

# CITY OF BELLAIRE TEXAS

MAYOR AND COUNCIL

MAY 18, 2015

---

Council Chamber and Council Conference Room  
6:00 PM

Special Session and Regular Session

---

7008 S. RICE AVENUE  
BELLAIRE, TX 77401



## Mayor

Dr. Philip L. Nauert

## Mayor Pro Tem

Amanda B. Nathan

## Councilman

James P. Avioli Sr.

## Councilman

Pat B. McLaughlan

## Councilman

Roman F. Reed

## Councilman

Gus E. Pappas

## Councilman

Andrew S. Friedberg

### **Mission Statement:**

***The City of Bellaire is dedicated to outstanding quality service and facilities to ensure an open, progressive, and secure community.***

**I. SPECIAL SESSION (EXECUTIVE SESSION) - 6:00 P.M.****A. Call to Order and Announcement of a Quorum - Dr. Philip L. Nauert, Mayor.****B. Convene in Executive Session:**

Convene in Executive Session (Closed Session) in the Council Conference Room under the Texas Government Code, Chapter 551, Open Meetings, Section 551.071, Consultation with Attorney; Closed Meeting, for the purpose of discussing legal options related to drainage and environmental impacts from a development known as "The Shoppes at Uptown Crossing" located at the intersection of South Rice Avenue and Westpark Drive, Houston, Harris County, Texas.

**C. Reconvene:**

Reconvene in Open Session and take action, if any, on item(s) discussed in Executive Session (Closed Session).

**D. Adjourn.****II. REGULAR SESSION - 7:00 P.M.****A. Call to Order and Announcement of a Quorum - Dr. Philip L. Nauert, Mayor.****B. Inspirational Reading and/or Invocation - Pat B. McLaughlan, Councilman.****C. Pledges to The Flags - Pat B. McLaughlan, Councilman.****1. U.S. Pledge of Allegiance:**

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

**2. Pledge to the Texas Flag:**

Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

**D. Approval or Correction of Minutes:****1. Minutes of the Regular Session held on April 20, 2015:**

Consideration of and possible action on the adoption of the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held on Monday, April 20, 2015.

Mayor and Council - Regular Session - Apr 20, 2015 7:00 PM

**2. Minutes of the Regular Session held on May 4, 2015:**

Consideration of and possible action on the adoption of the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held on Monday, May 4, 2015.

Mayor and Council - Regular Session - May 4, 2015 7:00 PM

**E. Personal/Audience Comments.**

In order to address the City Council, please complete a "Speaker Form" (located at the entrance to the Council Chamber), and turn in the form to City Clerk Tracy L. Dutton prior to commencement of the meeting. Speakers are limited to five (5) minutes.

The purpose of this item is to allow citizens or other interested parties an opportunity to address City Council on agenda issues and on non-agenda issues that are a matter of the jurisdiction of the City Council (i.e., City policy and legislative issues). Non-agenda issues regarding daily operational or administrative matters should be first dealt with at the administrative level by calling City Hall at (713) 662-8222 during business hours.

[Note: State law will not permit the City Council to fully discuss, debate, or consider items that are not on the agenda. Items that cannot be referred to the City Staff for action *may* be placed on the agenda of a future City Council Session.]

**F. Reports and Presentations:****Department Service Plans:**

Presentations of Fire and Information Technology Department Service Plans  
(Requested by Paul A. Hofmann, City Manager)

**G. New Business:****Adoption of Ordinance(s)/Resolution(s):****1. Petition for Permit Parking:**

1. Consideration of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Chapter 30, Traffic and Vehicles, Article II, Traffic-Control Regulations, Division 5, Parking, of the Code of Ordinances of the City of Bellaire, Texas, by adding a new Section 30-118, to be entitled "Restricted Parking - 9:00 A.M. to 5:00 P.M., Monday through Friday," for the purpose of establishing a permit parking process allowing for restricted parking on residential streets.

(Requested by John McDonald, Development Services)

**2. Policy:**

Consideration of and possible adoption of a resolution of the City Council of the City of Bellaire, Texas, approving the Comprehensive Financial Management Policy Statements of the City of Bellaire, Texas, for the purpose of providing guidelines for operational and long-range planning.

(Requested by Linda Symank, Finance Administration)

**3. Evelyn's Park:**

- a. Consideration of and possible action on the adoption of a resolution of the City Council of the City of Bellaire, Texas (the "City"), accepting a financial contribution in the amount of \$1,362,541 from the Evelyn's Park Conservancy Board to be utilized by the City for construction associated with Phase One of Evelyn's Park.

(Requested by Karl Miller, Parks, Recreation and Facilities)

- b. Consideration of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending the FY 2015 Budget for the City of Bellaire, Texas, by \$1,362,541 for the purpose of increasing the appropriation of the Evelyn's Park Phase One Construction Project from \$5,000,000 to \$6,362,541.

(Requested by Diane K White, City Manager's Office)

- c. Consideration and possible action on a recommendation from the Parks, Recreation, and Facilities Department to approve construction phase services to be provided by Linbeck Group, LLC, for Phase One of Evelyn's Park, located at 4400 Bellaire Boulevard, Bellaire, Texas 77401, in an amount not to exceed \$6,262,541, and on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Exhibit 1 to Ordinance No. 14-071, AIA Document A133--2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor, by and between the City of Bellaire, Texas, as Owner, and Linbeck Group, LLC, as Construction Manager, regarding Phase One of the Evelyn's Park Project, 4400 Bellaire Boulevard, Bellaire, Texas 77401, for the purpose of accepting the guaranteed maximum price for said project in the amount of six million two hundred sixty-two thousand five hundred forty-one dollars (\$6,262,541) and Contract Time for the Work.

(Requested by Michelle Jordan,)

#### **H. Items for Future Agendas; Community Interest Items from the Mayor and City Council.**

**[Note:** It is the intent of this item to provide any member of City Council the opportunity to request to place new items on the agenda of the next Regular Meeting of City Council pursuant to Article 4, Order of Business, Section A, Agenda, of the Rules of Procedure of the City Council of the City of Bellaire, Texas, 2012-2014, and/or to make a report about items of community interest. Community interest items may include expressions of thanks, congratulations, or condolences; information regarding holiday schedules; honorary recognition of City officials, employees, or other citizens or entities; reminders of upcoming events sponsored by the City or another entity that is scheduled to be attended by a City official or City employee; and/or announcements involving an imminent threat to the public health and safety of the citizens of Bellaire that has arisen after the posting of the agenda.]

#### **I. Adjourn.**





# CITY OF BELLAIRE TEXAS

## MAYOR AND COUNCIL

APRIL 20, 2015

Council Chamber

Regular Session

7:00 PM

7008 S. RICE AVENUE  
BELLAIRE, TX 77401

### REGULAR SESSION - 7:00 P.M.

#### A. Call to Order and Announcement of a Quorum - Amanda B. Nathan, Mayor Pro Tem.

**Amanda B. Nathan, Mayor Pro Tem**, called the Regular Session of the City Council of the City of Bellaire, Texas, to order at 7:08 p.m. on Monday, April 20, 2015. She advised that a quorum of the members of City Council was present as set forth in the table below.

Member Name	Title	Status	
Nauert	Mayor	Absent	
B. Nathan	Mayor Pro Tem	Present	
. Reed	Councilman	Present	
Avioli Sr.	Councilman	Present	
pappas	Councilman	Present	
Laughlan	Councilman	Present	
S. Friedberg	Councilman	Present	
lofmann	City Manager	Present	
etrov	City Attorney	Present	
Dutton	City Clerk	Present	

#### B. Inspirational Reading and/or Invocation - Gus E. Pappas, Councilman.

**Gus E. Pappas, Councilman**, provided the inspirational reading for the evening.

#### C. Pledges to The Flags - Gus E. Pappas, Councilman.

**Gus E. Pappas, Councilman**, led the audience and members of the City Council in the U.S. Pledge of Allegiance and the Pledge to the Texas Flag.

#### D. Approval or Correction of Minutes:

##### 1. Minutes of the Public Hearings held March 9, 2015:

Consideration of and possible action on the adoption of the minutes of two Public Hearings held before the City Council of the City of Bellaire, Texas, on Monday, March 9, 2015.

Mayor and Council - Public Hearings - Mar 9, 2015 6:00 PM

##### Motion:

**To approve the minutes of two Public Hearings held before the City Council of the City of Bellaire, Texas, on Monday, March 9, 2015.**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	James P. Avioli Sr., Councilman
<b>SECONDER:</b>	Andrew S. Friedberg, Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

**2. Minutes of the Regular Session held March 23, 2015:**

Consideration of and possible action on the adoption of the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held on Monday, March 23, 2015.

Mayor and Council - Regular Session - Mar 23, 2015 7:00 PM

**Motion:**

**To approve the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held on Monday, March 23, 2015.**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Roman F. Reed, Councilman
<b>SECONDER:</b>	Andrew S. Friedberg, Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

**3. Minutes of the Community Meeting held March 30, 2015:**

Consideration of and possible action on the adoption of the minutes of the Community Meeting of the City Council of the City of Bellaire, Texas, held on Monday, March 30, 2015.

Mayor and Council - Community Meeting - Mar 30, 2015 6:00 PM

**Motion:**

**To approve the minutes of the Community Meeting of the City Council of the City of Bellaire, Texas, held on Monday, March 30, 2015.**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Andrew S. Friedberg, Councilman
<b>SECONDER:</b>	James P. Avioli Sr., Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

**E. Personal/Audience Comments.****Rehan Memon:**

Mr. Memon addressed City Council and noted that he wished to discuss the current City ordinance that allowed up to an eight-foot height limit for a fence or brick wall. New zoning regulations required homes to be built much higher from the ground and an eight-foot height limit was not high enough to block the sight or sounds of homes that faced or backed to the freeway (Loop 610).

Mr. Memon indicated that he had requested and was granted approval from the City to build a ten-foot wall in January of 2015. Based on that approval, he had spent a great deal of money and three months of his time on the wall before the City realized that they had made a mistake. The City then issued a red tag and stopped construction of the wall.

A variance hearing was held the previous week before the Board of Adjustment of the City of Bellaire, Texas ("Board of Adjustment") regarding Mr. Memon's wall. Mr. Memon stated that he felt he presented a compelling case (including pictures); however, his variance request was denied (3-4), with three members in favor of granting the variance and four members against granting the variance.

Mr. Memon advised further that he did not know what the process would be to go forward with his case. He indicated that he had spent close to \$18,000. If he had not received approval from the City for the wall, he could have spent the funds to plant trees. He stated that he believed that he should be given some type of restitution, and was present this evening to express his objection to the process he had to go through.

In closing, Mr. Memon stated that he did not believe that he was given a proper explanation as to why his request for a variance was denied. He also referred to a report from the Fire Marshal presented during the hearing and noted that he was not aware of the report until the hearing.

**Richard Franke:**

Mr. Franke addressed City Council and referred to page 73 of the agenda packet. The map included in the agenda packet was an engineering assessment from James Andrews of ARKK Engineers, LLC.

The engineering assessment indicated that the City might possibly defer some maintenance and replacement of water lines based on a prioritization related to the frequency of repairs. The map indicated that the old water lines on Howard Lane were slated to be replaced in the future. According to Mr. Franke, the water lines along Howard Lane were 72-73 years old. He asked if the fact that the water lines had not failed recently was a legitimate reason not to replace a piece of infrastructure.

Mr. Franke indicated that the dollar amount needed to replace portions of the City's aging infrastructure was approximately \$300 million. He indicated further that the left hand did not seem to know what the right hand was doing in Bellaire.

**Lynn McBee:**

Ms. McBee addressed City Council regarding three matters. First, she noted that the first re-meeting of the Ad Hoc Municipal Facilities Committee ("Committee") was scheduled at 6:00 p.m. on Thursday, April 23, 2015. She urged City Council to ask that City staff not attend the meeting as their attendance had a dampening effect on the free and open discussions. Councilman Gus Pappas, as Liaison of the Committee, could handle anything that arose; therefore, it was not necessary for five staffers and the City Manager to attend the meetings in her opinion.

Secondly, the City Engineer provided an interesting report on the status of the City's wastewater infrastructure and water distribution system. One item missing from the report was totals for the proposed improvements. Ms. McBee indicated that the wastewater collection system improvements appeared to cost \$265,0000 and the water

distribution system improvements appeared to cost \$200,000, for a total cost of \$465,000.

Finally, with respect to the City of Bellaire's municipal election, Ms. McBee noted that Bellaire's was scheduled this year on Tuesday, November 3, 2015. Reference was made to the entity that set the election calendar--the Secretary of State of Texas. Ms. McBee announced that the terms of City Council Positions 2 (James P. Avioli, Sr.), 4 (Pat B. McLaughlan), And 6 (Amanda B. Nathan) were up this year. Councilman Avioli was term limited, but could run for Mayor if he chose to do so. Councilman McLaughlan was not term limited and could run for either a second term or for Mayor. Mayor Pro Tem Nathan was term limited, but could run for Mayor if she chose to do so. The Mayor's position was also up this year (Dr. Philip L. Nauert). Mayor Nauert was eligible to run for a third term as Mayor.

Ms. McBee continued and reported that the first day to file for a place on the Bellaire General Election ballot was Saturday, July 25, 2015. The last day to file for a place on the Bellaire General Election ballot was Monday, August 24, 2015, at 5:00 p.m. Early voting would begin in October of 2015. She urged residents to consider running for office and indicated that she would be committed to holding an election forum as she had done for many years. That forum would occur in October prior to early voting.

#### **Lynne Skinner:**

Ms. Skinner, Board Member of the Patrons for Bellaire Parks ("Patrons"), addressed City Council on behalf of the Patrons and advised that the Patrons wished to donate two water color prints of the Bellaire gazebo painted by Bellaire resident Don Springer to the City of Bellaire. Ms. Skinner indicated that the Patrons wished to thank the City of Bellaire and staff for going the extra mile in helping to make their events successful. The Patrons hoped that one print would be displayed in City Hall and one in the office area of the City Manager.

Ms. Skinner indicated that the Patrons were very proud to have continuous success in fundraising for the City parks. The entire Patrons Board was committed to making the "City of Homes" a better place to live with wonderful parks to be enjoyed by all residents.

In closing, Ms. Skinner noted that on Saturday, April 25, 2015, the Patrons would hold their Seventh Annual Wine & Tapas Event on the Great Lawn in Bellaire Town Square. Net proceeds from the event would benefit Evergreen Park. It was noted that tickets could be purchased from the Patrons' website.

#### **F. Reports:**

1. City Manager's Report dated April 20, 2015, regarding hurricane preparedness.

**Paul A. Hofmann, City Manager**, presented his City Manager's Report dated April 20, 2015, to members of City Council. The report consisted of an update of the City of Bellaire's hurricane message. City Manager Hofmann referred to residents of Bellaire who might not have lived in the City in 2008 when Hurricane Ike hit the area or in 2000 when Tropical Storm Allison hit the area who might be hearing the City's message for the first time. It was noted that Fire Chief Darryl Anderson had recently attended a National Hurricane Conference in Austin, Texas. City Manager Hofmann asked Chief Anderson to brief the residents and City Council on what the City of Bellaire did locally to keep ourselves ready, both internally and externally, for hurricane season. City Manager Hofmann advised that he really appreciated the great job that Chief Anderson and his team did.

**Fire Chief Darryl Anderson** provided a brief overview of the preparations that the City would make to help its residents in the event of a hurricane. It was noted that most of the City's employees and many of the City's officials had undergone National Incident Management System ("NIMS") training courses.

The City would have a tabletop exercise on May 21, 2015, and the Mayor and Mayor Pro Tem were invited to participate in the exercise (simulation of hurricane scenario). An operations section chief meeting, chaired by Chief of Police Byron Holloway, and a finance section chief meeting, chaired by Chief Financial Officer Linda Symank, would be held following the tabletop exercise. The logistics section would help ensure the health and welfare of residents. Employees in that section would begin training in the very near future.

Chief Anderson advised that hurricane season started on June 1, 2015. He cautioned residents to ensure that their vehicles had at least  $\frac{3}{4}$  of a tank of fuel throughout hurricane season. He stated that the City of Bellaire was not in the surge zone and evacuation was a personal decision that everyone needed to make.

