ 4.6.2** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

**§ 4.6.3** A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

**§ 4.6.4** Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 4.6.5** Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

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

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

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

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

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

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

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### **§ 5.3 SUBCONTRACTUAL RELATIONS**

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

### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

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

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

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

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

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

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

### **§ 6.2 MUTUAL RESPONSIBILITY**

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

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

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

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

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

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

### § 7.2 CHANGE ORDERS

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

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

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.

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

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

**§ 7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

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

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

**§ 7.3.8** Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

**§ 7.3.9** When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### **§ 7.4 MINOR CHANGES IN THE WORK**

**§ 7.4.1** The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

## **ARTICLE 8 TIME**

### **§ 8.1 DEFINITIONS**

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

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

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

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

### **§ 8.2 PROGRESS AND COMPLETION**

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

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

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

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

### **§ 9.2 SCHEDULE OF VALUES**

**§ 9.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to

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payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

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

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

- .1 defective Work not remedied;

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

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

### **§ 9.6 PROGRESS PAYMENTS**

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

**§ 9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

**§ 9.6.4** Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

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

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

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

### **§ 9.7 FAILURE OF PAYMENT**

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

## **§ 9.8 SUBSTANTIAL COMPLETION**

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

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

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

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

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

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in

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the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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

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

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

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

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

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

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

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

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

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

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

**§ 10.2.7** The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

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

**§ 10.4** The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

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

#### § 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

#### § 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

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**§ 11.3.2** To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

**§ 11.3.3** The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

#### **§ 11.4 PROPERTY INSURANCE**

**§ 11.4.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

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

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

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

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

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

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

**§ 11.4.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.4.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

**§ 11.4.7** **Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.4.8** A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.4.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.4.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

## **§ 11.5 PERFORMANCE BOND AND PAYMENT BOND**

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

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

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 UNCOVERING OF WORK**

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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

### **§ 12.2 CORRECTION OF WORK**

#### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

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

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract

Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

**§ 13.1.1** The Contract shall be governed by the law of the place where the Project is located.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

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

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

### **§ 13.3 WRITTEN NOTICE**

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

### **§ 13.4 RIGHTS AND REMEDIES**

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

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

### **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

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

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

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

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

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

### **§ 13.6 INTEREST**

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

### **§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**§ 13.7.1** As between the Owner and Contractor:

- .1** Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2** Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3** After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work

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by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

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

## **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor:

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

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

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

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

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

## **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

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

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

**§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

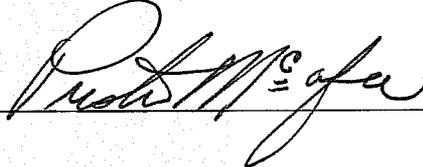
**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

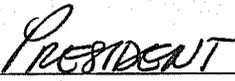
- .1** cease operations as directed by the Owner in the notice;
- .2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate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

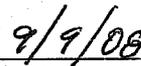
**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

**Certification of Document's Authenticity**  
**AIA® Document D401™ – 2003**

I, Preston McAfee, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:27:16 on 09/09/2008 under Order No. 1000323291\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 1997 - General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
\_\_\_\_\_  
(Signed)

  
\_\_\_\_\_  
(Title)

  
\_\_\_\_\_  
(Dated)

## SUPPLEMENTARY CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

The following supplements modify, change, delete from or add to the "General Conditions of the Contract for Construction", AIA Document A201-1997. Where an Article of the General Conditions is modified or any Paragraph, Subparagraph, or Clause thereof is modified or deleted by these supplements, the unaltered provisions of that Article, Paragraph, Subparagraph, or Clause shall remain in effect.

### ARTICLE 1 GENERAL PROVISIONS

- 1.2.1.1 **Add this new Subparagraph:** Should Drawings disagree in themselves or with Specifications and are not clarified by CM@R clarification or addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small-scale drawings.
- 1.2.1.2 **Add this new Subparagraph:** The most recently issued document takes precedence over previously issued forms of the same document. If an item is shown one place in the Drawings, but not another, or called for in a schedule or the Specifications but not shown on the Drawings, it is to be included. The order of precedence of the Contract Documents is as follows with the highest authority listed first:
- a. Addendum to Standard Form of Agreement;
  - b. The Agreement (except as expressly modified by any Addenda);
  - c. Supplementary Conditions of the Contract for Construction and other Division 1 Requirements of the Specifications;
  - d. General Conditions; and
  - e. Addenda;
  - f. Drawings and Specifications (other than the Supplementary Conditions and other Division 1 Requirements contained in the Specifications).
- 1.2.4 **Add this new Subparagraph:** Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules and drawings give locations.
- 1.2.5 **Add this new Subparagraph:** Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.
- 1.4.2 **Add this new Subparagraph:** When specific products, systems or items of equipment are referred to in the Contract Documents, any customary ancillary devices necessary for proper functioning which are typically furnished at no increase in contract amount as part of an installation contract shall also be provided, but not including any manufacturers' options on any particular device, which device is specified in the Contract Documents. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition at the time of contract

execution shall apply. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions, limitations or waivers that are inconsistent with the Contract Documents do not apply.

1.5.2.1

**Add this new Subparagraph:** Contractor shall fully acquaint itself with all above ground, visible existing conditions and limitations affecting the Work, including (without limitation) all property lines, visible utility locations, existing improvements, elevations, and site and local conditions. All dimensions and clearances necessary to the Work, as indicated on the Drawings and contained in the Specifications, shall be verified by Contractor at the job site and Contractor shall report any discrepancies to the Architect for adjustment before any Work affected thereby is prosecuted. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the above ground, visible conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, and (4) availability and cost of materials, tools and equipment. The Owner assumes no responsibility or liability for the safety of the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor of any Subcontractor to comply with the requirements of this Subparagraph.

1.5.2.2

**Add this new Subparagraph:** By execution of Amendment 1 to the Agreement, Contractor specifically acknowledges and declares that the Contract Documents are sufficient to have enabled it to determine the Guaranteed Maximum Price, and that the Drawings and Specifications are sufficient to enable Contractor to properly construct the Work in accordance with the Contract Documents, and otherwise to fulfill all of its obligations under the Contract Documents. Contractor shall carefully study and compare all existing conditions, Drawings, Specifications, and other Contract Documents; shall verify all figures on the Drawings before laying out the Work; shall take field measurements and verify field conditions; shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities; and shall give prompt notice to the Architect and Owner in writing, of all errors, inconsistencies, or omissions, which it may discover and obtain specific instructions in writing with respect thereto before proceeding with the Work. Contractor shall not take advantage of any apparent error or omission which may be found in the Contract Documents, but shall cooperate in good faith with the Owner and Architect to resolve any ambiguities, inconsistencies or defects in the Contract Documents. Contractor shall not be entitled to an extension of the Contract Time to carry out any repairs or corrections of any construction caused by Contractor's failure to notify Architect and Owner of errors, omissions or inconsistencies in the Contract Documents discovered by Owner prior to the execution of the Work affected by such errors, omissions or inconsistencies. Errors or omissions in Contract Documents or the misdescription of details of Work manifestly necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve

Contractor from performing such omitted work or misdescribed details of the Work and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications.

- 1.5.2.3 **Add this new Subparagraph:** By agreeing to a Guaranteed Maximum Price for the entire Project, Contractor agrees with Owner that the Work required by the Contract Documents, including, without limitation, construction means, methods, procedures and techniques necessary to perform the Work, will be consistent with: (a) good and sound practices within the construction industry; (b) generally prevailing and accepted industry standards applicable to the Work; and (c) requirements of any warranties applicable to the Work.