**Mayor Pro Tem Nathan**, after noting that there were no questions from City Council regarding the City Manager's Report, called for a motion, second, and action to accept the City Manager's Report into the record.

**Motion:**

**To accept the City Manager's Report dated April 20, 2015, as presented by City Manager Paul A. Hofmann and Fire Chief Darryl Anderson, into the record.**

(Requested by Paul A. Hofmann, City Manager)

<b>RESULT:</b>	<b>ACCEPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Roman F. Reed, Councilman
<b>SECONDER:</b>	Andrew S. Friedberg, Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

2. Presentation to the City Council of the City of Bellaire, Texas, providing a status report on Evelyn's Park as related to the progress being made in value engineering the project, a solar power opportunity and the Evelyn's Park Conservancy Board's plans to contribute to the construction costs.

**Michelle Jordan, Project Manager** for the City of Bellaire, Texas, referred City Council to items that were presented in their agenda packet titled "Budget and Funding Sources" and "Accepted Architectural VE (Value Engineering) Items."

The projected budget uses were reviewed and as of April 20, 2015, those uses were as follows:

<b>Projected Budget Uses</b>	<b>As of 4-20-2015 (millions)</b>
Original Draft Price Proposal	\$ 6.80
Identified and Accepted Value Engineering	(\$0.40)

Trees for Houston Estimated Commitment	(\$0.04)
Yellow House Decision - Rebuild or Renovate	?
<b>Total Not to Exceed</b>	\$ 6.36

Project Manager Jordan indicated that the City of Bellaire, Texas ("City") and the Evelyn's Park Conservancy Board ("Conservancy") had identified approximately \$400,000 of project items that could be eliminated, removed, or modified without changing the core substance of the project. She noted that the City and the Conservancy had also been working with Trees for Houston to get their involvement in the project. Project Manager Jordan advised that the City and Conservancy had been informed late this afternoon that Trees for Houston would make a commitment to the project in an amount greater than \$40,000 (i.e., the exact amount of which was not yet known).

The project funding sources were noted as follows:

<b>Funding Sources</b>	<b>As of 4-20-2015 (millions)</b>
City of Bellaire	\$4.95
Rubenstein Foundation	\$0.30
Evelyn's Park Conservancy Board	\$1.11
<b>Total</b>	\$6.36

The City's funding source was noted to be \$4.95 million (i.e., some of the original \$5 million in funding had been expended on abatement and environmental reports). The Jerry and Maury Rubenstein Foundation ("Foundation") had agreed to donate approximately \$300,000 in funds, with the Evelyn's Park Conservancy Board donating \$1.11 million.

**City Manager Paul A. Hofmann** referenced the donation from the Foundation and noted that the Operating Agreement and the Donation Agreement between the City of Bellaire and the Foundation provided for a one-half acre of the park site as a memorial for Evelyn Rubenstein. The donation from the Foundation would be used for the memorial garden portion of the project.

**Project Manager Jordan** continued and indicated that the City and Conservancy would have more definitive numbers when the guaranteed maximum price contract was placed on City Council's agenda in May.

With respect to value engineering items, the items had been separated into two categories: (1) architectural items; and (2) site items. With respect to architectural items, prefabricated canopy units would be used instead of custom canopies, the finish on the concrete floors would be modified, the Building Management System would be removed, and manual flush toilets would be used in lieu of automatic flush toilets.

With respect to landscaping/site items, the City and the Conservancy took a real hard look at the irrigation system to ensure that the system was designed in the most efficient way possible. Fine-tuning of the site grading, reduction of some of the berm heights, and substitution of some materials were taken into account.

In closing, Project Manager Jordan advised that discussions were still being held



with respect to possible changes to the types of benches in the park, as well as whether to renovate or rebuild the Yellow House on the site, all of which could result in some cost savings. Project Manager Jordan also briefly referenced the rejected architectural value engineering items, most of which would have represented a very small cost savings.

**Patricia King-Ritter, President of the Evelyn's Park Conservancy Board** ("Conservancy"), indicated her agreement with the report provided by Project Manager Michelle Jordan. President King-Ritter stated that the Conservancy was also looking for donations of items that could help lower the guaranteed maximum price. She introduced Jeffery Christman, the Conservancy's newest team member, and advised that Jeffery had been tasked to go over the Conservancy's business plan.

**Jeffery Christman, Board Member, Conservancy**, stated that he had been serving as a member of the Conservancy for the last three months and had seen the great amount of time and hard work that had been spent by Patricia King-Ritter and Lou Waters to get Evelyn's Park across the finish line. He presented the current financial condition of the Conservancy so that members of City Council could see how much money the Conservancy had available to contribute to Phase 1 of the Evelyn's Park Project.

Assets:	
Cash	\$1,600,000
Pledges Receivable	\$ 268,000
Liabilities:	
SWA	\$ 33,000
Lake Flato	\$ 196,000

Board Member Christman indicated that the Conservancy had net \$1.6 million in total assets, and expected to have more assets as soon as the project broke ground and additional fundraising efforts were started.

With respect to income projections from park operations, the Conservancy felt that the revenue sharing generated from the restaurant concessionaire would begin at \$100,000 and increase from there. Event pavilion rental fees (assuming two events per week at \$500 per event) were estimated at \$52,000. Other revenues of approximately \$50,000 per year would come from ongoing fundraising activities and an annual gala event.

Operating expenses would consist of payroll, taxes, and benefits for full-time staff, security fees, supplies, audit fees, etc. The Conservancy was anticipating operating at a surplus and retaining the surplus to further endow the park and/or move toward the park's next phases.

Board Member Christman indicated that the Conservancy had the funding to get the project started.

**Lou Waters, Board Member, Conservancy**, stated that the Conservancy was put in contact with a group called the "Sun Club," an education non-profit entity funded by Green Mountain Energy whose job was to help promote alternative forms of energy (i.e., solar installations, wind installations, etc.).

The Sun Club expressed an interest in funding a solar project for the Conservancy. Lake Flato helped the Conservancy design a first-class solar installation which would provide essentially all of the energy use of the park office and normal baseline regular operations of the event center area. A budget and initial cost estimates were developed by a company based in Austin that routinely worked on solar installation design for companies such as Whole Foods Market. The cost of the proposal was noted to be \$90,000, and the Sun Club agreed to fund the design, procurement, and installation costs, as well as a contingency for unforeseen building construction costs.

In closing, Board Member Waters noted that this was a positive change in the scope of Phase 1 of the Evelyn's Park Project. The Conservancy talked with the Sun Club regarding recognition of the system. Recognition could consist of a joint press release, feature article in the Conservancy's newsletter, booth space at park events, and the display of a sign near the solar installation explaining solar energy. Board Member Waters stated that the signage and other recognition related to the project were educational in nature for renewable energy and not for promotional use by Green Mountain Energy.

**Mayor Pro Tem Amanda B. Nathan** opened the floor for questions from members of the City Council. Following questions, a motion was made and seconded and action taken to accept the report regarding the status of the Evelyn's Park Project into the record.

**Motion:**

**To accept the status report on Evelyn's Park as related to the progress made in value engineering the project, a solar power opportunity and the Evelyn's Park Conservancy Board's plans to contribute to the construction costs, as presented by Bellaire Project Manager Michelle Jordan, Conservancy Board President Patricia King-Ritter, and Conservancy Board Members Jeffery Christman and Lou Waters, into the record.**

(Requested by Karl Miller, Parks, Recreation and Facilities)

<b>RESULT:</b>	<b>ACCEPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Roman F. Reed, Councilman
<b>SECONDER:</b>	Pat B. McLaughlan, Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

3. Presentation by City Engineer James Andrews, P.E., regarding an update on the City's water and wastewater infrastructure.

**Dave Kasper, ARKK Engineers, LLC**, presented an update on the City of Bellaire's water and wastewater infrastructure to members of City Council on behalf of City Engineer James Andrews.

**WASTEWATER COLLECTION SYSTEM:**

**Sanitary Sewer Lines**

Mr. Kasper advised that the original wastewater lines in Bellaire were constructed primarily in the 1940s. In the late 1980s, the City of Bellaire ("City") started



aggressively rehabilitating wastewater lines. As of today, all but 3% of the City's wastewater lines had been addressed. The remaining 3% were generally lines constructed in the 1970s by developers in various areas of the City.

Design work on a project to rehabilitate and/or replace the remaining wastewater lines would be undertaken in FY 2015, with work to commence in FY 2016 and carry through to FY 2020 (approximately 900 linear feet per year would be addressed).

### **Wastewater Lift Stations**

Mr. Kasper noted that the City had four lift stations located throughout the City. Three of the lift stations drained into one master lift station. The master lift station was located at the Wastewater Treatment Plant. One of the lift stations was located on Bellaire Boulevard (in the median on the east side of Loop 610). Another lift station was located on Wendell Street (between two homes), and the third lift station was located on South Rice Avenue.

With respect to the lift stations, plans for 2015-2020 included SCADA system improvements at the Wastewater Treatment Plan (\$125,000), the Rice Lift Station (\$30,000), and the Bellaire Lift Station (\$30,000); pump, motor and control improvements at the Bellaire Lift Station (\$25,000), and wet well rehabilitation at the Bellaire Lift Station (\$60,000).

### **WATER DISTRIBUTION SYSTEM:**

#### **Water Lines:**

Mr. Kasper advised that the original water distribution system was also about 70 years old. Approximately 55% of the water lines had been replaced. Of the remaining water lines (145,000 linear feet), 16% were high priority (52,000 linear feet) and 29% were of a lesser priority.

It was noted that water lines would be replaced on Oakdale Drive and Patrick Henry Street during FY 2015. Approximately 13,000 linear feet of water lines would be addressed over a four-year period (2016-2020) at a cost of approximately \$11 million.

### **OTHER FUTURE IMPROVEMENTS:**

Other future improvements were reviewed by Mr. Kasper. For example, a picture was shown of several utility conflicts in the Newcastle Street box at Bellaire Boulevard. Those conflicts consisted of old, abandoned utility lines that could be removed in order to improve the drainage capacity in that area.

Members of City Council had an opportunity to ask questions of Mr. Kasper regarding the update he provided on the City's water and wastewater infrastructure.

Following questions, **Mayor Pro Tem Nathan** called for a motion, a second, and action on the acceptance of the referenced update into the record.

#### **Motion:**

**To accept the update on the City's water and wastewater infrastructure,**

**as presented by Dave Kasper, ARKK Engineers, LLC, into the record.**

<b>RESULT:</b>	<b>UNANIMOUS</b>
<b>MOVER:</b>	Gus E. Pappas, Councilman
<b>SECONDER:</b>	James P. Avioli, Sr., Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

(Requested by Brant Gary, Public Works)

4. Presentation of the FY 2015 Second Quarter Report.

**Assistant City Manager Diane K. White** ("ACM White"), presented the City of Bellaire FY 2015 Second Quarter Report for the period January 2015 through March 2015 ("2nd Quarter Report") to members of City Council. ACM White indicated that her presentation would include brief highlights of the 2nd Quarter Report.

For each operational fund, a monthly allocated budget was prepared. Those monthly budgets were compared to the actual reports on a monthly and quarterly basis. Year-end projections were prepared by the various Department Heads that reflected where the City was six months into the budget year (March 31st), as well as any variables that might occur (for example, vacancies, challenges, etc.).

**GENERAL FUND**

ACM White advised that one of the largest expenditures for the General Fund operating budget was personnel at 73% of the overall operating budget. On page 3 of the report, a department vacancy list was provided depicting the 21 vacant positions that the City currently had.

In November of 2014, after the FY 2015 budget was adopted, the City implemented a pay plan. One of the things that was not considered in the pay plan was the rate at which overtime would be paid due to vacancies. Any salary savings that would have been realized in a normal year would have covered overtime expenditures; however, this was not the case this year.

With respect to the General Fund, the City was tracking on target with 48% of the General Fund being expended by March 31st and 78% of revenue being collected. It was noted that the City anticipated that revenues would exceed the budgeted amount by approximately \$231,000 (higher than anticipated sales tax collections, increased camp registration, and increased development fees). ACM White advised further that the City anticipated that property tax collections would be less than budgeted due to tax protests.

Expenditures in the General Fund would likely end slightly over budget at \$21,000, due to overtime, an increase in legal fees for representation related to the Urban Village (Transit-Oriented Development) District, and the City's sick leave buyback program.

Referenced budget amendments included an amendment for the pay plan implementation and improvements to Lafayette Park.

## ENTERPRISE FUND

With respect to the Enterprise Fund, the City had expended 44% of the budget through March 31, 2015, and collected 45% of budgeted revenue. The allocated budget for water usage was based on a five-year average of historical data, and the City was under the allocated budget for water usage for both quarters of FY 2015.

ACM White advised that as of March 31, 2015, the City had seven inches more rainfall than the previous year. The City anticipated ending the year at \$191,000 less than budgeted.

## MANAGEMENT AND CAPITAL PROJECTS:

Management project highlights included a Bellaire Family Safety Day on May 9, 2015 (developed by the City's Community Safety Outreach Team). Financial management policies would be presented to the Audit Finance Board on April 30<sup>th</sup>, then to City Council on May 18, 2015.

With respect to the Comprehensive Plan Update, City Council was scheduled to have a presentation on June 1<sup>st</sup>, with a public hearing on July 6<sup>th</sup>, and City Council consideration on August 3<sup>rd</sup>.

As to capital projects, ACM White mentioned that every major street and drainage project scheduled for FY 2015 was underway. A Workshop Session on the Municipal Facilities Project was targeted on May 20, 2015.

In summary, ACM White advised that the Department Heads were involved in the mid-year or 2nd Quarter Report and were required to provide an analysis of every single line item within their department. Also of note was the availability of the Chief Financial Officer's monthly finance report on the Internet.

**Mayor Pro Tem Amanda B. Nathan** opened the floor for questions regarding the 2nd Quarter Report. Following questions, Mayor Pro Tem Nathan called for a motion, second, and action on to accept the 2<sup>nd</sup> Quarter Report into the record.

### Motion:

**To accept the City of Bellaire FY 2015 Second Quarter Report for the period January 2015 through March 2015, as presented by Assistant City Manager Diane K. White, into the record.**

(Requested by Paul A. Hofmann, City Manager)

<b>RESULT:</b>	<b>ACCEPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Roman F. Reed, Councilman
<b>SECONDER:</b>	Andrew S. Friedberg, Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

## G. New Business:

### 1. Consent Agenda:

**Note:** Each item on the Consent Agenda was considered separately at the request of City Clerk Tracy L. Dutton.

- a. Consideration of and possible action on a request from the Bellaire City Library for City Council approval of an Appendix for Technology Element to be attached to the current Bellaire City Library's Long-Range Plan, 2010-2015, as required to meet the standards for accreditation in the State Library System as adopted by the Texas State Library & Archives Commission.

**Motion:**

**To approve a request from the Bellaire City Library for City Council approval of an Appendix for Technology Element to be attached to the current Bellaire City Library's Long-Range Plan, 2010-2015, as required to meet the standards for accreditation in the State Library System as adopted by the Texas State Library & Archives Commission.**

(Requested by Mary Cohrs, Library)

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Roman F. Reed, Councilman
<b>SECONDER:</b>	James P. Avioli Sr., Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

- b. Consideration of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Ordinance No. 09-073 and Ordinance No. 14-023 for the purpose of increasing the City Clerk's Annual Compensation as a result of the City Clerk's Annual Performance Review.

**Motion:**

**To adopt an ordinance of the City Council of the City of Bellaire, Texas, amending Ordinance No. 09-073 and Ordinance No. 14-023 for the purpose of increasing the City Clerk's Annual Compensation as a result of the City Clerk's Annual Performance Review.**

{Motion by Councilman Pat B. McLaughlan and second by Councilman Gus E. Pappas}

**City Clerk Tracy L. Dutton** advised that she had spoken with the City Attorney and had asked for language that might be included in the ordinance to allow City Council to take action one time on compensation related to performance reviews (as opposed to two actions taken up to two weeks apart). City Attorney Petrov suggested the following sentence be added at the end of enumerated item 2 of the resolution (page 2): *Such amount may be amended by a vote of the City Council of the City of Bellaire, Texas, from time to time.*

City Clerk Dutton requested City Council's consideration of the additional language in enumerated item 2.

**Amendment to the Motion (Friendly):**

**Councilman Andrew S. Friedberg offered a friendly amendment to the main motion to accept the additional language requested by the City Clerk. Councilman Pat B. McLaughlan seconded the friendly**

**amendment.**

(Requested by Tracy L. Dutton, City Clerk)

<b>RESULT:</b>	<b>ADOPTED AS AMENDED [UNANIMOUS]</b>
<b>MOVER:</b>	Pat B. McLaughlan, Councilman
<b>SECONDER:</b>	Gus E. Pappas, Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

**2. Item for Individual Consideration:**

Consideration of and possible action on a request from the Bellaire Public Works Department for City Council approval to purchase the following FY 2015 capital equipment: One (1) street sweeper in the amount of \$131,700.

**Motion:**

**To approve a request from the Bellaire Public Works Department for City Council approval to purchase the following FY 2015 capital equipment: one (1) street sweeper in the amount of \$131,700.**

Following a brief overview of the agenda item by Director of Public Work Brant Gary and questions from members of City Council, action was taken on the motion before City Council.

(Requested by Brant Gary, Public Works)

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Roman F. Reed, Councilman
<b>SECONDER:</b>	Pat B. McLaughlan, Councilman
<b>AYES:</b>	Nathan, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nauert

**H. Items for Future Agendas; Community Interest Items from the Mayor and City Council.**

Items for future agendas included a request from Councilman Pat B. McLaughlan for status reports on the stormwater management situation at Uptown Crossing and the status of the Uptown Houston/METRO Transit Center.

Community interest items from the Mayor Pro Tem and City Council included reminders to attend a "meet and greet" sponsored by the Friends of the Bellaire Library on April 22, 2015, the Ad Hoc Municipal Facilities Committee meeting on April 23, 2015, Patrons for Bellaire Parks Wine & Tapas Event on April 25, 2015, and National Day of Prayer at noon on May 7, 2015.

**I. Adjourn.**

**Amanda B. Nathan, Mayor Pro Tem,** adjourned the Regular Session of the City Council of the City of Bellaire, Texas, at 10:00 p.m. on Monday, April 20, 2015.



# CITY OF BELLAIRE TEXAS

## MAYOR AND COUNCIL

MAY 4, 2015

Council Chamber

Regular Session

7:00 PM

7008 S. RICE AVENUE  
BELLAIRE, TX 77401

### REGULAR SESSION - 7:00 P.M.

#### A. Call to Order and Announcement of a Quorum - Dr. Philip L. Nauert, Mayor.

**Dr. Philip L. Nauert, Mayor,** called the Regular Session of the City Council of the City of Bellaire, Texas, to order at 7:06 p.m. on Monday, May 4, 2015. He announced that a quorum of the members of City Council were present as set forth in the table below.

Member Name	Title	Status	
Dr. Philip L. Nauert	Mayor	Present	
Dr. B. Nathan	Mayor Pro Tem	Absent	
Dr. J. Reed	Councilman	Present	
Dr. J. Aviola Sr.	Councilman	Present	
Dr. J. Appas	Councilman	Present	
Dr. J. Laughlan	Councilman	Present	
Dr. S. Friedberg	Councilman	Present	
Dr. J. Hofmann	City Manager	Present	
Dr. J. Petrov	City Attorney	Present	7:20 PM
Dr. J. Dutton	City Clerk	Present	

#### B. Inspirational Reading and/or Invocation - Dr. Philip L. Nauert, Mayor.

**Dr. Philip L. Nauert, Mayor,** provided the inspirational reading for the evening.

#### C. Pledges to The Flags - Dr. Philip L. Nauert, Mayor.

**Dr. Philip L. Nauert, Mayor,** led the audience and the members of City Council in the U.S. Pledge of Allegiance and the Pledge to the Texas Flag.

#### D. Recognition of Proclamations:

1. Issuance of a proclamation by Dr. Philip L. Nauert, Mayor, proclaiming the month of May 2015 as "Older Americans Month" in the City of Bellaire, Texas, in recognition of the contributions that older adults and the people who serve and support them make to the community.

**Dr. Philip L. Nauert, Mayor,** read the proclamation he had issued proclaiming the month of May 2015 as "Older Americans Month" in the City of Bellaire, Texas, in recognition of the contributions that older adults and the people who serve and support them make to the community.

The following board members and employees accepted the proclamation on behalf of the Bellaire older adults: Chair of the LIFE Advisory Board **Iola Pickul**, Vice Chair of the LIFE Advisory Board **Jerisue Garner**, Board Member of the LIFE

Minutes Acceptance: Minutes of May 4, 2015 7:00 PM (Minutes of the Regular Session held on May 4, 2015:)

Advisory Board **Barbara Davis**, Assistant Director of Parks, Recreation and Facilities **Cheryl Bright**, and Recreation Supervisor **Victoria Arevalo**.  
(Requested by Karl Miller, Parks, Recreation and Facilities)

2. Issuance of a proclamation by Dr. Philip L. Nauert, Mayor, proclaiming the week of May 10-16, 2015, as "National Police Week" in the City of Bellaire, Texas in recognition and appreciation of all law enforcement officers for the vital services they perform, their exemplary service to their communities, and in honor of those that have made the ultimate sacrifice.

**Dr. Philip L. Nauert, Mayor**, read the proclamation he had issued proclaiming the week of May 10-16, 2015, as "National Police Week" in the City of Bellaire, Texas, in recognition and appreciation of all law enforcement officers for the vital services they perform, their exemplary service to their communities, and in honor of those that have made the ultimate sacrifice.

**Chief of Police Byron A. Holloway** accepted the proclamation on behalf of the Bellaire Police Department.  
(Requested by Byron Holloway, Police Department)

3. Issuance of a proclamation by Dr. Philip L. Nauert, Mayor, proclaiming the week of May 17-23, 2015, as "Emergency Medical Services Week" in the City of Bellaire, Texas, in recognition of the value and accomplishments of emergency medical services providers.

**Dr. Philip L. Nauert, Mayor**, read the proclamation he had issued proclaiming the week of May 17-23, 2015, as "Emergency Medical Services Week" in the City of Bellaire, Texas, in recognition of the value and accomplishments of emergency medical services providers.

**Fire Chief Darryl Anderson** accepted the proclamation on behalf of the Emergency Medical Services Division of the Bellaire Fire Department.  
(Requested by Darryl Anderson, Fire Department)

4. Issuance of a proclamation by Dr. Philip L. Nauert, Mayor, proclaiming the week of May 17-23, 2015, as "National Public Works Week," and encouraging our residents to join in paying tribute to our public works professionals, engineers, managers, and employees and to recognize the substantial contributions they have made to our health, safety, welfare, and quality of life.

**Dr. Philip L. Nauert, Mayor**, read the proclamation he had issued proclaiming the week of May 17-23, 2015, as "National Public Works Week," and encouraged the residents of Bellaire to pay tribute to our public works professionals, engineers, managers and employees and to recognize the substantial contributions they make to the health, safety, welfare, and quality of life of the community.

The following Bellaire Public Works Department employees accepted the proclamation on behalf of the Public Works Department: Director of Public Works **Brant Gary**, Solid Waste Superintendent **Darold Bailey**, Solid Waste Equipment Operator **George Stredic**, Water and Wastewater Laborer **Greg Bailey**, Water and Wastewater Equipment Operator **Patrick Scott**, Streets and Drainage Superintendent **David Kauffman**, and Streets and Drainage Equipment Operator **Sean Fields**.

(Requested by Brant Gary, Public Works)



**E. Approval or Correction of Minutes:****Minutes dated April 6, 2015:**

Consideration of and possible action on the adoption of the minutes of the Regular Session and Executive Session of the City Council of the City of Bellaire, Texas, held on Monday, April 6, 2015.

Mayor and Council - Regular Session and Executive Session - Apr 6, 2015  
7:00 PM

**Motion:**

**To approve the minutes of the Regular Session and Executive Session of the City Council of the City of Bellaire, Texas, held on Monday, April 6, 2015.**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Andrew S. Friedberg, Councilman
<b>SECONDER:</b>	Roman F. Reed, Councilman
<b>AYES:</b>	Nauert, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nathan

**F. Personal/Audience Comments.****Cindy Siegel, President of the Patrons for Bellaire Parks:**

President Siegel addressed City Council on behalf of the Patrons for Bellaire Parks ("Patrons"). She noted that the Patrons recently held a fundraising event, Wine & Tapas, on the Great Lawn in Bellaire Town Square. The event was an overwhelming success and President Siegel thanked City Council for their support. Reference was made to the City Manager who went above and beyond the call of duty to help the Patrons with the event. President Siegel indicated that she wished to express a special thanks to all of the City Staff who helped with the event, specifically the Parks, Recreation and Facilities Department.

The mission of Patrons was to raise money for Bellaire parks and recreational programs. President Siegel mentioned several of the City's parks that had benefited from the Patrons' fundraising activities--Bellaire Town Square (Great Lawn and Bellaire Family Aquatic Center), Evelyn's Park, The Nature Discovery Center at Russ Pitman Park, and Officer Lucy Dog Park (in Lafayette Park). She indicated that the net proceeds from the Wine & Tapas Event held on April 25, 2015, would be donated for improvements to Evergreen Park.

**Keith Bowers:**

Mr. Bowers addressed City Council regarding finances for the City of Bellaire. He felt that the City's financial picture was murky at the present time, with many moving pieces and constant change.

With regard to Evelyn's Park, Mr. Bowers indicated that the project was sold to the City as a project that would not require any taxpayer funds. He stated that the City had been hijacked or ransomed, in his opinion, for \$5 million to show that the City "had skin in the game." Then, the Evelyn's Park Conservancy Board wanted the right to take the park back. He inquired as to whether the City was finally able to remove the

Minutes Acceptance: Minutes of May 4, 2015 7:00 PM (Minutes of the Regular Session held on May 4, 2015:)



reversionary stipulation.

Reference was made to the report from the City and the Evelyn's Park Conservancy Board regarding value engineering. Mr. Bowers stated that he felt that everything had been stripped out of the park plans but the bare essentials. About the only thing above Third World standards in the "revised" plan were manual flush toilets, in his opinion. Examples cited by Mr. Bowers of items that were value engineered included a replacement of terrazzo floors with concrete floors,, change in ceiling materials, ten-foot walkways replaced with four-foot walkways, two-thirds of the surface drains were removed, and the utility entrance was reoriented. Mr. Bowers felt that everything decent had been stripped from the park plans and advised that he was totally opposed to any more City funds going toward Evelyn's Park.

As to municipal facilities, Mr. Bowers expressed dissatisfaction with the replacement of the City Hall and Civic Center. He indicated that the municipal facilities project was in total disarray and chaos in his opinion. He urged City Council to stop and get the City's priorities straight.

Mr. Bowers continued with comments related to the City's Wastewater Treatment Plant. He indicated that the City was facing \$40-50 million to rebuild the plant in the very near future. With respect to water production, Mr. Bowers advised that the City had spent approximately \$5 million to rebuild wells. He stated that he felt that Bellaire should be able to negotiate a better deal with the City of Houston.

As for the Rebuild Bellaire Program, Mr. Bowers stated that the program was a joke, in his opinion. He expressed concern that the City still had two-inch water mains, streets with no drainage, and potholes everywhere. Higher priority needs (as opposed to the replacement of City Hall) were staring at the City. He urged City Council to provide a five-year plan and tell the residents where the money was going to come from to address all of the City's priorities.

{The speaker's allotted time ended at this point in the meeting}

**Barbara Jerige:**

Ms. Jerige addressed City Council and advised that she wished to speak about Evelyn's Park. She stated that she and her husband met with Paul Hofmann, Patricia King-Ritter, Karl Miller, and Cheryl Bright over a week ago to discuss their concerns related to Wednesday night food trucks and the Saturday Pop-Ups in the Park fundraising events held at Evelyn's Park.

Ms. Jerige indicated that when she and her husband purchased their home they were told by many realtors that Evelyn's Park would be a sanctuary and that the existing historic home would be used as a café for events only.

Concerns voiced by the Jeriges to City Staff included parking in the street and people trespassing in their yard, as well as damage to their garage door from a paintball. Ms. Jerige advised that Camellia Street residents were unable to get up and down their street during these events without backing up all of the way to the stop sign.

Ms. Jerige indicated that she and her husband did not want to be bad neighbors, but also wanted the City to be good neighbors to the Camellia Street residents. She indicated further that she had asked if a security wall and noise control between the homes on Camellia Street and Evelyn's Park could be added in the design plan (on the property line at a height greater than the fence heights). The Jeriges were told that it

would not be fair to spend money on a wall that backed up to the homes on Camellia Street. She indicated that the events held at Evelyn's Park thus far had greatly affected her quality of life.

{The speaker's allotted time ended at this point in the meeting}

**Andrew Jerige:**

Mr. Jerige addressed City Council and expressed his concern with respect to the safety of the people walking up and down the street, as well as the safety and security of the residents on the north side of Camellia Street. He, too, proposed some type of wall running east to west on the property line. In closing, he echoed all of the comments made by his wife, Barbara Jerige.

**Lynn McBee:**

Ms. McBee addressed City Council on the topic of transparency and the responsibility of government. In her experience, Bellaire had traditionally had many people coming up to City Hall when their homes were believed to be in jeopardy.

Ms. McBee stated that she wished to point out to all of the citizens of Bellaire and to the sitting City Council that the City's Charter prevailed in addition to the laws of the State of Texas. Article X of the City Charter dealt with the initiative, referendum, and recall powers of the electors. Ms. McBee quoted Section 1, Power of Initiative, of Article X as follows:

*The electors shall have power to propose any ordinance except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the same at the polls, such power being known as the initiative. Any initiative ordinance may be submitted to the Council by a petition signed by qualified electors of the City equal in number to at least twenty-five percent (25%) of the number of votes cast at the last regular municipal election; provided, however, that the petition shall contain the signatures of at least two hundred (200) qualified electors of the City. Bond elections may be initiated by petition to the City Council as above provided.*

Ms. McBee stated that she had compiled the last canvass of the City's General Election held on November 9, 2013, and determined that 3,290 ballots were cast. Twenty-five (25%) of 3,290 was 823 voters. Only 823 signatures were needed to propose an initiative ordinance. She indicated that it was important for citizens to know that they did have the power that government relied upon. When things got out of hand, the people could exert their power to alter things (as was done in 1976 when one-half of the City Council was recalled from office for its attitude toward density and zoning).

Ms. McBee stated that the people of the community of Bellaire ruled. She indicated that she was not present to threaten, but to remind everyone as to how government worked in the country. She indicated that she spoke to this power because of its tremendous importance to the residents.

In closing, Ms. McBee suggested imposing a requirement on City management to arrange asking the people about issues, whatever those issues might be.

**Written Comment:**

**Dr. Philip L. Nauert, Mayor,** read one written comment into the record as follows:

Dear Mayor and City Council,

Recent mention of yet another bond issue to repair our infrastructure should raise red flags for City Council. According to the recent financial report for 2014, recent City Councils have increased our bonded debt by 72%, from \$44.4 million in 2005 to over \$77 million in 2014. Adding another \$12 million bond issue will effectively double our debt in just 10 years.

A large part of the recent increase in debt is dedicated to new municipal facilities and the Evelyn's Park Conservancy - a private 501 (c)(3) organization. Why did this organization gain priority over failing City infrastructure and the deferred maintenance of our existing parks?

I'd like to share my thoughts about all this. First, the municipal facilities. We need a new police station and new municipal courts. We do not need a new City Hall and Civic Center at this time. I cannot find one crack in the brick facade of the City Hall structure. Addressing the deferred maintenance plus some interior renovation would preserve the existing structure for many years to come.