## ARTICLE 2 OWNER

- 2.1.2 **Delete this Subparagraph in its entirety.**
- 2.2.3 **Add the following to the end of the Subparagraph:** The furnishing of surveys and legal descriptions shall not relieve Contractor from its duties under the Contract Documents.
- 2.2.5 **Delete entire subparagraph and replace it with the following:** Contractor will be furnished, free of charge, 2 copies of the Drawings and Project Manuals for use in executing the Work. Additional copies of documents may be purchased at cost of reproduction and handling.
- 2.4.1 **Delete second sentence from the end of the Subparagraph, which reads as follows:** "Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect."
- 2.4.2 **Add this new Subparagraph:** After the Work is complete, the Owner may make emergency repairs to the Work if necessary to prevent further damage, or if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

- 3.1.1 **Delete entire Subparagraph and replace it with the following:** The term "Contractor" means the Construction Manager or Construction Manager's authorized representative.
- 3.2.1 **Add the following to the end of the Subparagraph:** If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any item of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no increase in contract amount to the Owner.

3.2.3 **Delete the words “Subparagraphs 4.3.6 and 4.3.7” and replace with the following:** the Contract Documents.

3.3.1 **Add the following to the end of the Subparagraph:** The Contractor shall be solely responsible for all locations, dimensions and levels, and no plea as to instructions or orders received from any source, other than the information contained in plot, drawings and specifications or in written orders of the Architect shall justify departure from the dimensions and levels required by the drawings. He shall take his own measurements at the site, verifying same with the drawings and at the building, and will be held responsible for the proper fit of completed work in position.

3.3.2 **Add the following to the end of the Subparagraph:** It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor’s independent contractor status as described herein.

3.4.2. **Add the following Subparagraphs:** Substitutions after Execution of Contract.

3.4.2.1 Substitutions of Subcontractors, Suppliers, Manufacturers, other data disclosed, and specified materials or work constitute changes in the Work and must be incorporated into Contract by change order.

3.4.2.2 Contractor may propose substitutions only on condition that one or more of the following conditions exist:

1. Previously disclosed data or specified material cannot be provided and incorporated into Work in time allowed due to conditions beyond control of Contractor, or
2. Owner will benefit by reduced cost or improved project. Owner to receive full benefit of any cost reductions.
3. The substitution must be required for compliance with final interpretation of code requirements or insurance regulations.
4. Subsequent information discloses the inability of the specified products to perform properly or to fit in the designated space.
5. Manufacturer or Fabricator refuses to certify or guarantee performance of the specified product as required.

3.4.2.3 Request for substitution to include:

1. Statement of cause for request with substantiating documents.
2. Documentary proof of equal or superior quality, delivery time, and costs in form of certified quotations from supplier of both specified and proposed material.

- 3.4.2.4 When requesting Changes in Work, or when Changes in Work are caused by Contractor, Contractor agrees to:
1. Bear costs of additional architectural services and related costs required for effecting change;
  2. Make acceptable adjustments in related construction at no additional cost to Owner and without reduced quality in the project.

3.4.4 **Add this new Subparagraph:** Not later than 45 days after the Notice to Proceed, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

3.4.5 **Add this new Subparagraph:** The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive.

3.5.1 **Add the following to the end of the Subparagraph:** The warranties set out in this paragraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or implied under applicable law.

3.5.2 **Add this new Subparagraph:** The warranty of Contractor provided in Subparagraph 3.5.1 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall use its good faith efforts to include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

3.6.2 **Add this new Subparagraph:** If the Contractor elects to operate under a "separated contract" as defined and required by the State Sales and Use Tax, Rule 3.291 (b) (4) and Rule 3.291 (e) (reference, Texas Tax Code, Chapter 151) by obtaining the necessary permit or permits from the State Comptroller's office allowing the purchase of materials for incorporation in this Project without having to pay the Limited Sales and Use Tax at the time of purchase, the Contractor shall identify separately from all other charges the total agreed contract price for materials incorporated into the Project. Total materials shall include only materials physically incorporated into the realty. If the Contractor operates under a "separated contract," the Purchasing division will furnish the Contractor with an exemption certificate for the applicable materials.

In order to comply with the requirements of Rule 3.291E. (1-5), Contractor shall obtain a sales tax permit. Sales tax application for a sales tax permit and information regarding resale certificates may be obtained by writing to:

Comptroller of Public Accounts  
Capitol Station  
Austin, Texas 78774

The Contractor may also receive information or request sales tax permit applications by calling the State Comptroller's toll free number, 1-800-252-5555.

It shall be necessary that the Contractor issue resale certificates to suppliers. Subcontractors are eligible for a sales tax exemption if the subcontract is made in such a manner that the charges for materials are separated from all other charges. The procedure described above will effect a satisfactory separation. When subcontracts are handled in this manner, the Contractor shall issue a resale certificate to the subcontractor, who, in turn, must issue a resale certificate to his supplier.

- 3.7.1 **Add the following to the end of this subparagraph:** The City building permits and inspections shall still be obtained, but the fees will be waived.
- 3.7.5 **Add this new Subparagraph:** The Contractor shall be responsible for timely notification to, and coordination with, all utility companies regarding the provision of or revising of services to the Project. The Contractor shall inform the Owner at once when the Owner's participation is required. Connections for utilities required for the Work are the responsibility of the Contractor.
- 3.7.6 **Add this new Subparagraph:** The General Contractor shall file the required drawings with the local governing authorities as required for all construction permits. Building and zoning permits, connection fees, including utility company differential charges for underground service, if required, shall be secured and paid for by the General Contractor.
- 3.7.7 **Add this new Subparagraph:** Permits and licenses of a temporary nature shall be obtained and paid for by the General Contractor. The General Contractor shall pay for and obtain all permits and fees required for construction of the Work; however, the City of Copperas Cove agrees to waive any building permit fee and General Contractor's permit fee. If the City subsequently does not waive such fees, the General Contractor shall be entitled to a Change Order for such costs.
- 3.7.8 **Add this new Subparagraph:** A photocopy of the building permit shall be delivered to the Architect and Owner as soon as it is obtained. Upon final completion, the Contractor shall deliver all original permits, licenses and certificates to the Owner and shall deliver photocopies to the Architect.
- 3.8.4 **Add this new Subparagraph:** Contractor shall keep separate and adequate records of all allowances and shall submit such records to Owner from time to time upon request. Owner shall be responsible for costs incurred in excess of allowance amounts only to the extent approved by Owner.
- 3.9.1 **Add the following to the end of the Subparagraph:** Notwithstanding the foregoing, Contractor shall keep on the job the superintendent approved by

Owner who shall not be transferred from the Work without Owner's consent (which shall not be unreasonably withheld). However, such obligation to furnish the superintendent shall not be construed to give rise to any liability of Contractor if any person assigned to the Work leaves Contractor's employ. If Owner determines that any employee of Contractor or of its Subcontractors is careless or not qualified to perform the Work assigned to him or otherwise in Owner's judgment is not appropriate for the Project, and Owner and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employee, the Contractor shall promptly remove such employee from the Work and replace such employee. At all times while procurement activities are being performed in Contractor's office, Contractor shall appoint an individual (approved by Owner, acting reasonably) authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times, and who shall be authorized to receive the instructions, requests and decisions of Owner. Similarly, at all times during the construction Work and the start-up and commissioning phases of the Work at the site, Contractor shall appoint a resident individual who shall be vested with the same authority and shall have the same responsibilities to Owner as the person described above. All of Contractor's and Subcontractors' personnel shall comply with all applicable health, safety, and loss prevention rules of applicable authorities. Contractor shall remove from the Work any person who fails to comply with such rules and instructions in any material respect.

- 3.10        **Add the following to this Subparagraph:** The Parties specifically agree that any float contained in the schedules shall belong to the Project and in no event shall the contractor make claim for any alleged delay, acceleration, or early completion so long as the project is completed within the Contract Time.
- 3.10.4      **Add the following Subparagraph:** The Contractor and all Subcontractors, suppliers and manufacturers shall schedule materials, deliveries, and installations to conform to the construction schedule and provisions to this effect shall be included in all Subcontracts.
- 3.11.2      **Add the following Subparagraph:** The Contractor shall submit to the Owner upon completion of the Work and no later than two weeks after substantial completion and before final payment is made, a complete set of "Project Record Drawings" to reflect all changes made to the Contract Documents during construction.
- 3.12.8      **Add the following to the end of the Subparagraph:** Contractor shall submit complete and accurate submittals at the first submission. If the submittal is returned not approved, only one (1) additional submission will be reviewed at Owner's cost. Any additional submissions will be reviewed at the cost of Contractor. Incomplete submittals or submittals containing excessive errors will be returned unchecked and any delay caused thereby will be the responsibility of Contractor.
- 3.12.10     **Add the following to the end of the Subparagraph:** provided, however, Contractor shall comply with the requirements of Subparagraphs 3.2.1 and 3.2.2.

3.12.11 **Add this new Subparagraph:** Contractor shall assemble for approval by Owner one (1) complete copy in loose leaf binders of all operating and maintenance data for all equipment installed as a part of the Work, which binders must be delivered to Owner on or before Substantial Completion of the Work.

3.13.2 **Add this new Subparagraph:** Where Contractor desires to use City water in connection with any construction work, he shall make complete and satisfactory arrangements with the City's Department of Public Works for so doing. Meters are to be utilized and the charge for water will be at the regular established rate.

3.15.3 **Add this new Subparagraph:** The Contractor shall be responsible for protection of the Work, including damaged or broken glass, and at completion of the Work shall replace damaged Work. The Contractor shall perform the following final cleaning at completion of the Work:

- .1 Remove all temporary protections;
- .2 Remove marks, stains, fingerprints and other soil or dirt from all surfaces and other work;
- .3 Remove spots, mortar, plaster, soil and paint from ceramic tile, marble and other finish materials from all surfaces and other work;
- .4 Clean fixtures, cabinetwork and equipment, removing stains, paint, dirt, and leave in an undamaged and new condition; and
- .5 Clean all surfaces and other work in accordance with recommendations of the manufacturer.

3.18.1 **In the first sentence eliminate the following :**  
“ and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3,”

#### **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

4.2.3 **Add the following to the end of the Subparagraph:** In no event shall Owner or its representatives have control over or charge of, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Work, since these are solely Contractor's responsibility except as provided in Subparagraph 3.3.1. Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Owner will not have control over or charge of and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees.

4.2.4.1 **Add this new Subparagraph:** Copies of all communications delivered by one party to the Architect shall be simultaneously delivered to the other party. Upon request of Owner, Contractor will also furnish Owner with copies of any other items delivered to the Architect.

4.2.6 **Add the following after “Architect” in line 1:** and Owner.  
**Thereafter, add the following after each use of “Architect”:** or Owner.

- 4.3.2 Insert the phrase "Except as provided in Subparagraph 4.3.4" at the beginning of the first sentence, and insert the phrase "containing a description thereof to the other party and the Architect" after the word "notice" in the fourth line.
- 4.3.5.1 **Add the following Subparagraph** : No Damages for Delay: In the event of any delays that are less than 30 days cumulatively and are not the fault of the Contractor, the Contractor shall be entitled to an extension of time for completion only, and shall not be entitled to any additional payment on account of such delay(s).
- 4.3.7.2 **Add to the end of this Subparagraph the following:** Abnormal weather conditions not reasonably anticipated shall mean weather conditions which prevent work on the Project and which have a direct effect on the Contractor's predefined critical work sequence. Contractor's schedule has taken into consideration 25 weather delay days with muddy site days directly related to the precipitation days indicated. Requests for additional days shall accompany each month's application and certificate for payment. Requests shall identify those days affected by weather less the anticipated number of days. There shall be no change in the contract amount for weather related delays. Float: The measure of leeway in starting and completing an activity. Float time is not for the exclusive use or benefit of either Owner or Contractor, but is a jointly owned, expiring Project resource available to both parties as needed to meet schedule milestones and Contract completion date. Any float contained in the schedules shall belong to the Project and in no event shall the contractor make claim for any alleged delay, acceleration, or early completion so long as the project is completed within the Contract Time.
- 4.4 Delete any and all reference to arbitration from Paragraph 4.4.
- 4.4.6 In the first line insert a period after the word "mediation" and delete the rest of that subparagraph.
- 4.4.7 **Delete this Subparagraph.**
- 4.4.8 In the third sentence insert a period after the word "mediation" and delete the rest of that sentence.
- 4.4.9 **Add the following Subparagraph:** The Contractor and the City expressly covenant and agree that in the event of any litigation arising between the parties to this contract, each party shall be solely responsible for the payment of its attorneys. In no event shall either party be responsible for the other party's attorney's fees, regardless of the outcome of the litigation.
- 4.5 Delete any and all reference to arbitration from Paragraph 4.5.
- 4.5.2 **Delete Subparagraph 4.5.2 and substitute the following:** The parties shall endeavor to resolve their Claims by mediation. Request for mediation shall be filed in writing with the other party to the Contract. Mediation shall proceed in advance of legal or other equitable proceedings, which shall be stayed pending

mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

4.6 **Delete this Paragraph and all Subparagraphs in their entirety.**

## **ARTICLE 5 SUBCONTRACTORS**

5.2.1 **Delete entire Subparagraph and replace it with the following:** At least five (5) days before entering into any Subcontracts, the Contractor shall furnish in writing to the Architect and Owner the name of the person or entities proposed for any Subcontracts. The Owner may object to any such proposed person or entity.

5.2.5 **Add this new Subparagraph:** The Contractor shall not subcontract the work as a whole. The approval of Subcontractors in no way relieves the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. Contractor shall be fully responsible for the performance of its Subcontractors, including those selected or approved by the Owner.

5.3.1 **Insert the following word between the words “appropriate” and “agreement” and delete the words “written where legally required for validity”:** written

5.3.3 **Add this new Subparagraph:** Any part of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written subcontract between the Contractors and such Subcontractor, which shall be prepared on a master form of subcontract which the Contractor has, prior to the execution of any such subcontract, submitted to the Owner, upon request, to insure that each such subcontract contains provisions that:

- (a) require that such portion of the Work be performed in accordance with the requirements of the Contract Documents;
- (b) require timely submission of Subcontractor payment in order of applications to enable the Contractor to apply for payment in accordance with the provisions of Article 9;
- (c) waive all rights the subcontracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Paragraph 11.4 except for such rights as they may have to the proceeds of such insurance held by the Contractor as trustee under Subparagraph 11.4.8;
- (d) recognize the rights of the Owner pursuant to the Contingent Assignment of Subcontracts under Subparagraph 5.4.1 and require the Subcontractor (upon notice by the Owner that the Owner has terminated the Owner-Contract agreement with the Contractor pursuant to the terms of Article 14, and that the Owner has elected, pursuant to Subparagraph 5.4.1 to retain the Subcontractor pursuant to the terms of its Subcontract with the

Subcontractor) to complete the unperformed obligations under such Subcontract and, if required by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under his Subcontract in the manner in which he had been bound to the Contractor;

- (e) require the Subcontractor to carry and maintain insurance in accordance with the requirements of the Contract Documents;
- (f) require the Subcontractor to promptly pay its subcontractors and all its suppliers of materials; and
- (g) contain no provisions inconsistent with any of the foregoing subparagraphs (a) through (f) of this Paragraph 5.3.3.