Based on the recent revelation about the escalating costs for Evelyn's Park, it is unlikely that all the new facilities, no matter what design is chosen, can be built, and built well, for the current proposed amount of \$10 to \$12 million, especially since I understand that the exterior walkways, lighting, landscaping and other extraneous costs are not included. However you decide to proceed, I strongly urge you to do so in stages by first completing the new police station and municipal courts before demolishing City Hall and the Civic Center. That would be the financially prudent thing to do.

As for Evelyn's Park, which residents were assured would be developed without taxpayer funds, I say enough is enough. This is already becoming a black hole, but City Council made the commitment via the bond issue although voter turnout, as I recall, totaled a few thousand residents, and I've heard resident after resident say they were not in favor of this handout. Please do not devote one more cent of taxpayer funds to this project. The group running this needs to revise their plans for spending our money to the \$5 million dollar amount. Renovate the old house, open a cafe, build some fences and turn the rest into green space and walking paths, with plenty of parking. Then raise future funds as promised, from outside sources.

I, along with many, many other residents, am tired of crumbling streets and sewer lines, streets without gutters or curbs, (why on earth was the 5100 block of Chestnut completely repaved, while the 5200 block was not?), other streets with no sidewalks or walking paths, ratty looking esplanades. It's embarrassing to view the entrance to Bellaire at the Beechnut and Rice Avenue entry and see the difference between the Meyerland portion and the Bellaire portion. Other City entrances also leave much to be desired.

And portions of our downtown area look awful, next to no landscaping, deteriorating parking areas, and gaps in sidewalks. Definitely not pedestrian friendly. A majority of Council recently voted to spend \$200,000 for Holly Street landscaping. Can't the City

*underwrite the cost of additional landscaping, maybe some crepe myrtles at least, in areas along our main thoroughfares?*

*Please, it's time to address what most residents really want to see in Bellaire, and it's not a new park with a water feature, or even a new City Hall. What residents want is an attractive City that provides excellent City services, a downtown that's accessible via well-paved streets, sidewalks, and parking areas, reliable water and sewer systems, well maintained City parks, and City personnel and a City Council that sets priorities with all the residents in mind, not just a vocal few.*

*Thank you,*

*Jane McNeel*

#### **G. Reports:**

City Manager's Report dated May 4, 2015, regarding the April 27th department director planning session and a significant employee recognition.

**Paul A. Hofmann, City Manager,** presented the City Manager's Report dated May 4, 2015, to members of City Council regarding the April 27th department director planning session and a significant employee recognition.

City Manager Hofmann indicated that he and the department directors spent a day away from the office to prepare for budget season and, more specifically, for City Council's June 8th Planning Session. Most of the day was spent going over presentations of four departmental service plans. Those service plans would be shared with City Council in some amount of detail during the next two City Council Regular Sessions. The four service plans were for the departments of Police, Fire, Information Technology, and Public Works.

It was noted that a Bellaire homeowner with a home valued at \$1 million paid \$3,200 per year in taxes (after taking a homestead exemption into account) to the City of Bellaire. If that homeowner were over 65 years of age, he or she would pay \$2,600 per year in taxes to the City of Bellaire.

For those taxes, the homeowner in Bellaire received superb police and fire protection (well equipped and well trained), really good park services, annual street and drainage construction improvements, a well-resourced library, and other good City services.

City Staff hoped the service plans would provide information in a good context for future City Council decision making.

City Manager Hofmann advised that Human Resources Director Yolanda Williams received a statewide award last week. The award was provided by the Texas Municipal Human Resources Association, and the name of the award was "Human Resource Management Professional of the Year." It was noted that some very meritorious nominees competed with Yolanda for the award. Human resources professionals helped ensure that decisions were made professionally, with accountability and consistency in the decision making. City Manager Hofmann advised that the City was very proud of Yolanda and happy that she was with us.

**Dr. Philip L. Nauert, Mayor,** opened the floor for questions of the City Manager regarding his report. Following questions, a motion was made, seconded, and

action taken to accept the report into the record.

**Motion:**

**To accept the City Manager's Report dated May 4, 2015, as presented by City Manager Paul A. Hofmann, into the record.**

(Requested by Paul A. Hofmann, City Manager)

<b>RESULT:</b>	<b>ACCEPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Gus E. Pappas, Councilman
<b>SECONDER:</b>	Roman F. Reed, Councilman
<b>AYES:</b>	Nauert, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nathan

**H. New Business:**

**Adoption of Ordinances:**

1. Consideration of and possible action on the adoption of an ordinance appointing Patricia Sanchez as Deputy Court Clerk of the Municipal Court of the City of Bellaire, Texas, for a term commencing on May 4, 2015.

Following questions of Chief Financial Officer Linda Symank regarding the requested appointment, a motion was made and action taken to appoint Patricia Sanchez as Deputy Court Clerk of the Municipal Court of the City of Bellaire, Texas.

**Motion:**

**To adopt an ordinance appointing Patricia Sanchez as Deputy Court Clerk of the Municipal Court of the City of Bellaire, Texas, for a term commencing on May 4, 2015.**

(Requested by Tracy L. Dutton, City Clerk)

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Pat B. McLaughlan, Councilman
<b>SECONDER:</b>	Roman F. Reed, Councilman
<b>AYES:</b>	Nauert, Reed, Avioli Sr., Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nathan

2. Consideration of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Ordinance No. 14-058, which provided for the appointment of seven (7) members to serve in an advisory capacity on the Ad Hoc Municipal Facilities Committee (the "Committee"), set the charge of the Committee, and approved a work plan for the design of new municipal facilities, for the purpose of filling two vacancies on the Committee.

**Dr. Philip L. Nauert, Mayor,** summarized the agenda item before City Council related to the possible appointment of up to two individuals to fill vacancies existing on the Ad Hoc Municipal Facilities Committee. He noted that two of the original appointees had withdrawn leaving two vacancies.

**Motion:****To consider approving up to two positions on the Ad Hoc Municipal Facilities Committee.**

{Motion by Councilman Gus E. Pappas and second by Councilman James P. Avioli, Sr.}

Discussion ensued among members of City Council regarding the motion on the floor; more specifically, how City Council wanted to go about selecting the members to fill the two positions.

**Amendment (No. 1) to the Main Motion:**

That the individuals selected to propose replacements for the two positions on the Ad Hoc Municipal Facilities Committee would be Mayor Philip L. Nauert and Councilman Pat B. McLaughlan, followed by interviews of the individuals before the entire City Council and final approval to be made by the the entire City Council.

<b>RESULT:</b>	<b>APPROVED [5 TO 1]</b>
<b>MOVER:</b>	Dr. Philip L. Nauert, Mayor
<b>SECONDER:</b>	Pat B. McLaughlan, Councilman
<b>AYES:</b>	Nauert, Reed, Avioli Sr., McLaughlan, Friedberg
<b>NAY:</b>	Pappas
<b>ABSENT:</b>	Nathan

It was noted that Mayor Nauert and Councilman McLaughlan would present their nominees to the City Manager. Interviews would be set up as soon thereafter as possible. Final action was taken on the main motion, as amended.

(Requested by Tracy L. Dutton, City Clerk)

<b>RESULT:</b>	<b>ADOPTED AS AMENDED [5 TO 1]</b>
<b>AYES:</b>	Nauert, Reed, Avioli Sr., McLaughlan, Friedberg
<b>NAYS:</b>	Pappas
<b>ABSENT:</b>	Nathan

**I. Items for Future Agendas; Community Interest Items from the Mayor and City Council.**

Community interest items from the Mayor and City Council included expressions of congratulations to the Patrons for Bellaire Parks on their successful Wine & Tapas Event; expressions of congratulations to Bellaire's Human Resources Director Yolanda Williams on her recent statewide award and recognition; and expressions of appreciation for the City employees and to Councilman James P. Avioli, Sr., for attending and participating in the evening's City Council meeting despite his feeling very poorly.

**J. Adjourn.****Motion:**

**To adjourn the Regular Session of the City Council of the City of Bellaire, Texas, at 8:42 p.m. on Monday, May 4, 2015.**

<b>RESULT:</b>	<b>UNANIMOUS</b>
<b>MOVER:</b>	Roman F. Reed, Councilman
<b>SECONDER:</b>	Pat B. McLaughlan, Councilman
<b>AYES:</b>	Nauert, Reed, Pappas, McLaughlan, Friedberg
<b>ABSENT:</b>	Nathan and Avioli Sr.

Minutes Acceptance: Minutes of May 4, 2015 7:00 PM (Minutes of the Regular Session held on May 4, 2015:)



**Mayor and Council**

7008 S. Rice Avenue  
Bellaire, TX 77401



Meeting: 05/18/15 06:00 PM  
Department: City Manager's Office  
Category: Presentation  
Department Head: Paul A. Hofmann  
DOC ID: 1584

**SCHEDULED  
ACTION ITEM (ID # 1584)**

---

**Item Title:**

Presentations of Fire and Information Technology Department Service Plans

**Background/Summary:**

The Fire and Information Technology Department Service Plans will be presented. Service plans are an integral element of the City's Strategic Planning Model. Each service plan will address:

- Why the department exists
- What the department does
- Who is responsible for what
- Who the department serves
- Service level expectations for the department within current resources
- Environmental factors that may impact the department
- Assets available
- Potential enhancements to services and service levels
- Future strategies

Service plans have a three year planning horizon. Our three year cycle for creating service plans is as follows. The plan is to update each department service plan after three years.

For FY 2015:

- Fire, IT, Police and Public Works (Streets/Drainage and Solid Waste)

For FY 2016

- Parks Recreation & Facilities, Human Resources, Public Works Water/Wastewater, and City Clerk

For FY 2017

- Library, Development Services and Finance

**Previous Council Action Summary:**

None

**Fiscal Impact:**

Not at this time

**Recommendation:**

Receive presentations. Provide feedback as appropriate after presentation and throughout budget process.



**ATTACHMENTS:**

- Fire Service Plan (PDF)
- IT Service Plan (PDF)



## FY 2015 Bellaire Fire Department Service Plan

**City of Bellaire Mission Statement:**

*The City of Bellaire is dedicated to outstanding quality service and facilities to ensure an open, progressive, and secure community.*

## Fire Department Service Plan

# Table of Contents

Why Statement.....	Page 3
Who's Responsible for What.....	Page 3
What Does the Department Do.....	Page 3
Emergency Response.....	Page 4
Preparation & Planning.....	Page 4&5
Prevention and Education.....	Page 6
Who Does the Department Serve.....	Page 7
Service Level Expectations.....	Page 8&9
Budget.....	Page 10
Revenues/Expenditures.....	Page 10
Fiscal Forecast.....	Page 10
Environmental Scan.....	Page 11-12
Available Assets.....	Page 13-15
Future Service Enhancements.....	Page 16-22
Future Strategy.....	Page 23

## Why Statement

Bellaire Fire Department – Professionally compassionate during your greatest need. When someone considers moving to Bellaire, it is the safety of family that has the greatest influence in that decision making process. Bellaire Fire Department fulfills a portion of that decision, providing lifesaving and extinguishment expertise within minutes. Bellaire Fire Department is your partner in your safety and well-being.

## Who's Responsible for What

Department	Fire Chief- Admin/Budget & Operations	
	Asst Fire Chief/Marshal- Code Enforcement & Operations	
	Commander A- Training/Continuing Education	Lieutenant A Personal Protective Equipment
	Commander B- EMS/Acute Medical Care	Lieutenant B Vehicle & Equipment Maintenance
	Commander C- Suppression/Communication	Lieutenant C Safety & Air Supply

## What Does the Department Do

Bellaire Fire Department's primary function is to provide life safety and property conservation, through planning, response, mitigation and evaluation. When emergencies do not threaten our constituents, we provide educational opportunities in fire prevention and health/first aid. Code Enforcement and Inspections help to ensure safety of commercial occupancies in Bellaire.

### Services

- Emergency Response
- Preparation and planning for Emergency Response
- Public Education and Training
- Fire & /Arson Investigation
- Inter-Departmental & Inter-Agency Cooperation through response and training

## Activities

### Emergency Response to EMS, Fire, Rescue and Hazardous Material Incidents

As the organization's name implies, Bellaire Fire responds to and extinguish hostile fires of all types within the City and upon a request for assistance, outside of the City. The suppression services are supported by standard operating guidelines and live fire training.

We also provide the highest quality of emergency medical care and treatment of the sick and injured through effective leadership, creation, implementation and management of a comprehensive in-house educational program, along with external specialized EMS training, protocol enhancement and medical direction.

Rescue is a combined function of Fire & EMS. This specifically refers to a situation where the incident requires EMS to care for the patient but Fire to access the patient and assist with packaging for transport. The utilization of specialized tools is a hallmark of rescue.

Fire and Arson Investigations are important to understanding the cause of fire, analyzing the data, in attempts to stop future fires. Bellaire Fire Department utilizes the expertise of Harris County Fire Marshal's Office and the State Fire Marshal's office on fires of suspicious origin.

Hazardous material response is based on training to the operational level. IH 610 is a route in which hundreds of trucks carrying products to and around Houston pass daily. Response readiness and vigilant training is mandatory.

### Preparation and planning for Emergency Response

#### Training

On the Fire Department wall is a saying:

"When confronted with a crisis: you will not rise to the occasion but sink to the level of your training"

*John Rennie (2009 Editor in Chief of Scientific America)*

Training is as much a part of the fire service as is emergency response. It is this function that allows the Fire Department to provide a service that is both effective and efficient. Bellaire Fire has been fortunate to receive funding for aggressive training in live fire evolutions as well as advancement in EMS.

The Texas Commission on Fire Protection (TCFP) is the governing body of Texas' paid fire departments and derives its authority from Texas Government Code 419. TCFP sets training minimums for firefighters and Bellaire Fire Department meets or exceeds the standard of 18 hour per year for each firefighter with an additional 2 hours per year in content specific training in areas where certification is carried as a job requirement (i.e., certified as a fire investigator and investigating fires for the dept.).

Live Fire training is facilitated through the Houston Fire Department Val Janke Training Field where each shift trains as the cohesive unit; mastering concepts from basic to advance. The training incorporates the latest innovation as revealed by the National Institute of Standards and Technology.

Bellaire Fire Department's EMS training, provided by direct contact training with the Medical Director, Bhushan Kukkalli, has resulted in a better equipped practioneer providing improved patient care, as well as an enhanced relationship with the medical director. This relationship allows the paramedics a greater degree of access to advanced topics and care modalities. The net outcome is a better educated and more responsive decision making by the caregivers.

## Planning

Effective emergency response depends on planning. It is impossible to guess what the next emergency will be, especially when most emergencies eventually require Fire Department intervention. Bellaire Fire Department uses pre-incident inspections of commercial occupancies as a planning tool, evaluating construction methods and identifying hazards that may present obstacles to an effective response, and cataloging those in a data base. A special emphasis is placed on “target hazards” or those occupancies that present a significant life hazard in the event of an emergency.

Planning also incorporates analysis of our incident reporting software for fire and EMS. This is done when an incident requires an evaluation to determine prior trends, such as Motor Vehicle Accidents on IH Loop 610 prior to reconstruction. It was also helpful with Ford vehicles were catching fire, even when not operating. Bellaire Fire Dept cooperated with the Greater Houston Fire Marshal’s Group to help break a nationwide story.

Bellaire Fire is contributing to, and soon to be assisted by, a new tool in target hazard response. This tool, the Digital Sandbox, is supported by an Urban Area Security Initiative (UASI) grant. Each target hazard’s information is placed in a data base where any responding agency, who participates in the UASI Digital Sandbox, can retrieve that information and assist with the emergency condition

## Maintenance

### *Vehicles, SCBA, Personal Protective Equipment, Water Supply, Human Maintenance*

Responding with the right equipment, the right tools and all being fully functional is a component of our ongoing and continually changing maintenance program. The fire service has many unique items requiring a much more detailed maintenance due to the rigors of the service.

Fire Department Vehicles are not just bigger trucks but are vehicles that have specialized components (i.e. pumps, waterways, Compressed Air Foam Systems, hydraulics, etc.). The Standards Body of the fire service, the National Fire Protection Association (NFPA) requires those who work on those components to be certified as an Emergency Vehicle Technician. Bellaire Fire Dept follows those recommendations. The goal is to have fully functional vehicle ready to respond 24/7/365.