Owner acknowledges that in the event a Subcontractor does not agree to include in his subcontract a provision required by subparagraph (d) hereof, and the Owner does not waive that requirement, the Contractor may be required to replace that Subcontractor which could result in a Claim for an increase in the Contract Sum and/or for an increase in the Contract Time.

5.4.3 **Add this new Subparagraph:** Each Subcontract shall specifically provide that Owner shall only be responsible to the Subcontractor for those obligations of Contractor that accrue subsequent to Owner's exercise of any rights under the conditional assignment.

5.4.4 **Add this new Subparagraph:** Contractor shall include the following provision in all of its subcontracts and purchase orders: "This Contract is for Owner's benefit, its successors and assigns who, as well as Contractor, may directly enforce all rights and warranties, express or implied herein, but Subcontractors shall have recourse only against Contractor and not against Owner." Owner may rely solely upon Contractor for enforcement of all Subcontracts. To effect such purpose, Contractor conditionally assigns to Owner all right to bring any actions against Subcontractors and material vendors without waiver by Owner of his right against Contractor because of defaults, delays and defects for which a Subcontractor or material vendor may also be liable; provided, however, Contractor shall have the sole right to bring actions against the Subcontractors unless Contractor has defaulted hereunder (and such default remains uncured) or Owner has terminated the Contract as a result of such default, whereupon Owner shall have such right.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

6.3.1 **In the third line, delete the words "the Architect will."**

## **ARTICLE 7 CHANGES IN THE WORK**

7.2.3 **Add this new Subparagraph:** Unless otherwise provided in the Change Order, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such

change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

7.3.6

**Delete the first sentence and replace it with the following:** If the Contractor does not object in writing to the Owner and the Architect within ten (10) calendar days after the receipt of the Construction Change Directive, such Construction Change Directive shall be deemed accepted by the Contractor and shall be effective and recorded as a Change Order. If the Contractor disagrees with the method for adjustment in the Contract Sum and timely and properly objects, the method and the adjustment shall be determined by the parties on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead. Any change order based on drawing modification shall only be for the net differences between additions and deductions in scope made in the later issued drawings.

Overhead, profit and commission percentages shall not exceed the maximum given at the end of this paragraph and shall include, but not be limited to, incidentals and office expenses. Percentages for overhead and profit shall be applied only to Items 1, 2 and 3 above.

The markup on work subcontracted by a Subcontractor will be limited to one overhead percentage and one profit percentage in addition to the Prime Contractor's commission percentage. Not more than 3 percentages, not to exceed the percentage below, will be allowed regardless of the number of the Contractors.

	Overhead	Profit	Commission
To Contractor on work performed by other than his own forces			10% of cost up to \$5,000 8% of costs over \$5,000 up to \$80,000- then 5%
To Contractor and/or the Subcontractors for that portion of the work performed with their respective forces	10% of cost	10% of cost plus overhead	

The Contractor shall submit with the proposal a request for time extension (if any).

**ARTICLE 8 TIME**

8.2.2

**Delete the portion of the last sentence at the end of the Subparagraph beginning at the words "to permit" to the end of the sentence.**

- 8.2.4 **Add this new Subparagraph:** The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents.
- 8.3.1 **Add “the critical path” between the words “or” and “progress” on the first line, delete “or by labor disputes” on the third line and add the following to the end of the Subparagraph:** If the performance of the Work is not, was not or would not have been delayed by any other cause for which Contractor is not entitled to an extension in the Contract Time under the Contract Documents. Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused by Contractor and (2) adversely affects the critical path of the Work (it being understood that Contractor may be entitled to an adjustment in the Contract Time even when the Contractor is ahead of the Project schedule).
- 8.3.4 **Add this new Subparagraph:** Claims for extension of time shall be stated in whole calendar days.
- 8.4 **Add this new Paragraph:**  
**§ 8.4 LIQUIDATED DAMAGES**  
 In the event that the Owner has specified a stipulated completion date, the following shall apply:  
 Time is of the essence for the performance of this Contract. For each calendar day that any work shall remain uncompleted after expiration of the time specified in the Contract executed by the Owner and applicable change orders, a sum equal to One Thousand Dollars (\$1,000.00) per day shall be deducted from the moneys due the Contractor, not as a penalty, but as an agreed upon liquidated damage.

## ARTICLE 9 PAYMENTS AND COMPLETION

- 9.1.1 **In this Subparagraph and throughout the General Conditions, delete the phrase “Contract Sum” and replace with the phrase “Guaranteed Maximum Price.” Delete the word “total” and replace with the word “maximum.”**
- 9.2.1 **Delete entire Subparagraph and replace with the following:** Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Owner a schedule or breakdown showing the respective amounts (called “values” for convenience) properly allocable to the various portions of the work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require. Such schedule, when approved by the Owner, unless it is found to be in error, shall be used only as a basis for the Contractor’s Applications for Payment and shall not be taken as evidence of market or other value.

9.3.1.1 **In the first sentence, add the following language after “Architect”:** and Owner

**Add the following to the end of the Subparagraph:** The Contractor shall submit Applications for Payment in triplicate, supported by affidavits that it has paid all sums due to the Subcontractors and suppliers from all prior Payments from Owner and other such documentation as is required by the Contract Documents. All Applications for Payment (and the required supporting documentation) shall be submitted to the Owner and the Architect.

9.3.1.3 **Add this new Subparagraph:** Monthly Applications for Payment shall include waivers of liens for all work included in the previous payment from Owner. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months’ application for payment.

9.3.1.4 **Add this new Subparagraph:** With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics’ or Materialmen’s Liens outstanding at the date of this Application for Payment for which Contractor previously received payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics’ or Materialmen’s Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

9.3.2 **Add the following to the end of the Subparagraph:** Payment for materials that are stored off-site will only be for the invoiced cost of the material; handling, storage, and profit will need to be submitted separately after the materials are incorporated into the Work.

9.4.3 **Add this new Subparagraph:** The issuance of a Certificate for Payment shall constitute a recommendation to the Owner in respect to the amount to be paid. This recommendation is not binding on the Owner if in Owner’s opinion legitimate reasons for nonpayment exist including, but not limited to the reasons set out in Paragraph 9.5.1. If the Owner declines to make payment upon a Certificate of Payment, the Owner shall promptly notify the Contractor of the reasons therefor.

9.5.1 **Add the following to the end of Subparagraph:**

.8 failure to submit written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract Time if Contractor is behind schedule.

.9 if any part of such payment is attributable to Work which is not performed in accordance with the Contract Documents.

- 9.5.3 **Add this new Subparagraph:** If Contractor disputes any determination by Architect or Owner with regard to all or any part of an Application for Payment or a Certificate of Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work but shall be entitled to make a Claim as provided in Paragraph 4.3.
- 9.6.1 **Add the following to the end of the Subparagraph:** Notwithstanding the foregoing, Owner may withhold payment as provided in Paragraph 9.5.1. Further, if Contractor is not current in its obligations to a supplier, laborers and/or Subcontractors on the Project, Owner may (but is not obligated to) withhold a periodic or final payment in an amount reasonably necessary to cover the amount which is not current until the Owner receives reasonable proof from the Contractor that this situation does not exist.
- 9.7.1 **Add the following phrase after “the amount certified by the Architect”:** subject to Owner’s right to withhold payment as set out in Subparagraph 9.6.1 above.
- 9.7.2 **Add this new Subparagraph:** If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have the right to such amount against the Contract Sum and may, in the Owner’s sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner; or (2) issue a written notice to the Contractor reducing the Contact Sum by an amount equal to that which the Owner is entitled.
- 9.8.1 **Add the following to the end of the Subparagraph:** In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on that Date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner’s normal business operations. The “punchlist” shall be completed within 30 consecutive calendar days or as agreed upon following the Date of Substantial Completion (“Final Completion”). Should the Contractor fail to complete the “punchlist” with the set time, the Owner may assess liquidated damages of Five Hundred Dollars (\$500.00) for each calendar day Contractor fails to complete the punchlist after the final completion date. Such assessment shall be deducted out of retainage.
- 9.8.3 **On the fourth line add the following language following “intended use”:** the Architect shall furnish Contractor information on what items it believes are necessary to reach substantial completion; and
- 9.8.4 **On the first line following “When”, add “the Architect and Owner agree that”.**
- 9.8.5 **In the second sentence, delete the phrase “and consent of surety, if any.”.**

9.10.2           **In the second line, add the following after “Architect”:** and Owner

9.10.2.1       **Add this new Subparagraph:** In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver all other items required by the Contract Documents relating to the final completion and closeout of the Project.

## **ARTICLE 10   PROTECTION OF PERSONS AND PROPERTY**

10.2.1       **Add the following to the end of this Subparagraph:** 10.2.1.4 The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and any improvements thereon. Any damage caused by Contractor or its Subcontractors to such property or improvements shall be promptly repaired by the Contractor.

10.2.3.1      **Add this new Subparagraph:** Where the Work is carried on in or adjacent to any street, alley or public place, the Contractor shall at his own expense design, furnish and erect such barricades, fences, lights and danger signals; shall provide such watchmen and shall take such other precautionary measures for the protection of persons or property and of the work as are necessary. This shall be done in accordance with the Barricade and Construction Standards from the most current Texas Manual of Uniform Traffic Control Devices.

The Contractor will be held responsible for all damage to the Work due to the failure of barricades, signs, lights and watchmen to protect it, and whenever evidence is found of such damage, the Owner may order the damaged portion immediately removed and replaced by the Contractor at his cost and expense. The Contractor's responsibility for the maintenance of barricades, signs and lights shall not cease until the Owner accepts the Project.

10.2.8       **Add this new Subparagraph:** The Contractor shall protect and be responsible for any damage to his work or material, from the date of the Contract until the acceptance of the Work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that the Architect may inspect it. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

10.2.9       **Add this new Subparagraph:** The Contractor shall have full responsibility for preventing overstress of any structure or any part or member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

10.2.10      **Add this new Subparagraph:** The Contractor shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

- 10.2.11 **Add this new Subparagraph:** The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.
- 10.5 **Add the following to the end of this Subparagraph:** to the extent permitted by law.
- 10.6.1 **Add the following to the end of this Subparagraph:** provided the Contractor shall not be entitled to additional compensation or an extension of time if an emergency is caused by the negligence or failure to fulfill a specific responsibility of the Contractor to the Owner set forth in the Contract Documents or the failure of the Contractor's personnel to supervise adequately the Work of the Subcontractors or suppliers.

**ARTICLE 11 INSURANCE AND BONDS**

**11.1 Delete Paragraph 11.1 and its Subparagraphs, all in their entirety, and replace with the following:**

**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§ 11.1.1 Required Prior To Commencing Work.** The Contractor shall not commence work on any contract until he has obtained, for himself and all subcontractors, all the insurance required under this Paragraph, and such insurance has been approved by the Owner.

**§ 11.1.2 Types and Amounts.** The Contractor, and his subcontractor agrees to provide and to maintain the following types and amounts of insurance, which may be satisfied by any combination of primary, excess or umbrella liability insurance, for the term of this Contract:

<u>TYPE</u>	<u>AMOUNT</u>
1) <u>Workers Compensation</u>	Statutory
2) <u>Commercial (Public) Liability, including, but not limited to:</u>	
	<u>Bodily injury:</u>
	\$1,000,000 per person
	\$2,000,000 per occurrence
A. Premises/Operations	and
B. Independent Contractors	
C. Personal Injury	
	<u>Property Damage:</u>
D. Products/Completed Operations	\$1,000,000 per occurrence
E. Contractual Liability (insuring above indemnity provisions)	
F. Explosion or Cave-in	with <u>general aggregate</u> of \$2,000,000

3) Automobile Policy

Combined Single Limit/  
\$1,000,000.00

The preceding amounts notwithstanding, Owner reserves the right to increase the minimum required insurance to be effective thirty (30) days after notice is sent to the Contractor's address as shown on Contractor's Proposal. The Contractor may pass through to the Owner all costs for obtaining the increase in the insurance coverage.

**§ 11.1.3 Additional Insurance Requirements**

**§ 11.1.3.1** The Contractor understands that it is its sole responsibility to provide the required insurance and that failure to timely comply with the requirements of this Article shall be a cause for termination of the Contract.

**§ 11.1.3.2** Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas, and they must currently be 'A' rated with Best Key Rating Guide. All Policies shall be subject to examination and approval by the City Attorney's office for their adequacy as to form, content, form of protection and the providing company.

**§ 11.1.3.3** Insurance required by this Contract for the Owner shall be primary insurance and not contributing with any other insurance available to the Owner, under any third party liability policy.

**§ 11.1.3.4** The Contractor further agrees that with respect to the above-required insurance, the Owner shall:

1. Be named as additional insured/or an insured on all liability policies excepting Worker's Compensation.
2. Be provided with a waiver of subrogation, in favor of the Owner on all policies.
3. Be provided with a 30-days advance written notice of cancellation or material change.
4. Prior to execution of the Contract, be provided with either their original Certificate of Insurance or their insurance policy evidencing the above requirements. Thereafter, new certificates or copies of the policies shall be furnished prior to the expiration date of any prior certificate.

**§11.1.4.1** By signing the Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

**§11.1.4.2** The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the

Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

**§ 11.1.5 Scope of Insurance and Special Hazards.** The insurance required in this Paragraph 11.1 shall provide adequate protection for the Contractor and his sub-contractors, respectively, against damage claims which may arise from operations under the Contract, whether such operations be by the Insured or by anyone directly or indirectly employed by him, and also against any special hazards, such as blasting, which may be encountered in the performance of the Contract, in the amount as shown in Subparagraph 11.1.2 above.

**§ 11.1.6 Proof of Carriage of Insurance.** The Contractor shall furnish the Owner with certificates showing type, amount, class of operations covered, effective dates and dates of expiration of policies. All certificates of insurance shall specify: (i) Owner as a certificate holder with correct mailing address; (ii) insured's name, which must match that on the Contract; (iii) companies affording each coverage, policy number of each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of insurance company, (iv) producer of the certificates with correct address and phone listed; (v) certificate holder has been named as an additional insured as respects the general, auto and umbrella liability policies described herein, (vi) waivers of subrogation in favor of the Owner on workers' compensation, general, auto and umbrella liability policies; and (vii) the general, auto and umbrella liability policies described are primary in respect to the Owner.

**§ 11.1.7 Payment.**

**§ 11.1.7.1** The Contractor shall furnish, pay for, and maintain insurance as provided for herein. Payment shall be considered incidental to the total contract price except for additional coverage as required by the Owner, which will be paid for as a single lump sum amount.

**§ 11.1.7.2** Any insured property loss or claim of loss shall be adjusted by the Owner, and any settlement payments shall be made payable to the Owner as trustee for the insureds, as their interests may appear. Upon the occurrence of an insured loss or claim of loss under the Builder's Risk insurance policy only, monies received will be held by Contractor who shall make distribution in accordance with an agreement to be reached in such event between Owner and Contractor. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted to a court of competent jurisdiction to determine ownership of the disputed amounts but the Work of the Project shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute, provided, however, the timing of the lawsuit shall not be governed by the Claims provision set out herein.