The toxicity of the products of combustion, as well as NFPA, requires all firefighters entering a burning structure to wear Self Contained Breathing Apparatus (SCBA). This equipment requires specialized service and maintenance, from the daily air level checks to quarterly air quality checks, to annual fit testing of each mask to the firefighter, to the 15 year hydrostatic testing of the air cylinders. Bellaire Fire Department complies with all.

Firefighter Personal Protective Equipment is an ensemble that allows firefighters, along with SCBA, to survive in a burning building. Bellaire Fire follows or exceeds NFPA 1851 requirements for selection, maintenance and cleaning as prescribed and enforced by TCFP.

Firefighting water supply is an absolute necessity, and while the water supply is maintained by Public Works, Bellaire Fire tests hydrants for functionality annually. This is also a requirement of ISO, as part of the overall Community Rating Schedule. During the process, Bellaire Fire checks for flow, function and maintenance issues to be forwarded to Public Works.

EMS equipment has a much more refined purpose and as such, the maintenance is a more delicate proposition. All major repairs are completed by Original Equipment Manufacturer. Bellaire Fire checks its EMS electronics, medications, and oxygen supply daily, with a weekly

approach to other EMS supplies. EMS vehicle maintenance is daily, weekly, monthly and annually. The historic BFD ambulance vendor is only ¼ of a mile from the station.

Lastly and most importantly is human maintenance. The roles of a Firefighter/ Paramedic are those of a dragster; 0-100 mph quickly, and like the dragster maintenance of BFD personnel is necessary to receive the expected and required performance. Daily physical exercise is required for each member of the department. This helps relieve the stress elements of the day while maintaining the fitness for needs yet to come. Stress reduction is a key factor in maintaining quality individuals on the payroll. When events exceed the individual's ability to deal with those issues, and the shift cannot help, Bellaire Fire calls upon qualified outside help to debrief from the stresses of the service. The utilization of Employee Assistance Program is encouraged as a personal strength.

### *Prevention and Public Education*

An overriding goal of the fire service is the protection of life and property. The absolute best way to protect against fire is through Fire Prevention and one of the best tools to prevent fires is through Public Education on fire cause and simple, life saving tips to prevent fire.

Prevention through analysis is the simplest and most cost effective way to determine patterns in fire cause. An example would be the old bathroom heaters installed in the 40's & 50's. These heaters were installed directly onto dimensional lumber supports. Years of use lowered the ignition temperature of the lumber leading to fires. The reports helped to lead to calls to discontinue use of these heaters. Fire Investigation is a form of Fire Prevention though analysis of the cause and origin. Bellaire Fire has several Firefighters certified as Arson Investigators as well as numerous Fire Investigators. A team approach, utilizing assets from Harris County and mutual aid partners, is a force multiplier in fire cause determination.

The Fire Marshal is the keystone in Fire Prevention via the contact with business and property owners, developers, architects and contractors. This initial step, prior to building construction, ensures that all plans are review by the Fire Marshal with an eye towards fire prevention via building construction methods and materials.

Business Inspections is a form of prevention, finding areas of risk from business practices or misuse of everyday items, such as extension cords. Robust code enforcement can reduce the fire potential in this community dramatically. The inspection also becomes an avenue to teach prevention to the business owner, hopefully winning them over as a prevention advocate. Business inspection is a function of the Fire Marshal's Office with assistance from the Shift Commanders. The Fire Marshal uses job knowledge to focus on high hazard occupancy inspections.

Public Fire Education is a focused opportunity to teach "Fire prevention in the Home" to school age children in public schools. Bellaire and West University Place have combined this effort with a Clown Program, where children K-5 have an opportunity to learn fire prevention methods in a fun learning environment. The Clown Program is written and directed, and the stage set up is designed and constructed by the firefighters of the departments. These dedicated professionals even spend their own money designing and building their costumes. The departmental personnel not involved with the skits are busy hosting tours at the station or taking the apparatus to local day cares, private schools, and civic organizations.

Public Education isn't only for the young but for the young at heart as well. Bellaire Fire provides Home Safety Analysis to point out fire safety concerns without mandatory enforcement of those concerns. Bellaire Fire also utilizes a Digital Fire Extinguisher Trainer to

provide training on various types of extinguishers and extinguisher use on a variety of fires. This training is provided to business, schools, civic groups and internal customers.

The Fire Station is a big draw and the Fire Department provides tours to all who knock on the Station's doors. From Birthday tours to Scout's looking for merit badges, from mothers pushing strollers to High School-age revelers on a scavenger hunt; Bellaire Fire will take all opportunities to promote the fire prevention through public education message.

Outside the walls of the station, our members gladly install smoke detectors or change batteries where a fall from a ladder is a resident's concern. We want to see the elimination of potential hazards that stop citizens from enjoying their life in Bellaire to its fullest.

## Who Does the Department Serve?

Bellaire Fire Department underwent a self-evaluation several years ago. Prior to that time Bellaire Fire responded to victims of fire and auto accidents; BFD responded to patients that needed help to get to the hospital; the Department responded to residents who needed help for a variety of issue, from dangerous to mundane. Bellaire Fire also responded to help other departments, albeit begrudgingly at times. Today, Bellaire Fire Department views any call for service as a response to our customer(s). The simple change of a name changed the view of our service.

Our external customer is that person who calls Bellaire Fire to provide a service. This customer is a resident, a business or a guest passing through our City. As a customer, they are buying our service and that customer has an expectation of being provided the best that this City has to offer.

Not all customer requests are filtered through a 911 call center. Home Safety Analysis, Blood Pressure Screening, Smoke Detector Installation or Battery Check, Block Parties, Station Tours, Fire Extinguisher Training, Civic Organization education on Fire Safety, and High Rise Evacuation are just a few services we offer our customers; a response without an emergency.

To that customer who never calls 911 or utilizes the service offered by Bellaire Fire Department, we provide a quality of life that comes through peace of mind that should an emergency take place, qualified, compassionate help is seconds away.

The Internal customers are adjacent departments where Bellaire Fire provides support in endeavors through expertise or manpower. Bellaire Firefighters are teachers and seek opportunities to bring new information to our City.

Fire and Police work many incidents types together. Bellaire Fire provides the opportunity to train on a myriad of subjects, the latest being Traffic Incident Management. This 6 hour course helps develop a common language and goal to freeway incidents. Aside from being a federally mandated course, it provides an avenue to reach safety objectives; No on-Scene Injuries! Bellaire Fire also assists with crime scene lighting and laddering of buildings in search of evidence.

The Fire Department provides training to Public Works personnel on Hazardous Material response and also provides training on SCBA use and maintenance procedures. The Fire Department has taken on the mandated maintenance and refilling of depleted air cylinder used by Waste Water. Safety Training has been part of past practices and will be again in the future.



Cooperation on fire hydrant maintenance and testing is also part of this interdepartmental cooperation.

The Fire Department, especially the Fire Marshal's office, works closely with Development Services, providing plan oversight on commercial and residential sprinkler requirements and business construction code compliance. Field Inspections facilitates the processes used by Development Services in issuing Certificate of Occupancy permits.

The offering to Library is specific to reading events, public education or a rescue from a stuck elevator. Bellaire Fire Department works with the Library to reach some of the most vulnerable.

Parks and Recreation receive some training from Fire and response for grass and weed fires. The string of vandalism at the pool house and Pittman Park utilized investigative efforts from Bellaire Fire.

All Bellaire Facilities are inspected for safety and code compliance annually. This is scheduled through Facilities but the benefit is directly to our department by enhancing public safety.

Perhaps our most important internal customer is each other. The Fire Service leans heavily on each other for healthy relief from stress and for sage wisdom in the form of advice. Be it a hand up or listening ear in confidence, the life of a firefighter is dependent on one another.

## Service Level Expectations

Service level expectations for the Fire Department are viewed with an historic eye. The Service provide by Bellaire Fire Department is largely vetted by time, customer feedback and a view of the larger Fire Service. NFPA is a recommended standards organization except where TCFP has adopted certain aspects as mandates for all paid Texas Fire Departments. These mandates have the rule of law (Texas Government Code, Chapter 419), are as follows:

NFPA 1971, 2013 Edition. *Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting.*

NFPA 1851, 2014 Edition. *Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting.*

NFPA 1981, 2013 Edition. *Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services.* NFPA 1852, 2013 Edition. *Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus (SCBA).*

NFPA 1982, 2013 Edition. *Personal Alert Safety Systems (PASS).*

NFPA 1989, 2013 Edition. *Breathing Air Quality for Emergency Services Respiratory Protection.*

NFPA 1561, 2014 Edition. *Emergency Services Incident Management System.*

Bellaire Fire Department underwent a semi-annual field inspection from the Commission in the week of February 16<sup>th</sup> and met or exceeded the requirements of the Commission.

Fire Department		Expected Results	
Administration		2015	2016
5-Year Plan	Complete Planning Document by 6-1-15 for 2016-21 View	85%	95%
Std Op Guide	Review Guides Process 25% per year	25% Review	50% Review

Emergency Response			
Fire	Response Time of <4 Minutes from Receipt of Alarm	80%	80%
Fire	Provide 4 personnel on Responding Engine	75%	80%
EMS	ALS Response time of <210 Seconds (this may be a ALS equipped Fire Apparatus)	95%	95%
EMS	Respond as ALS Ambulance (1-EMT & 1-Paramedic)	100%	100%
EMS	Respond with MICU (2 Paramedics)	99%	99%
Preparedness			
Fire Prevention	Clown Program-Reach 50% of Public School Children in K-5	33%	50%
Fire Prevention	Business Inspection of >900 businesses occupancies in Bellaire	50%	50%
Fire Prevention	Business Preplan per shift per Occupancy	10%	10%
Fire Prevention	Digital Fire Extinguisher Training	7 Demos	10 Demos
Fire Prevention	Remember When- A senior guide to fall prevention and fire safety in the home	50 Individuals	50 Individuals
Training-Fire	Fulfill Commission Req'd Continuing Education	100%	100%
Training-Fire	Fulfill Commission Req'd Certificate Training	100%	100%
Training-EMS	Fulfill 36 hour of 144 hr-4 year total	95%	95%
Training-EMS	Participate in Medical Director Contact Training	90%	90%

# Budget

## Revenues/Expenditures

Annual Budget			
Department/Fund	FY 2014 Actual	FY 2015 Budget	FY 2015 Projections
<b>FTE's</b>	24	24	24
<b>Revenues</b>	\$308,739.77	\$308,500.00	\$290,000.00
Ambulance and Rescue Billing			
<b>Expenditures</b>			
Personnel	\$2,137,041.30	\$2,220,088.00	\$2,220,088.00
Professional Services	\$36,448.00	\$51,585.00	\$50,000.00
Maintenance	\$57,447.88	\$57,743.00	\$57,000.00
Contractual Services	\$66,272.97	\$75,583.00	\$75,583.00
Materials & Supplies	\$82,641.25	\$113,655.00	\$113,655.00
<b>Total</b>	<b>\$2,379,851.20</b>	<b>\$2,518,654.00</b>	<b>\$2,516,326.00</b>

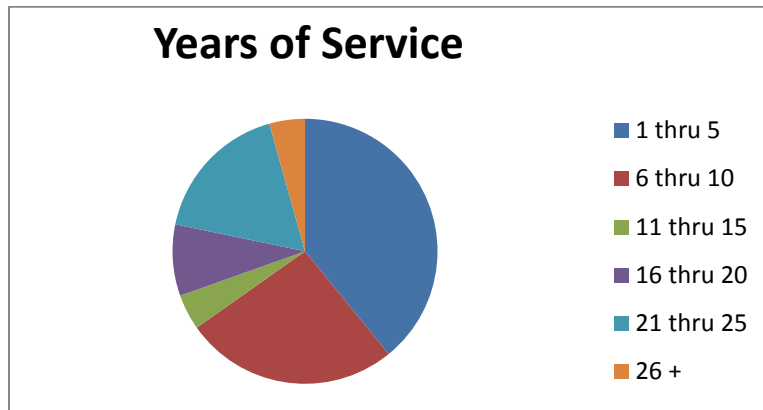
## Fiscal Forecast

Fiscal Forecast			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>FTE's</b>	24	24	24
<b>Revenues</b>	\$290,000.00	\$280,000.00	\$280,000.00
Ambulance and Rescue Billing			
<b>Expenditures</b>			
Personnel	\$2,297,791.00	\$2,378,214.00	\$2,461,451.00
Professional Services	\$51,500.00	\$49,000.00	\$48,000.00
Maintenance	\$57,000.00	\$58,710.00	\$60,000.00
Contractual Services	\$75,583.00	\$77,000.00	\$78,000.00
Materials & Supplies	\$115,000.00	\$117,000.00	\$117,000.00
<b>Total</b>	<b>\$2,596,874.00</b>	<b>\$2,679,924.00</b>	<b>\$2,764,451.00</b>

# Environmental Scan

Bellaire Fire Department is a Combination Department with 23 full-time, 1 full time equivalent and 10-15 dedicated volunteers, all working in concert to provide cost effective emergency response to the City of Bellaire.

Bellaire Fire Department is made up of individuals with varying years of service.



Bellaire Fire requires that all personnel be dual certified. Since fire response and EMS are the focal response characteristics, the dual certification becomes necessary for cost effective operations. Since 1995 Bellaire Fire Department's personnel goal was to hire dual certified individuals with a requirement that all hiree's be Paramedics or become Paramedics within 6 months of testing for hire.

The shifts operate with a 48-hour on, 96-hours off duty schedule. No front line firefighters live within the City limits of Bellaire and this schedule allows for fewer commute hours, less commute stress and a more rested force. Each shift has 7 Dual Certified Personnel but the minimum manning requirement is 6 persons per shift per day. The consistent hiring of paramedics allows for the most stressful position to be rotated through the shift personnel.

The administrative personnel work an 8 hour, M-F schedule, and respond to emergency operations where additional personnel are needed.

This brief environmental scan of Bellaire Fire Department is not meant to be fully comprehensive but a snapshot of the department at this moment in time. This view was developed with certain assumptions being made; that of a stable environment with the use of certain observed trends. Should those trends change dramatically, this document would need to be revisited.

## Trends

As the Fire Service moves forward, emphasis will be on EMS, largely due to the lack of fires and the increase in EMS responses. The Affordable Care Act has limited reimbursement for repeat trips to a medical facility for the same treated malady. EMS plays a key role in helping to ensure adequate post-interventional care at the local level. It is believed that reimbursement

to EMS, for that role, will come directly from the medical community, and not the insurance providers & underwriters, or government agencies.

-A slight decrease in population of Bellaire, based on H-GAC's projection of 2006, for the next several decades if no change in residential density is allowed<sup>1</sup>

-An overall increase in responses for Emergency Medical Services based on H-GAC's 2025 projection of an additional 2million people in Harris County.<sup>2</sup>

-Houston is called the Capital of the Third Coast; an area formed by all of the Gulf of Mexico adjacent states, and is being acknowledged as America's next great global city.<sup>3</sup> Houston is now the most ethnically and racially diverse city in the US<sup>4</sup>. This brings an opportunity for global biologic agents to gain foothold through greater world-wide travel. A responsive, forward looking plan for addressing response personnel safety, with cooperation from the Harris County Public Health, is vital.

-A steady to declining annual fire response based on an increase in valuations (socio-economic stability), and new homes being built to more stringent codes. This trend is projected to continue unless economic times deteriorate and homeowners are left with debt, little chance of re-cooping that debt, and loss of income.

-A moderate redevelopment of business corridor properties and an associated increase in daily visitors to Bellaire.

-A constant level of manning for Bellaire Fire Department at the shift level based on no increase to residential density in Bellaire (Fire Response).

-A constant level of manning for Bellaire Fire Department if EMS calls remaining below 1200 responses per year (a 25% increase over 2014 responses)

-A slight decrease in revenue from Ambulance Service due to: increasing scrutiny of the service, as a whole from Medicare and Medicaid; increase for individual deductible, where the first access to health care will come from an ambulance ride, and the full amount of the ride will be from the patient's pocket and not insurance; an overall unwillingness to pay for medical related services by patients; a shift from commercial pay to self-pay (no insurance).