**§ 11.1.7.3** If Owner is damaged by the failure of Contractor to purchase or maintain such insurance, then Contractor shall bear all costs properly attributable thereto.

**§ 11.1.7.4** Contractor shall obtain and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the

Work are to be included. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract Documents or until no person or entity other than Owner has an insurable interest in the property required by this Paragraph to be covered, whichever is earlier.

- 11.2 **Delete Paragraph 11.2 and its Subparagraph, all in their entirety.**
- 11.3 **Delete Paragraph 11.3 and its Subparagraphs, all in their entirety.**
- 11.4 **Delete Paragraph 11.4 except its Subparagraphs 11.4.1.5, 11.4.3 and 11.4.7.**
- 11.5.1 **Delete entire Subparagraph and replace it with the following:**

**§ 11.5.1 General**

**§ 11.5.1.1** With the execution and delivery of the Contract, the Contractor shall furnish and file with the Owner, in the amounts herein required, the following surety bonds:

A. Performance Bond--A good and sufficient performance bond in an amount equal to one hundred (100) percent of approximate total amount of the contract, as evidenced by the proposal tabulation or otherwise, guaranteeing the full and faithful execution of the work and performance of the Contract in conformance with the plans and specifications. The Performance Bond also provides for the repair or replacement of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of completion and acceptance of the improvement by the Owner.

B. Payment Bond--A good and sufficient bond in an amount equal to one hundred (100) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and proper protection of all claimants supplying labor and material in the prosecution of the work provided for in said Contract and for the use of each such claimant.

**§ 11.5.1.2** No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation against the Owner. All bonds shall be made on forms furnished by the Owner, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the Owner. An acceptable surety to the Owner shall be a Surety approved by the Texas State Board of Insurance under Article 7.19-1 of the Insurance Code and authorized under the laws of the State of Texas to act as surety on bonds for principals. In addition, the Contractor and its agents shall have no financial interest in the surety.

**§ 11.5.1.3** Each bond shall be executed by the Contractor and the surety. The surety shall designate a resident of Dallas County, Texas as agent to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. Legal venue for enforcement of the bonds shall lie exclusively in Dallas County, Texas.

§ 11.5.1.4 Should any surety on the Contract be determined unsatisfactory at any time by the Owner, notice will be given the Contractor to that effect, and the Contractor shall immediately provide a new surety satisfactory to the Owner. No payment will be made under the Contract until the new surety or sureties, as required, have qualified and been accepted by the Owner. The Contract shall not be operative nor will any payment be due or paid until approval of the bonds has been made by the Owner.

11.6

## **BUILDERS RISK INSURANCE**

General Contractor shall maintain all risk-builder's risk insurance as follows:

General Contractor shall carry completed value form builder's risk property insurance upon the entire Work, including without limitation coverage for all Owner supplied materials, for 100% of the full replacement cost value of such Owner supplied materials (100% includes additional cost of architectural and engineering services in the event of a loss and include coverage for soft costs with a sublimit of at least \$500,000). This policy shall include the interests of the Owner and the other Indemnities, Construction Manager, and Subcontractors in the Work as named insureds, as their interests may appear, and shall be on an "All Risk" basis for physical loss or damage resulting from, without limitation, fire, flood, earthquake, subsidence, hail, theft, vandalism and malicious mischief. This policy shall also include coverage for portions of the Work while it is stored off the site or is in transit. This policy shall further provide, by endorsement or otherwise, that General Contractor shall be solely responsible for the payment of all premiums under the policy, and that Owner and the other indemnities shall have no obligation for the premium payment, notwithstanding that Owner and the other indemnities are named Insureds and loss payee under the policy. Any insured loss or claim of loss shall be adjusted by the Owner and any settlement payments shall be made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Owner who shall make distribution in accordance with an agreement to be reached in such event between Owner and General Contractor. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted first to mediation, but the Work of the Project shall, nevertheless, progress during any such period of dispute without prejudice to the rights of any party to the dispute.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

12.1.1 **Add the following after each use of the word "Architect":** or Owner

12.1.2 **Add the following after each use of the word "Architect":** or Owner

12.2.1.1 **Add the following after "Architect" in line 1:** or Owner

12.2.2.1 **Add the following to the end of the second to last sentence:** except when emergency repairs are necessary to prevent further damage to the Work or damages to the Owner.

12.2.2.3

**Delete entire Subparagraph and replace with the following:**

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of 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 to replace or re-execute without cost to the Owner such portion of the Work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. **This guarantee shall be made to cover a period of twelve (12) months from the date of final completion as certified by the Architect under the Contract.** This guarantee must be furnished to the Owner and approved by him before acceptance and the final payment is made.

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph A above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. 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.

12.2.6

**Add this new Subparagraph:** Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

13.2.2

**Delete entire Subparagraph and replace it with the following:** Contractor may not assign this Contract or any portion hereof except with the prior written consent to Owner; provided, however, that in any event, Contractor shall not be relieved or released from any of its obligations or responsibilities hereunder. Subject to the foregoing limitations, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

13.5.7

**Add this new Subparagraph:** Tests, unless otherwise specified, will be made in accordance with the latest methods of the American Society for Testing Materials. The Contractor shall provide such facilities as the City Representative may require for collecting and forwarding samples, and shall not use the materials represented by the samples until tests have been made and satisfactory results obtained in compliance with the Project specifications. The Contractor shall furnish adequate samples without charge. The hiring of the testing laboratory shall comply with Article 2254.004 of the Texas Governmental Code (Professional Services Procurement Act).

13.6.

**Delete paragraph 13.6 and subparagraph 13.6.1 in its entirety.**

- 13.8 **Add this new Paragraph:**  
**§ 13.8 ANTI-KICKBACK ACT**  
The Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) or supplemented by Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.
- 13.9 **Add the following Paragraph:** Severability
- 13.9.1 The invalidity of any covenant, restriction, condition, limitation or any other part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remainder of the Contract Documents.
- 13.10 **Add the following Paragraph:** Captions
- 13.10.1 The captions and headings of various Articles and Paragraphs in the Contract Documents are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

#### **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

- 14.1.1.4 **Delete the Subparagraph in its entirety.**
- 14.1.3 **On the first line, delete “or 14.1.2”. Also, at the end of the first line delete the word “seven” and in its place insert “fourteen (14)”. On the third line, delete the remainder of the subparagraph starting with “and for proven loss with respect...”.**
- 14.1.4 **On the third line from the bottom, delete the word “seven” and replace with “fourteen (14)”.**
- 14.1.5 **Add this new Subparagraph:** Any payment due to, or recovered by, Contractor under paragraphs 14.1.3 and 14.1.4 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:
- a. the fair value (not Contractor’s cost or profit) of the executed Work, or
  - b. an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.
- 14.2.1.3 **At the end of the subparagraph, delete the word “or”.**
- 14.2.1.4 **Add a semicolon at the end of this phrase.**
- 14.2.1.5 **Add this new Subparagraph:** Contractor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors;

- 14.2.1.6 **Add this new Subparagraph:** Contractor files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding;
- 14.2.1.7 **Add this new Subparagraph:** a receiver or trustee is appointed for all or a significant portion of the assets of Contractor; or
- 14.2.1.8 **Add this new Subparagraph:** Contractor actually or constructively abandons, as defined in subparagraph 14.5, or puts Owner on actual or constructive notice that it intends to abandon, the Project.
- 14.2.2 **Delete the words “upon certification by the Architect that sufficient cause exists to justify such action” and delete the words “subject to any prior rights of the surety” and add the following:** After any termination of this Contract by Owner pursuant to this Subparagraph 14.2.2, Contractor shall not be entitled to any further payment except to the extent of any amount by which Work completed or installed by Contractor prior to such termination and not previously paid for by Owner exceeds the amount due by Contractor to Owner under this Paragraph 14.2.2 (including all damages which Owner would be entitled to recover at law from Contractor by reason of Contractor’s breach, subject to the waiver of consequential damages set out herein), and even then only at such time as the Work is finally completed. It is expressly agreed that pursuit by Owner of any one or more of the remedies provided herein or otherwise available at law or in equity shall not constitute an election of remedies by Owner, nor shall forbearance by Owner to enforce one or more of the remedies provided herein upon an event of default by Contractor be deemed or construed to constitute a waiver of such default.
- 14.2.4 **Delete the last sentence, which reads as follows:** The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect.
- 14.2.5 **Add this new Subparagraph:** It is recognized that: (1) if an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Bankruptcy Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor’s performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract Documents and to the accompanying rights set forth above in Subparagraphs 14.2.1 through 14.2.4 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum.

14.5

**Add this new Paragraph:**

**§ 14.5 ABANDONMENT BY CONTRACTOR**

Contractor shall be considered to have abandoned the Work when conditions (A) and (B) or (C) are met:

A. Twenty (20) calendar days have elapsed since the last day worked and, in the opinion of the Owner,

1. work could have been completed and reasonable progress made; and/or
2. sufficient amounts of equipment have been removed from the site, without approval of the Owner, such that, in the opinion of the Owner, completion of the Work cannot be made within the allowed time limits; and

B. the Contractor fails or refuses to resume work within ten (10) calendar days after date of written notification from the Owner to the Contractor directing the Contractor to return to work or consider himself in abandonment of the Contract; or

C. If the Contractor persistently fails to comply with the written orders of the Owner, when such orders are consistent with the Contract Documents.

Upon meeting conditions (A) and (B) or (C), and in the case where a performance bond exists, the surety on the bond shall be notified in writing and directed to complete the Work. A copy of the notice to the surety will be delivered to the Contractor's last known address.

After receiving said notice of abandonment, the Contractor shall not remove from the work site any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under Contract for the Work, may be held on the work site by the Owner or the surety on the performance bond, or another contractor in completion of the Work; and the Contractor shall not receive any rental or credit therefor (except where credit shall be allowed as provided for elsewhere), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the Work and be reflected in the final settlement.

# ACORD<sup>TM</sup> CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/9/2008

**PRODUCER** Phone: (972) 770-1600 Fax: (972) 770-1699  
 McQueary Henry Bowles Troy, LLP  
 12700 Park Central Drive  
 17th Floor  
 Dallas TX 75251-0470

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**  
 Rogers-O'Brien Construction Company LTD  
 1901 Regal Row  
 Dallas TX 75235

**INSURERS AFFORDING COVERAGE**
**NAIC #**

INSURER A: American Zurich Insurance Co.	40142
INSURER B: Zurich American Ins. Co.	16535
INSURER C: American Guarantee & Liability	26247
INSURER D:	
INSURER E:	

**COVERAGES**

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CPO534744303	7/1/2008	7/1/2009	EACH OCCURRENCE	\$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
						MED EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 2,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	BAP534744203	7/1/2008	7/1/2009	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
C		<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	AUC913852502	7/1/2008	7/1/2009	EACH OCCURRENCE	\$ 10,000,000
						AGGREGATE	\$ 10,000,000
							\$
							\$
							\$
B		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC534744403	7/1/2008	7/1/2009	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
		OTHER					

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

The Certificate Holder is named as Additional Insured under General Liability (Form UGL1175BCW-including Completed Operations), Automobile Liability (CA0403) and Umbrella Liability (Follow Form) and is provided with Waiver of Subrogation under General Liability (CG2404), Automobile Liability (UCA320B), Workers' Compensation (WC420304A) and Umbrella Liability (Follow Form), but only to the extent that the limits and forms are required to satisfy the terms of a written contract. The General Liability coverage is Primary & Non-Contributory. Copperas Cove Police Station

**CERTIFICATE HOLDER**

Copperas Cove  
 507 S. Main Street  
 Copperas Cove TX 76522

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

# ACORD<sup>TM</sup> CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/9/2008

<b>PRODUCER</b> McQueary Henry Bowles Troy, LLP 12700 Park Central Drive 17th Floor Dallas TX 75251-0470	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
<b>INSURED</b> Rogers-O'Brien Construction Company LTD 1901 Regal Row Dallas TX 75235	<table border="1"> <tr> <th>INSURERS AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Great American Insurance Compa</td> <td>16691</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Great American Insurance Compa	16691	INSURER B:		INSURER C:		INSURER D:		INSURER E:	
INSURERS AFFORDING COVERAGE	NAIC #												
INSURER A: Great American Insurance Compa	16691												
INSURER B:													
INSURER C:													
INSURER D:													
INSURER E:													

## COVERAGES

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

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$								
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$								
	<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$								
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATU-TORY LIMITS	OTH-ER												
E.L. EACH ACCIDENT	\$												
E.L. DISEASE - EA EMPLOYEE	\$												
E.L. DISEASE - POLICY LIMIT	\$												
A	<b>OTHER BUILDERS' RISK</b> Decuctible: \$10,000 Flood/Quake Ded.: \$25,000	IMP619787703	7/1/2008	7/1/2009	\$25,000,000-Limit- Per Project* \$ 2,500,000-Limit- Flood/Quake \$ 500,000-Limit- Soft Costs \$ 500,000-Limit- Temporary Loca.								

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The Temporary Locations Limit above is for Stored Materials. Flood coverage applies for projects in any Flood Zone other than Zones A & V. \*Wood Frame/Brick Veneer Project Limit is \$2,000,000.  
 The Certificate Holder is named Additional Insured and Loss Payee with respect to Builders' Risk, as their interest may appear at the time of a loss. Waiver of Subrogation is provided to Certificate Holder if required by written contract with the Insured.  
 Copperas Cove Police Station

### CERTIFICATE HOLDER

Copperas Cove  
 507 S. Main Street  
 Copperas Cove TX 76522

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



## **IMPORTANT**

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# City of Copperas Cove City Council Agenda Item Report

November 3, 2008

## Agenda Item No. I-9

Contact – Tim Molnes, Police Chief, 547-4274

tmolnes@ci.copperas-cove.tx.us

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**SUBJECT: Consideration and action on authorizing the City Manager to enter into a contract for construction manager at risk with Rogers-O'Brien Construction for the construction of the new police facility.**

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### 1. BACKGROUND/HISTORY

On April 15, 2008 and through Agenda Item I-1 of the Regular City Council Meeting, City Council authorized the City Manager to execute a contract authorizing Rogers-O'Brien Construction to participate with Brinkley Sargent Architects during the design phase of the project. Furthermore, through the same Council action, the City Manager was authorized to negotiate a contract for construction manager at risk services.

### 2. FINDINGS/CURRENT ACTIVITY

Since that time, staff completed the negotiations of an American Institute of Architects (AIA) agreement, to include supplements, with Roger's-O'Brien Construction. A legal review of the contract is complete.

During the same time period, the design of the police facility was finalized and the bidding process initiated by Brinkley Sargent Architects and Rogers-O'Brien Construction. A review of the construction bids was completed with City staff. Article 5.2.1 of the American Institute of Architects contract states that the sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided, subject to additions and deductions by changes in the work as provided in the contract documents as the Guaranteed Maximum Price. If the Guaranteed Maximum Price increases, a Construction Change Directive, a Change Order, or an order for a minor change in work must first be issued.

The total amount indicated below for Construction also includes the 4% Construction Manager at Risk Fee as indicated in the contract.