This trend can be somewhat offset by removing the In-District directive to only collect what insurance will pay.

---

<sup>1</sup> Bellaire Comprehensive Plan

<sup>2</sup> Houston –Galveston Area Council 2025 Regional Growth Forecast

<sup>3</sup> Forbes.com

<sup>4</sup> Rice University's Kinder Institute for Urban Research, and the Hobby Center for the Study of Texas.

## Available Assets

Bellaire Fire Department's greatest asset is its personnel. The professionalism shown through excellence of service, excellence of education and committed desire for continuous improvement to provide the best to the Citizens of Bellaire, is reason those who choose to work for Bellaire Fire are such an asset.

-Large components of available assets are those persons who support the Department without working in the Department. This is Finance, Human Resources, IT, Facilities & Organizational Services. This support aids in the daily operations of the Fire Department by taking care of the personal needs of the Departmental personnel, allowing those personnel to focus on the job at hand.

Departments that don't play a direct role in personnel and business continuity matters, stand alongside the Fire Department in service delivery to residents. Library, Public Works and Police all interact directly with Fire at points in the year; assisting with research, brining equipment and supplies to a spill or providing a safe working environment by blocking and directing traffic on IH 610.

Communications Division of Police is the lifeline for the Fire Department. The voice on the radio can assist with directions, coach as distraught caller and summon needed resources. Communications is also a vital link in troubleshooting communication problems. The number one requested improvement on the fire ground is communication. Without the dispatchers, service delivery would be greatly diminished.

-Bellaire Fire Department receives and gives automatic aid to West University Place and Southside Place. The reciprocal arrangement assures that all 3 cities, with departments too small to address their building size, have the resources necessary to implement an effective fire attack. West University Place also provides EMS mutual aid. This allows Bellaire to maintain Fire Department at the current manning level. This asset cannot be understated or overused as it is not given at the rate it is received.

-The Community of Bellaire is an asset to the Fire Department. There is a tremendous amount of "Good Will" shown to the Fire Department by citizens. This leads to better morale in the Fire Department, coming from a sense of belonging in the community. The reciprocal is a key in fostering community relations into the future.

-Bellaire Fire Department has a potential asset in the Bellaire Police and Fire Foundation. This foundation supports equipment, technology and training requests outside of normal budget processing. Since inception, the foundation has made great strides in recruitment of membership. The longevity of sustaining membership will determine the importance to Bellaire Fire.

-The Fire Station, as a structure is an asset. As a landmark, declaring the changing Bellaire Environment, it is a tremendous asset. The building is an asset to the Firefighters who occupy it, giving those Firefighters a sense of belonging. It is a statement from the community to the Fire Department that the Department has value to the community. It is an asset in recruitment as well. Photos of this station will be part of an overall hiring campaign.

-City Streets are an important asset to the City in general but as a response agency, smooth, spacious streets with a well-defined radius corners is definitely an asset. The ability to respond knowing the driving surface will allow the apparatus to navigate quickly allows the operator to focus on the human-based traffic impediments.

-Water infrastructure is another City asset that is an integral part of the overall needs of the Bellaire Fire Department. The assurance of a seemingly unlimited water supply for extinguishment is foundational to Fire Department response.

The Fire Department has numerous apparatus and pieces of equipment that are assets to the Department and community.

-2003 Pierce Rescue Pumper. This apparatus was custom built for Bellaire based on operational needs and department size. The overarching goal at the inception of planning was to provide the equipment needed for all situations on one vehicle and the ability to arrive safely with that equipment. This plan was largely successful.

Vital Equipment/assets carried

Compressed Air Foam System

Hydraulic PTO Generator

Rescue Components

Pre-connected Hydraulic Rescue Tools

Pneumatic Rescue Tools

Advanced Life Support Capable Equipment

Life Pack 15 Cardiac Monitor/Defibrillator

Water Supply, Delivery and Shaping

1500 Gallon per Minute Pump

1000' of 4" Supply Hose

1000' of 3" Supply Hose

Pre-connected Attack Hose and Nozzles

Hose Adapters and Nozzles

3000 Watt Light Tower

Communication Equipment

Truck Mounted and Portable Radios

SCBA Mounted Radio Interface Equipment

Self-Contained Breathing Apparatus

- 1989 Sutphen pumper reserve fire apparatus, purchased at a time when fire response was done with multiple engines. This vehicle did not require the storage, and subsequently carried less equipment.

Vital Equipment/Assets Carried

Diesel Generator

Hydraulic Rescue Tools

Water Supply, Delivery and Shaping

1500 Gallon per Minute Pump

1000' of 4" Supply Hose

1000' of 3" Supply Hose

Pre-connected Attack Hose and Nozzles

Hose Adapters and Nozzles  
 Communication Equipment  
 Truck Mounted and Portable Radios  
 Self-Contained Breathing Apparatus

-2015 Chevy Tahoe Command Vehicles-This vehicle is scheduled to go into service in June of 2015. The command vehicle is purchased to provide a rapid response to investigate all major calls and make pre-arrival determinations for incoming units; fire or EMS.

Vital Equipment

Digital Preplan Computers.  
 Infrared Camera for fire origin determination  
 Communication Equipment  
 Truck Mounted and Portable Radios  
 Basic Life Support Equipment  
 Automatic External Defibrillator

-2013 & 2005 Ford F450 Frazer Ambulance. These units are designed to be nearly identical, maintaining like equipment to reduce change- over confusion during maintenance periods. The vital equipment is portable and only on the unit in use.

Vital Equipment

Mobile Intensive Care Capable Equipment- portable  
 Life Pack 15 Cardiac Monitor/Defibrillator  
 Video Laryngoscope  
 Mechanical Chest Compression Device  
 Mechanical Ventilator  
 Communication Equipment  
 Truck Mounted and Portable Radios

-2009 Ford F-550 Rescue Body Cascade/Rehab Vehicle. This vehicle is a crew cab pickup chassis with a specially manufactured rescue body, utilized for Rehabilitation and air cylinder refill at location of a major incident.

Vital Equipment

Power Take Off Hydraulic Generator  
 NFPA approved cylinder refill station  
 6-High pressure air cylinders, 6000 PSI  
 Various items to assist in rehabilitation of personnel from the effects of firefighting and long duration EMS events.  
 Communication Equipment  
 Truck Mounted and Portable Radios

2001 Ford F-150 Pickup & 2005 Ford Expedition. These are administrative vehicles utilized in the day to day Fire Code Inspection, Fire Sprinkler System Inspection and Fire Investigation. These vehicles are also the backup to the Command Vehicle if that unit should ever become disabled for long periods. The units are used to assist with large, complex responses, such as structure fires and tanker rollover accidents.



## Future Service Enhancements

Bellaire Fire Department believes the home values will remain firm and reconstruction of Bellaire will continue based on the proximity to major shopping, the world's largest medical facility, and access to a revitalized downtown Houston. These positive indicators will lead to an increase in need for emergency response. To meet those anticipated needs, Bellaire Fire Department proposes these future service enhancements. These enhancements are directly responsive to the Council Goals of Residential and Commercial Safety Focus. The enhancement will be in these primary service delivery areas: Suppression, EMS, Training, Fire Prevention & Public Education, and Code Enforcement & Organizational Development

### Suppression

#### -Safety Initiatives

- Implement 16 Fire Safety Initiatives as set forth by national Fallen Firefighter Foundation
- Evaluate and implement safety practices and relevant technical changes to firefighting mythologies
- Develop Prioritized Safety Initiative list for quick implementation as funds become available

Annual Enhanced Budget-Safety Initiatives			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>Expenditures</b>			
Personnel	\$0.00	\$0.00	\$0.00
Professional Services	\$0.00	\$0.00	\$0.00
Maintenance	\$0.00	\$0.00	\$0.00
Contractual Services	\$0.00	\$0.00	\$0.00
Equipment	\$2000.00	\$2000.00	\$2000.00
<b>Total</b>	<b>\$2000.00</b>	<b>\$2000.00</b>	<b>\$2000.00</b>

#### -Vehicle and Equipment Needs Analysis

- Choose appropriate resource to conduct analysis
- Focus of responder safety
- Compare current equipment and apparatus with recognized standards and best practices
- Request Funding (FY18 Budget)

Annual Enhanced Budget-Vehicle and Equipment Needs			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>Expenditures</b>			

Maintenance	\$0.00	(\$2000.00)	\$2000.00
Contractual Services	\$0.00	\$0.00	
Equipment		\$750,000.00	
<b>Total</b>	<b>\$0.00</b>	<b>\$748,000</b>	<b>\$2000.00</b>

### -Develop Engineer/Operator Classification

A two year trial program of a single driver of the fire apparatus on each shift found that those individuals operated the vehicle at a more consistent level, saving time, money and wear and tear on the apparatus. Rewarding those who save the City money, make the apparatus last longer with fewer out of service time is the desired goal

- Develop a promotional packet
- Present a pay classification proposal
- Implement grade/rank change.

Annual Enhanced Budget-Engineer Operator			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>Expenditures</b>			
Personnel	\$8648.95	\$9081.00	\$9535
Professional Services	\$0.00	\$0.00	\$0.00
Maintenance	\$0.00	\$0.00	\$0.00
Contractual Services	\$0.00	\$0.00	\$0.00
Equipment			
<b>Total</b>	<b>\$8648.95</b>	<b>\$9081.00</b>	<b>\$9535.00</b>

### EMS-

#### -Specialized EMS

-Investigate the possibility of sending Paramedics to Critical Care Paramedic training  
The Program will add a layer of specialization to our already well trained personnel. The additional knowledge gained can be utilized in hospital/MD Office to Receiving Emergency Room, a practice not being utilized. Critical Care Paramedic's also have advanced training in medicine pumps, advance disease recognition and intervention; all bringing a greater level of care to sick or convalescing residents.

Annual Enhanced Budget-Critical Care Paramedic			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>FTE's</b>	24	24	24
<b>Revenues</b>	\$0.00	\$10,000	\$10,000
Ambulance Revenue			
<b>Total</b>			
<b>Expenditures</b>			
Personnel	\$11,388	\$24,000	\$36,000
Professional Services	\$2400.00	\$2400.00	\$3600.00
Training	\$7200.00	\$7200.00	\$7200.00
Contractual Services	\$0.00	\$0.00	\$0.00
Equipment	\$5000.00	\$3000.00	\$1000.00
<b>Total</b>	<b>\$25,988.00</b>	<b>\$36,600.00</b>	<b>\$47,800.00</b>

#### -Technology

-Investigate a technology based option to communicate patient condition with receiving hospitals. EMS standards of practice are changing. Where once a simplistic radio report

was all needed to convey the patient condition was adequate, today it no longer is. The change is largely due to the advanced capabilities of the Paramedic and the equipment carried on the ambulance. The ability to communicate with voice, video and telemetric data is vital for decision making by the receiving Emergency Room. That information is then sent back to the Medics to improve patient care and hopefully, outcomes.

Annual Enhanced Budget-EMS Technology			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>Expenditures</b>			
Contractual Services			
Equipment	\$1,000.00*	\$5,000.00	\$0.00
<b>Total</b>	<b>\$1,000.00</b>	<b>\$5,000.00</b>	<b>\$0.00</b>

\*Evaluation Period

### -Community Based Para-medicine

The concept of Community Based Para-medicine is not new to the U.S. but is new to our area. The basic premise is Paramedics can intervene in providing at-home health care, relieving the burden of care from the Emergency Room or repeat customers returning for follow-up. The demographics of Bellaire do not fit that narrow scope concept but Community Based Para-Medicine has a position within the community and is a service that helps achieve Premier City status.

-Prescription Based Service-A Bellaire Resident returning after a surgical intervention. Bellaire Fire Community Paramedics will coordinate follow up with the attending physician. The goal will be to ensure MD orders are being followed, the wound is healing as desired, and the medication regimen is being followed. A two-way conversation with the MD will be held via a closed link video network. The paramedics will be able to relay vital signs, present symptoms, cardiac monitoring, and visualized wound and wound care. This at home visit would be charged to the physician ordering the contact. The benefit to the hospital is reoccurring health care visits for the same malady are not reimbursable under the Affordable Care Act. The benefit to the patient is convalescing at home, and the ability to access EMS, with a doctor's informed consent.

-Subscription Based Service-The goal of this project is to keep Bellaire resident, who live at home, to remain at home if that is the resident's decision. A loved one may request a visit by the responding Paramedics for a Well-Person check. This could include a review of prescribed medicine and a compliance with doctors' orders. In the home, the Critical Care Paramedics will assess the patient, check on fitness of living condition, make suggestions for safer living, assist with prescription refill, maintain a log of signs and symptoms, and make suggestions for higher level care. This information can then be relayed to the family member requesting service. The end product will be focused on an evaluation tool to determine the efficacy of the program, and the continuation of the same. While this program offering helps Bellaire Residents, the program must demonstrate the ability to be partially self supporting.

Annual Enhanced Budget-Community Based Paramedic			
Department/Fund	FY 2016	FY 2017	FY 2018

<b>FTE's</b>	24	27	27
<b>Revenues</b>	\$0.00	\$10000	\$10000
Ambulance Billing			
<b>Total</b>			
<b>Expenditures</b>			
Personnel	\$0.00	+\$195,090.00	+\$204,844.05
Training	\$7,200.00	\$7,200.00	\$7,200.00
Maintenance	\$1000.00	\$1,000.00	\$1,500.00
Contractual Services	\$0.00	\$0.00	\$0.00
Equipment	\$5,000.00	\$5,000.00	\$5000.00
<b>Total</b>	<b>\$13,200.00</b>	<b>\$208,290.00</b>	<b>\$218,544.05</b>

### - Asymmetric Threats & Tactical Paramedics

Asymmetry is not a term generally used in Fire and EMS circles but aptly describes the advance of differing viewpoints towards EMS. An ambulance has historically been a symbol of aid. Today, in parts of the world and this country, it is a symbol of governance and recipient of community resentment. Bellaire Fire does not believe that situation exists for The City of Bellaire or the immediate surrounding area. The program we are requesting is targeted to bring immediate EMS response to a hostile situation. A tactical Paramedic will be unarmed, but will have the requisite training to operate in a Hot or Warm zone where police are injured serving warrants or civilians are injured as part of a "Lone Wolf" attack. The training is very specific and requires a team. Bellaire Fire currently has one individual who has begun the training, and on approval, will begin to train others. Ultimately this training will meet Police Department requirements.

Annual Enhanced Budget-Tactical Paramedic			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>Expenditures</b>			
Personnel	\$5,184.00*	\$5,443.00*	\$5,715.00*
Professional Services	\$0.00	\$0.00	\$0.00
Maintenance	\$0.00	\$0.00	\$0.00
Contractual Services	\$0.00	\$0.00	\$0.00
Equipment	\$5,000.00	\$3,000.00	\$3,000.00
<b>Total</b>	<b>\$10,184.00</b>	<b>\$8,443.00</b>	<b>\$8715.00</b>

\*should this become a discipline of Bellaire Fire Department, overtime dollars will need to be budgeted for response and backfill. Estimate is for 3 personnel training 8 hrs./month

## Training

### -Increase Scope of Training

This will include all personnel becoming certified as an Engine/Operator as a matter of employment. The budget impact is the incentive paid.

A second improvement area is training for High Consequence-Low Frequency Events.

This is an encompassing ideology, based on infrequent High Consequence events. The

notion of putting wet stuff on the red stuff no longer is a viable training option. The rapid development of any response requires training in Command Structure, Situational Awareness and resource management. Training for these events is our only preparation.

As the Command Staff in the Department ages, a Continuity of Operation Plan must be implemented to replace those on the retirement tract. The continued high level of service given is a result of excellent leadership. The focus on repeating excellence is the crux of Officer Development

#### -Improve Continuing Education

Improvement in Continuing Education starts with an evaluation of current processes, the effectiveness of those process and will the processes be of value in the future. Each member of Bellaire Fire will be engaged to find out what is needed for that member, eliminating a “one-size fits all” approach to training. The ultimate goal is to elevate the department in education and training. Incentivizing the enrichment doesn’t entice most to try but rewarding them once completed is a morale-boosting gesture.