### 3. FINANCIAL IMPACT

The total project costs, as well as the sources of funding are as follows:

Construction	\$8,349,858
Bond Issuance Cost	<u>\$100,000</u>

<b>Subtotal</b>	<b>\$8,449,858</b>
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Testing	\$56,000
Land	\$197,140
FFE	\$602,000
City Budget	\$266,000
Professional Fees	<u>\$883,840</u>

<b>Subtotal</b>	<b>\$10,454,838</b>
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2007 CO's	-\$5,300,000
2006 Tax Notes	-\$1,000,000
CTCOG Grant	<u>-\$50,000</u>

<b>Subtotal</b>	<b>\$4,104,838</b>
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Prop #1 Election	<u>-\$3,700,000</u>
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<b>Subtotal</b>	<b>\$404,838</b>
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2006 Tax Notes Interest Earnings	-\$82,582
2007 CO's Interest Earnings	<u>-\$272,636</u>

<b>Subtotal</b>	<b>\$49,620</b>
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The shortfall of \$49,620 will be obtained from additional interest earnings during the construction phase.

**4. ACTION OPTIONS/RECOMMENDATION**

City staff recommends that the City Council authorize the City Manager to complete the contract for Construction Manager at Risk with Roger's O'Brien Construction for the new police facility.



Government Finance Officers Association  
203 N. LaSalle Street - Suite 2700  
Chicago, IL 60601

Phone (312) 977-9700 Fax (312) 977-4806

October 22, 2008

Wanda Bunting, CPA  
Director of Financial Services  
City of Copperas Cove  
P.O. Box 1449  
Copperas Cove TX 76522-5449

Dear Ms. Bunting:

We are pleased to notify you that your comprehensive annual financial report (CAFR) for the fiscal year ended September 30, 2007, qualifies for a Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

Each entity submitting a report to the Certificate of Achievement review process is provided with a "Summary of Grading" form and a confidential list of comments and suggestions for possible improvements in its financial reporting techniques. Your list has been enclosed. You are strongly encouraged to implement the recommended improvements into the next report and submit it to the program. If it is unclear what must be done to implement a comment or if there appears to be a discrepancy between the comment and the information in the CAFR, please contact the Technical Services Center (312) 977-9700 and ask to speak with a Certificate of Achievement Program in-house reviewer.

Certificate of Achievement program policy requires that written responses to the comments and suggestions for improvement accompany the next fiscal year's submission. Your written responses should provide detail about how you choose to address each item that is contained within this report. These responses will be provided to those Special Review Committee members participating in the review.

When a Certificate of Achievement is awarded to a government, an Award of Financial Reporting Achievement (AFRA) is also presented to the individual(s) or department designated by the government as primarily responsible for its having earned the Certificate. As the designated individual we have enclosed your AFRA.

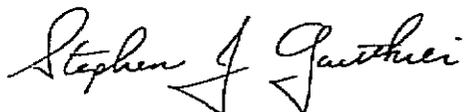
Your Certificate of Achievement plaque will be shipped to you under separate cover in about eight weeks. We hope that you will arrange for a formal presentation of the Certificate and Award of Financial Reporting Achievement, and that appropriate publicity will be given to this notable achievement. A sample news release has been enclosed. We suggest that you provide copies of it to local newspapers, radio stations and television stations. In addition, enclosed is the Certificate Program "Results" for reports with fiscal years ended during 2006 representing the most recent statistics available.

A current holder of a Certificate of Achievement may include a reproduction of the award in its immediately subsequent CAFR. A camera ready copy of your Certificate is enclosed for that purpose. If you reproduce your Certificate in your next report, please refer to the enclosed instructions. A Certificate of Achievement is valid for a period of one year. To continue to participate in the Certificate of Achievement Program it will be necessary for you to submit your next CAFR to our review process.

In order to expedite your submission we have enclosed a Certificate of Achievement Program application form to facilitate a timely submission of your next report. This form should be completed and sent (postmarked) with three copies of your report, three copies of your application, three copies of your written responses to the program's comments and suggestions for improvement from the prior year, and any other pertinent material with the appropriate fee by March 31, 2009.

Your continued interest in and support of the Certificate of Achievement Program is most appreciated. If we may be of any further assistance, please contact Delores Smith ([dsmith@gfoa.org](mailto:dsmith@gfoa.org) or (312) 578-5454).

Sincerely,  
Government Finance Officers Association

A handwritten signature in black ink that reads "Stephen J. Gauthier". The signature is written in a cursive style with a large, stylized initial 'S'.

Stephen J. Gauthier, Director  
Technical Services Center

SJG/ds



Government Finance Officers Association  
203 N. LaSalle Street - Suite 2700  
Chicago, IL 60601

Phone (312) 977-9700 Fax (312) 977-4806

10/22/2008

NEWS RELEASE

For Information contact:  
Stephen Gauthier (312) 977-9700

(Chicago)--The Certificate of Achievement for Excellence in Financial Reporting has been awarded to **City of Copperas Cove** by the Government Finance Officers Association of the United States and Canada (GFOA) for its comprehensive annual financial report (CAFR). The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

An Award of Financial Reporting Achievement has been awarded to the individual(s), department or agency designated by the government as primarily responsible for preparing the award-winning CAFR. This has been presented to:

**Wanda Bunting, CPA, Director of Financial Services**

The CAFR has been judged by an impartial panel to meet the high standards of the program including demonstrating a constructive "spirit of full disclosure" to clearly communicate its financial story and motivate potential users and user groups to read the CAFR.

The GFOA is a nonprofit professional association serving approximately 17,000 government finance professionals with offices in Chicago, IL, and Washington, D.C.

# Certificate of Achievement for Excellence in Financial Reporting

Presented to

City of Copperas Cove  
Texas

For its Comprehensive Annual  
Financial Report  
for the Fiscal Year Ended  
September 30, 2007

A Certificate of Achievement for Excellence in Financial Reporting is presented by the Government Finance Officers Association of the United States and Canada to government units and public employee retirement systems whose comprehensive annual financial reports (CAFRs) achieve the highest standards in government accounting and financial reporting.



President

Executive Director



**The Government Finance Officers Association  
of the United States and Canada**

*presents this*

## **AWARD OF FINANCIAL REPORTING ACHIEVEMENT**

*to*

**Wanda Bunting, CPA**  
Director of Financial Services  
City of Copperas Cove, Texas



*The award of Financial Reporting Achievement is presented by the Government Finance Officers Association to the individual(s) designated as instrumental in their government unit achieving a Certificate of Achievement for Excellence in Financial Reporting. A Certificate of Achievement is presented to those government units whose annual financial reports are judged to adhere to program standards and represents the highest award in government financial reporting.*

Executive Director

Date October 22, 2008

# City of Copperas Cove

## City Council Agenda Item Report

November 3, 2008

### Agenda Item J-2

Contact – Wanda Bunting, Director of Financial Services, 547-4221  
wbunting@ci.copperas-cove.tx.us

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**SUBJECT: Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting for Fiscal Year End September 30, 2007.**

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**1. BACKGROUND/HISTORY**

The City submitted the Fiscal Year 2006-07 Comprehensive Annual Financial Report (CAFR) to GFOA in March 2008. The CAFR must meet the high standards of the program including demonstrating a constructive “spirit of full disclosure” to clearly communicate its financial story and motivate potential users and user groups to read the CAFR. The document must be rated “proficient” in all categories to receive the award.

**2. FINDINGS/CURRENT ACTIVITY**

The City of Copperas Cove was awarded the Certificate of Achievement for Excellence in Financial Reporting for the fiscal year end September 30, 2007. This is the eighteenth consecutive year that the City has received this award and the City will continue to strive to improve the CAFR in future years.

**3. FINANCIAL IMPACT**

None.

**4. ACTION OPTIONS/RECOMMENDATION**

None.