#### -Improve Volunteer Training

Bellaire Volunteer Firefighters are an asset that needs to be exploited. This dedicated group is not under that same authority at the State level as the paid staff. This creates an opportunity for training missteps in overall training. Creating a system where a paid staff member becomes a buddy to a volunteer may help overcome discrepancies in training. Creating a individual assessment of each volunteer and tailoring a training plan, overseen by a paid staff “buddy” will close the training gap.

#### -Maintain Certified Training Facility Status

Bellaire Fire Department currently has the opportunity to host and teach numerous Texas Commission on Fire Protection recognized classes allowing Bellaire Fire to present this information in house, with minimal cost to the individual or City. This is true with Continuing Education for EMS. A Certified Training Facility allows Bellaire Fire to train new hires up to Fire & EMS standards. A by product will be the training of citizens in CPR/AED training as well.

Annual Enhanced Budget-Training			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>Expenditures</b>			
Personnel	\$1,500	\$1,500	\$1,500
Professional Services			
Maintenance			
Contractual Services	\$2,000	\$2,000	\$2,000
Equipment	\$3,000	\$3,000	\$3,000
<b>Total</b>	<b>\$6,500.00</b>	<b>\$6,500.00</b>	<b>\$6,500.00</b>

## Fire Prevention & Public Education

### -Create Needs Assessment Work Group

This will be done to understand the needs of the community. Historically, Public Education was based on what the Fire Service delivered, with little feedback as to what the target audience wanted. Understanding the elements necessary; time, content and delivery system will help Bellaire Fire offer meaningful Community Training

#### -Analysis of Community and Internal Survey

Survey information will be gathered and analyzed to determine what and how the Community desires to learn about Fire and Health safety. This will allow Bellaire Fire to make necessary assumptions on training for the public.

#### -Identify Program Changes Reflecting Survey

Data driven programming and changing the idiom of public education to Community Education is the end result of the analysis. Customer based focus will then be evaluated for learning.

#### -Evaluate Effectiveness of Outreach Programs

Once the program has been reviewed, the Community has made it desires known, and content is delivered a formalized survey will be deliver to gather community feedback on the process changes in Public Education.

Annual Enhanced Budget-Fire Prevention & Public Education			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>Expenditures</b>			
Personnel			
Professional Services			
Maintenance			
Contractual Services			
Equipment	\$1,000	\$1,000	\$1,000
<b>Total</b>	<b>\$1,000</b>	<b>\$1,000</b>	<b>\$1,000</b>

### Code Enforcement

#### -Modify Inspections to improve Output

Utilize the use of Mobile Applications to increase the number and quality of the Fire Code Inspections.

#### -Increase Inspections through Part time Inspector

Utilize retired or hire part time inspectors to assist in fulfilling desired number of annual inspections. A particular goal is to stay under the retirement allowed hours for the year

#### -Prioritize Occupancy Inspections based on Risk vs. Safety Objectives

Develop and analyze a "Self-Inspection" method for low risk occupancies. Utilize a detailed self-inspection form sent to the business. This for will detail the most common deficiencies. A follow up of a random 10% post self-inspection will be a compliance tool.

Annual Enhanced Budget-Code Enforcement			
Department/Fund	FY 2016	FY 2017	FY 2018

<b>Expenditures</b>			
Personnel	\$25,000	\$25,000	\$25,000
Professional Services			
Maintenance	\$500	\$500	\$500
Contractual Services			
Equipment	\$1000	\$1000	\$1000
<b>Total</b>	<b>\$26,500</b>	<b>\$26,500</b>	<b>\$26,500</b>

### -Preparation for ISO Inspection

Insurance Service Office (ISO) is an organization that rates communities on ability to provide an adequate Fire response, based on the make-up of the City. The rating reviews Communication, Fire Department, and Water Supply & Community Risk Reduction. These broad topics are multi-departmental, requiring time that normally is spent on day to day operations. The recommendation of hiring a specialist to do a review of the City, make recommendations for improvement and assist with the actual grading, was proven to be a valuable asset in the 2003 grading, leading to a 3 class reduction in Community Rating Schedule. (Alt 1) provides for split analysis over 2 budget cycles.

Annual Enhanced Budget-ISO Preparation			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>Expenditures</b>			
Personnel			
Professional Services	\$30,000.00		
Contractual Services	\$15,000.00 (Alt 1)	\$15,000 (Alt 1)	
Equipment			
<b>Total</b>	<b>\$30,000.00</b>		

### Organizational Development

#### -Employee Recognition

Investigate and implement an employee recognition program. Develop milestone events wherein a Bellaire Firefighter has demonstrated mastery of certain training, then that firefighter would be formally recognized in a ceremony.

A parallel program will be implemented wherein the Firefighter will be recognized for meeting certain successful response criteria. Upon peer review of the event, that firefighter(s) will be recognized in a similar ceremony. Formalization of the Awards will be a hallmark of its successful completion.

#### -Create Innovative Communication Pathways

Communication between shift employees, between officers, between Officers and employees create a free flow of information that has a direct impact on morale, department direction, and response continuity. Simple ideas, such as sending the spouse of an employee a Congratulations card on the anniversary of the employee's employment, makes a huge statement of that employee's worth. This is outside of Employee recognition and would be much less formal.

Annual Enhanced Budget-Organizational Development			
Department/Fund	FY 2016	FY 2017	FY 2018

<b>Expenditures</b>			
Personnel			
Professional Services			
Maintenance			
Postage	\$250	\$250	\$250
Material	\$500	\$1000	\$1000
<b>Total</b>	<b>\$750</b>	<b>\$1250</b>	<b>\$1250</b>

## Future Strategy

Bellaire Fire Department's strategy for the future is very straight forward. Hire the best available personnel, train them to the expected level, give that person the equipment and tools necessary to do the job, help the new hire to fit into the culture of Bellaire and inspire them to become better tomorrow than today. This simplistic approach it is absolutely necessary to continue the high level of service that Bellaire citizens have come to expect. The changing demographics of Bellaire also require that the service providers become more diverse. Understanding cultural norms for the population served will help Bellaire Fire to remain relevant and helpful to all.

*Should the Comprehensive Plan be vigorously pursued by Public & Private enterprises, and should available space be converted into High Density Housing, the following shall apply.*

- Consideration shall be given to an increase in the number of Fire Department Employees to operate additional resources.
- Consideration of implementing a Peak Period Ambulance with additional personnel.
- Consideration of purchasing an elevated device from which to conduct extinguishment and rescue.
- Consider a change in Automatic Aid Agreement to utilized West University Place Fire Apparatus as on scene protection of IH 610 emergencies.





## FY 2015 Information Technology Service Plan

**City of Bellaire Mission Statement:**

*The City of Bellaire is dedicated to outstanding quality service and facilities to ensure an open, progressive, and secure community.*

## Information Technology Service Plan

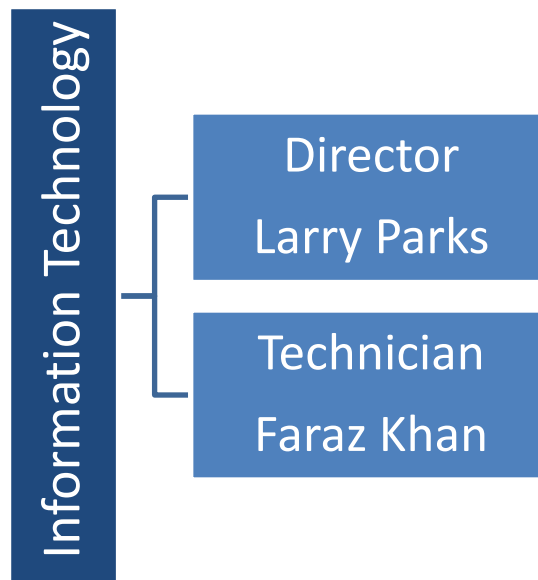
# Table of Contents

Why Statement.....	Page 3
Who's Responsible for What.....	Page 3
What Does the Department Do.....	Page 4
Service: Technology systems and support.....	Page 5
Service: Strategic planning.....	Page 6
Service: Compliance and security.....	Page 6
Service: Training and Education .....	Page 6
Who Does the Department Serve.....	Page 7
Service Level Expectations.....	Page 7
Budget.....	Page 8
Revenues/Expenditures.....	Page 8
Fiscal Forecast.....	Page 8
Environmental Scan.....	Page 9
Available Assets.....	Page 10
Future Service Enhancements.....	Page 10
Future Strategy.....	Page 11

## Why Statement

The primary mission of Information Technology, IT, is to provide secure infrastructure; excellent management oversight; and support in the delivery of information technology products and services to all City end users in an efficient and qualified manner.

## Who's Responsible for What



## What Does the Department Do

In support of the IT service delivery, various services are required for operational effectiveness and stability.

- **Technology systems and infrastructure support**  
 Insure service availability which consists of response to systems outage;, support for standard software applications; disaster recovery/business continuity projects and maintenance of technological assets
- **Strategic planning and Project Management**  
 Implement appropriate technologies to enhance City initiatives, functions and operations through a robust and dynamic technology infrastructure providing key benchmark information. Invest purposefully in the expansion and improvement of the City's technology infrastructure to enhance the efficiency and success of all aspects of City operations. Consult with Department management on solutions to insure consistent and unified systems integration.
- **Compliance and security**  
 Accomplish compliance initiatives which include regulatory, vendor and security upgrades; operating system and software version implementations; legal and operational regulations support; and internal and external audit requirements
- **Training and Education**  
 Maintain competence in technological topics and issues through education and training efforts; collaboration with governance groups and strategic partnerships; and participations with a wide range of colleague institutions and professional organizations

## Service: Technology and Systems Support

Information Technology provides all network, software, hardware and telecommunication support to the City's end users and other designated parties. Support includes, but not limited to, response to systems outages, support for standard software applications, disaster recovery/business continuity projects and maintenance of technology assets.

Network support includes all server connectivity, routers, switches and supportive network operating systems, firmware and protocols. Wireless connectivity, remote access (including mobile device connectivity), user authentication/validation are included in network support as well.

Hardware support services include diagnosing computing equipment for any hardware issues, purchasing parts, installing and properly disposing of defective parts as needed. Managing warranties, replacement schedules, determining replacement value and maintaining a modest replacement parts inventory are included in this scope.

Software support is provided comprehensively to all City staff users. Specific support is provided to City Council, Board, Commission and Committee members as it relates to effective correspondence and compatibilities with City systems. Software includes desktop applications, financial software, customer relation management applications as well as specific applications a user or Department may utilize. Software support is accomplished for all personal computers, laptops and mobile devices.

Disaster recovery and continuity includes reliable and current backups, redundant and/or mirrored enterprise data, virtual servers and network storage appliances. Off-site backups and comprehensive maintenance support contracts supplement current disaster recovery efforts.

An Information Technology support management suite is utilized to log, track and manage support calls. It is the goal to complete all level one service calls, not requiring vendor or third party technical assistance, within a 24 hour period. Level two service calls, that require vendor assistance, are on a case by case basis.

### Service: Strategic Planning and Project Management

IT develops an annual Strategic Plan, a combination of the IT Service Plan and supportive individual Project Plans. The Service Plan is Information Technology's core planning document and cornerstone of the IT annual Strategic Plan. The Service Plan outlines support objectives and operational guidance by fiscal year. In support of the Service Plan, specific Project Plans are created and establishes annual project scopes; deliverables, required constituent participation; necessary resources and completion schedules. These Project Plans serve as working documents and are amended throughout the year. Ultimately the Service Plan and supporting Project Plans serve as documentation and the tool used toward achieving robust, reliable, and secure technology systems and infrastructure improvements.

Information Technology creates and manages an annual budget to support IT operations. The budget funds the personnel, infrastructure, hardware, software, networking and IT projects for all Departments in the City. Input from Department Directors, City Administration and City Council request factor into budget development and determine budget priorities. The goal is to invest purposefully in the expansion and improvement of the City's technology and infrastructure to enhance the efficiency and success of all aspects of City operations.

Implementation of the strategic plan is an ongoing process to include execution and evaluation. As plans are initiated, each stage is monitored along with any dependencies to insure each phase is successfully completed.

### Service: Compliance and Security

Information Technology monitors industry standards, legislative rulings and vendor recommendations to maintain a secure, current and viable technological platform for all users. Network security is accomplished through the management of firewalls; server security updates and patches and updates and patches to all network devices. Maintaining an active and current antivirus server is a key component to security as well.

Securing the user environment is an ongoing process. As new and modified security threats develop, desktops and enterprise systems are maintained and updated for protection from known threats. IT manages user accounts; issues passwords, and manages access to various resources to insure user security.

### Service: Training and Education

Information Technology is a forever changing and evolving area. The Director and Technician maintain a continuous education and training schedule to remain abreast of the field. Technical training; webinars; conferences; professional affiliations; independent study and list services all serve as resources. The goal is to maintain an in-house knowledgebase of current best practices and future trends.

# Who Does the Department Serve \*\*\*Internally & Externally

The IT Department currently services the following constituents:

- All City Department staff members (operations and management)
- City Council, Boards, Commissions and Committees
- City affiliated operational partners and contractors

## Service Level Expectations

Department: Information Technology		Expected Results
<b>Technology and Systems Support</b>		
Network availability	Total hours in a month that the network is fully operational to all users	98% (goal)
Desktop support	Class I calls Class II calls	w/in 24 hours w/in 72 hours
Disaster recovery	Successful restoral of services/data	100% restoral
<b>Strategic planning and Project Management</b>		
Meet with Managers	Discuss and plan for future Department needs	
Four year plan	Updated and relevant organizational plan	Continuous review
Budgeting	Balance resources available to meet organizational objectives	Continuous review
Implementation	Managing plan objectives	Continuous review
Evaluation	Evaluate system operations and analyze for improvements	Continuous review
<b>Compliance and Security</b>		
Upgrades	Insure hardware, software and networks are current on all relevant updates and patches	100%
Legislative	Stay current of all rules and regulations to maintain compliant network and system operations	100%
Security	Maintain a secure network and system environment	100%
Evaluation	Evaluate system operations and analyze for improvements	Continuous review
<b>Training and Education</b>		
Education	Maintain knowledge of technological current events, advances and future offerings through information gathering; webinars; and vendor discussions	Continuous review

# Budget

## Revenues/Expenditures

Annual Budget			
Department/Fund	FY 2014 Actual	FY 2015 Budget	FY 2015 Projections
<b>FTE's</b>	1	2	2
<b>Revenues</b>			
*Source*			
<b>Total</b>			
<b>Expenditures</b>			
Personnel			
Professional Services		286,000	286,000
Maintenance		35,000	35,000
Contractual Services		225,000	225,000
Materials & Supplies		142,000	142,000
<b>Total</b>		<b>688,000</b>	<b>688,000</b>

## Fiscal Forecast

Fiscal Forecast			
Department/Fund	FY 2016	FY 2017	FY 2018
<b>FTE's</b>	2	2	3
<b>Revenues</b>			
*Source*			
<b>Total</b>			
<b>Expenditures</b>			
Personnel			
Professional Services	305,000	350,000	375,000
Maintenance	35,000	40,000	45,000
Contractual Services	240,000	270,000	290,000
Materials & Supplies	150,000	175,000	200,000
<b>Total</b>	<b>730,000</b>	<b>780,000</b>	<b>835,000</b>

FY16 considers natural cost increases; first year increases in Harris County/City of Houston Public Safety communication service.

FY17 considers natural cost increases; supportive services for CRM implementation and relocation planning; second year of increases in Harris County/City of Houston Public Safety communication service.

FY18 considers natural cost increases; supportive services for relocation implementation.



## Environmental Scan

Information Technology will have two primary factors impacting its operations and budget over the next three years: relocation to new facilities and a Customer Relations Management, CRM, application.

During the construction process there will be a transitional period where all IT resources must continue to operate and function in a normal manner. The temporary relocation of IT services and infrastructure will present logistical and budgetary issues that must be planned for and addressed. In addition to the obvious desktop computers and printers, network and telecommunication factors must be satisfied in the areas of Public Safety, public services and administrative support. Ongoing communication with stakeholders and detailed plans will be developed as details become defined.

FY16 will be a planning year for an upgraded or new CRM application. Incode has been the CRM tool for the City for the past eleven years and our current version will reach end of life by FY17. Incode includes operational software for Finance (General Ledger, Accounts Payable, Budgeting, Cash Collections, Check Reconciliation, Fixed Assets, Project Accounting and Purchase Orders), Development Services (Building Projects, Business License, and Cash Collection), Utility Billing, and Municipal Courts. Over the past eleven years technologies and Departmental needs have evolved and a CRM tool to meet the current landscape will be explored. All Departments will have representation in a workgroup to provide input on a needs assessment and participate in vendor interviews and selection process in preparation for FY17 implementation. This upgrade has been included in the annual budget fiscal forecast.

The new CRM tool would offer greater customer/resident access for self service and management of accounts; integrated secure online payments; online building applications allowing for real time review; integrated geographical information data; accessibility from any mobile device and other features not available in our current system. An assessment of data needs was conducted of all the Directors by a third-party consultant in 2014. There is a clear need for shared data between all Departments and the new CRM tool would securely provide that. Our current CRM application is a local server-based product. A cloud-based product will be evaluated as well. There are definite advantages and disadvantages to both and a thorough analysis will be conducted.

Over the past eleven years these are our direct cost for Incode:

\$720,600 licensing, maintenance, training and peripherals to Tyler Technology FY05-15

\$44,000 additional local server hardware and software cost FY05-15

\$68,000 is our annual maintenance support cost in FY15

## Available Assets

### Equipment Inventory

- 3 Cisco firewalls
- 6 48 Port Cisco Switches
- 3 25 port Cisco Switches
- 3 Motorola switches
- 8 Wi-Fi routers
- 9 Routers (including those for TLETS, AT&T, TranStar, Motorola, HPD, etc.)
- 4 Telecommunication servers
- 21 Physical Servers
- 128 Desktop PC's
- 42 Printers
- 31 Laptops (3 integrated with Coban)
- 11 Coban car computers
- 17 Apple iPads tablet
- 1 Microsoft Surface tablet
- 2 Color copiers (lease)

## Future Service Enhancements

Annual Enhanced Budget			
Department/Fund	FY 2016	FY 2017	FY 2018
FTE's			
Revenues			
*Source*			
Total			
Expenditures			
Personnel			
Professional Services			
Maintenance			
Contractual Services			
Materials & Supplies			
Total			

IT will actively be involved in the support of future cloud computing efforts, SCADA support, mobility initiatives and increased virtualization of hardware and IT deliverables. As stated in the Environmental Scan, FY16-18, will have projects that will have long term significances for the City. No planned budget enhancements are projected for this timeframe. Three years seems like a generation in technology, so as potential solutions evolve, IT will evaluate and monitor for inclusion in future Service Plans and budgets.

# Future Strategy

The Information Technology future strategy has three primary areas of focus:

- Network capacity and security
- Cloud computing and mobility
- User Education
- Facility relocation

As more computing and communication is conducted over the internet, greater amounts of bandwidth and improved speeds are necessary. Network capacity must continue to support the increasing demand while proving opportunities for growth. The City has a primary and secondary circuit for internet access. This allows us to balance our traffic and have backup access should the need arise. We are currently in a two year cycle of upgrading our internet circuits. This is reviewed on an annual basis to insure that bandwidth needs are met within reasonable budget parameters. Security is always of paramount concern. As additional mobile devices are brought into service and remote computing increases, the City will secure access to network resources utilizing industry standard hardware appliances and software. Standards of use will be strictly enforced while emphasis on safe computing is communicated to all users.

As current software applications come to end of life support, cloud-based alternatives will be explored. Those include Office 365 to replace MS Office 2013 as well as a replacement for the server-based Incode CRM application for numerous City functions. In FY15, two Departments migrated from server-based operational software to cloud-based operational software. The Parks Department utilizes ActiveNet while the Fire Department utilizes FireHouse. Both products are subscription based, paid annually with built-in product support. The City no longer has the cost of licensing the software, annual maintenance cost, local server hardware and software cost, data backup cost and staff support cost. A cloud-based solution for the new CRM application will take this into consideration while also placing an emphasis on security, reliability, and feature set. Mobile computing is a standard feature in all modern software applications. It allows for robust computing while eliminating the corded connection of a traditional PC.

Mobile computing has increased in the Public Safety Departments and will increase in the Public Works and Development Services areas as well over the next few years. Remote opportunities will be made available for administrative staff in various functions. Maintaining a secure and mobile-friendly computing environment will be woven into all future projects.

A formal in-house User Training Program will be established for educational opportunities on all software applications, network navigation and secure computing practices for all staff. IT will work with Human Resources to formulate a skills standard that identified staff positions must possess. Training opportunities will include webinars, online videos, instructor-led WebEx trainings and knowledgebase materials.

I will monitor the process and provide input as needed during the planning development of the new facilities.

**Mayor and Council**

7008 S. Rice Avenue  
Bellaire, TX 77401



Meeting: 05/18/15 06:00 PM  
Department: Development Services  
Category: Ordinance  
Department Head: John McDonald  
DOC ID: 1588

**SCHEDULED  
ORDINANCE (ID # 1588)**

**Item Title:**

Consideration of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Chapter 30, Traffic and Vehicles, Article II, Traffic-Control Regulations, Division 5, Parking, of the Code of Ordinances of the City of Bellaire, Texas, by adding a new Section 30-118, to be entitled "Restricted Parking - 9:00 A.M. to 5:00 P.M., Monday through Friday," for the purpose of establishing a permit parking process allowing for restricted parking on residential streets.

**Background/Summary:**

On April 30, 2015, the City Clerk received a petition from the residents of Fournace Gardens Drive requesting that their street be limited by permit parking Monday - Friday, from 9:00 a.m. to 5:00 p.m. This street is a small cul-de-sac with six single-family residences off Fournace Place, between Innsbruck and Newcastle. All six property owners have signed the petition. This request came about due to visitors to nearby businesses parking on Fournace Gardens Dr.

The City Clerk has reviewed the petition and verified all signatures. On May 11, the Traffic Management Team discussed the request and put forth no objections.

Attached is an ordinance amending the Code of Ordinances, Chapter 30, Traffic, to add a new Section 30-118 to enact this request. Though similar to past ordinances regulating permit parking, this one differs due to the removal of the "opt in" clause. Due to the streets location off of a collector and its separation from nearby residents, any future requests for permit parking should be reviewed on their own merits.

**Previous Council Action Summary:**

N/A

**Fiscal Impact:**

N/A

**Recommendation:**

The Director of Development Services recommends adoption of the Ordinance enacting permit parking regulations on Fournace Gardens Drive.

**ATTACHMENTS:**

- Code Amendment - Chapter 30 - New Section - 30-18 Restricted Parking 9A-5A Monday through Friday - 2015 (PDF)
- Fournace Place Gardens -Permit Parking(PDF)



## ORDINANCE NO. 15-\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, AMENDING CHAPTER 30, TRAFFIC AND VEHICLES, ARTICLE II, TRAFFIC-CONTROL REGULATIONS, DIVISION 5, PARKING, OF THE CODE OF ORDINANCES OF THE CITY OF BELLAIRE, TEXAS, BY ADDING A NEW SECTION 30-118, TO BE ENTITLED "RESTRICTED PARKING - 9:00 A.M. TO 5:00 P.M., MONDAY THROUGH FRIDAY," FOR THE PURPOSE OF ESTABLISHING A PERMIT PARKING PROCESS ALLOWING FOR RESTRICTED PARKING ON RESIDENTIAL STREETS.**

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

**Section 1.** *Chapter 30, Traffic and Vehicles, Article II, Traffic-Control Regulations, Division 5, Parking, of the Code of Ordinances of the City of Bellaire, Texas ("Code"), is hereby amended by adding a new Section 30-118, to be entitled "Restricted parking—9:00 a.m. to 5:00 p.m.—Monday through Friday," for the purpose of establishing a permit parking process to allow for restricted parking on residential streets. The amended Code shall read as set out in Appendix A, attached hereto. All other portions of Chapter 30 of the City's Code not specifically amended hereby shall remain in full force and effect.*

**Section 2.** All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of the conflict only.

**Section 3.** If any word, phrase, clause, sentence, paragraph, section or other part of this Ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this Ordinance, nor the application of such word, phrase, clause, sentence, paragraph, section or other part of this Ordinance to any other persons or circumstances, shall be affected thereby.

**Section 4.** The City Council officially finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this Ordinance was discussed, considered or acted upon was given in the manner required by the *Texas Open Meetings Act*, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves, and confirms such notices and the contents and posting thereof.

**Section 5.** This Ordinance shall be effective as of June 8, 2015.

**PASSED** and **APPROVED** this 18<sup>th</sup> day of May, 2015.

(SEAL)

**ATTEST:**

**SIGNED:**

\_\_\_\_\_  
Tracy L. Dutton, TRMC  
City Clerk

\_\_\_\_\_  
Philip L. Nauert  
Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan P. Petrov  
City Attorney

## Appendix A

### New section to be added.

Sec. 30-118. Restricted parking – 9:00 a.m. to 5:00 p.m., Monday through Friday.

- (a) It shall be unlawful for any person to park any vehicle, at any time between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, or at such other times as the city manager may declare pursuant to subsection (e) of this section, on any of the following streets or portions of streets where such streets have been posted for restricted parking.

Street	Block
Fournace Gardens Drive	Entire Street

- (b) Subsection (a) of this section shall not apply to commercial vehicles loading or unloading or parked in connection with the performance of a service, or to governmental vehicles.
- (c) Subsection (a) of this section shall not apply to any vehicle displaying a valid parking permit for the location where it is parked.
- (1) The director of development services (the “director”) shall, upon application, issue address-specific parking permits for the restricted parking area designated in subsection (a) of this section in accordance with the following terms and conditions:
- a. Upon application, the director shall issue up to five parking permits to each residence located in the restricted parking area designated in subsection (a) of this section. Such permit(s) may be issued with or without expiration dates upon regulations and procedures promulgated by the city manager.
  - b. Temporary guest permits for periods not exceeding fourteen (14) days in length may be issued to each residence located in the restricted parking area designated in subsection (a) of this section in accordance with regulations and procedures promulgated by the city manager.
  - c. Permits issued pursuant to this subsection shall be for the sole use and benefit of the occupants of each residence to which such permits have been issued and their invitees, and may not be transferred or sold.
- (2) It shall not be a defense to prosecution for violation of this section for a vehicle owner to have a valid parking permit but to not have displayed such permit.
- (d) The city manager is authorized to enlarge the time of the parking restriction beyond the hours specified in subsection (a) of this section.
- (f) Persons found in violation of this section shall be subject to a fine of up to \$200.00 per offense and/or may be towed from the restricted parking area designated in subsection (a) of this section.



From the desk of:

**Tracy L. Dutton**  
**City Clerk**



To: City Manager Paul A. Hofmann

Date: May 1, 2015

---

**Petition**

My office received a petition on April 30, 2015, from the residents of Fournace Gardens Drive for permit parking. Fournace Gardens Drive is a small street consisting of six (6) homes. It is not a through-street and can only be accessed from Fournace Place (near the intersection of Fournace Place and Newcastle Street).

Primary Petitioner Amanda Lewis indicated to me by telephone that overflow parking from the office building located on the corner of Bissonnet Street and Newcastle Street (4500 Bissonnet Street) has become a daily problem for the residents of Fournace Gardens Drive.

As a result of the traffic congestion, 100% of the property owners along Fournace Gardens Drive have requested permit parking from Monday through Friday, 9:00 a.m. to 5:00 p.m.

**Petition Review**

I have reviewed the petition referenced above and determined that it is valid with 100% of the property owners of record in agreement and executing the petition.

**Agenda Item**

I would like to place an item on City Council's May 18<sup>th</sup> agenda for consideration. If approved for agenda placement and in the event that City Council would like to grant the request from the petitioners, I will prepare an ordinance amending Chapter 30, Traffic, of the Code of Ordinances of the City of Bellaire, Texas, for the purpose of adding a new Section 30-118, to be entitled "Restricted Parking—9:00 a.m. to 5:00 p.m., Monday through Friday," for the purpose of establishing a permit parking process allowing for restricted parking on residential streets. Fournace Place would be the only street, in this instance, with restrictions related to those particular hours and days.

Copies of the petition, petition review document, and map printed from the Harris County Appraisal District website are attached hereto.

T. L. D.

Attachments



# City of Bellaire

## Petition Review - Permit Parking Fournace Gardens Drive

Address	Owner Per Tax Roll	Name of Signatory	Valid
0 Fournace Gardens (ROW-All Streets in Subdivision)	City of Bellaire 7008 South Rice Avenue Bellaire, TX 77401	N/A	N/A
1 Fournace Gardens Dr. (Lot 1, Fournace Gardens)	Lubaina F. Latif and Amitabh Dubey 1 Fournace Gardens Drive Bellaire, TX 77401-2600	Amitabh Dubey	Yes
2 Fournace Gardens Dr. (Lot 2, Fournace Gardens)	Todd S. Lewis and Amanda L. Lewis 2 Fournace Gardens Drive Bellaire, TX 77401-2600	Amanda Lewis	Yes
3 Fournace Gardens Dr. (Lot 3, Fournace Gardens)	Barbara Y. Pereira and Tuyen Y. Tran 3 Fournace Gardens Drive Bellaire, TX 77401-2600	Tuyen T. Tran	Yes
4 Fournace Gardens Dr. (Lot 4, Fournace Gardens)	Kathleen Gamber Ballanfant 4 Fournace Gardens Drive Bellaire, TX 77401-2600	Kathleen Ballanfant	Yes
5 Fournace Gardens Dr. (Lot 5, Fournace Gardens)	Jeffrey L. Baker & Cynthia J. Baker 5 Fournace Gardens Drive Bellaire, TX 77401-2600	Jeffrey L. Baker	Yes
6 Fournace Gardens Dr. (Lot 6, Fournace Gardens)	Jimmy K. Chow and Louise O. Joe 6 Fournace Gardens Drive Bellaire, TX 77401-2600	Louise O. Joe	Yes

### Summary:

Total Number of Properties Abutting Fournace Gardens Drive:	6
Number of Valid Signatures (One Per Property Needed):	6
Percentage of Property Owners Requesting Permit Parking:	100.00%

Prepared by Tracy L. Dutton

Validated: 5/1/2015

**Attachment: Fournace Place Gardens -Permit Parking (1588 : Permit Parking - Fournace Gardens Dr)**

4-30-2015

To whom it may concern:

Please find the enclosed petition to make Fournace Gardens Dr, in Bellaire, a permit-parking street. Our small street off of Fournace place has become a parking lot for nearby businesses, affecting our quality of life and ability to maneuver and park on our own street. All six residents have agreed and signed the petition and eagerly await this change for our road.

Please let us know if you have questions or concerns and we would be happy to answer them.

I can be reached at [REDACTED]

Sincerely,  
Amanda Lewis



The residents of Fournace Gardens Drive, Bellaire, respectfully request that the city deem our street Permit Parking Only from Monday through Friday, 9am to 5pm. We have 6 houses on this street and the owners of the homes below agree with this request and have signed below:

Name	Address	Email
Amanda and Todd Lewis <i>Amanda Lewis</i>	2 Fournace Gardens Dr 4/27/15	[REDACTED]
LUBAINA and AMITABH DUBEY <i>Amitabh Dubey</i>	1 Fournace Gardens Dr 4/26/15	[REDACTED]
KATHLEEN BALLANFANT <i>K Ballanfant</i>	4 Fournace Gardens Dr 4/28/15 4 Fournace Gardens	[REDACTED]
JEFFREY L & CYNTHIA BAKER <i>J &amp; C Baker</i>	5 Fournace Gardens Dr 4/27/15	[REDACTED]
PEREIRA BARBARA Y TRAN TUYEN V <i>Barbara Y Pereira</i>	3 Fournace Gardens Dr 4/26/15	[REDACTED]
CHOW JIMMY K JOE LOUISE <i>Joe Louise Chow</i>	6 Fournace Gardens Dr 4/27/15	[REDACTED]







HARRIS COUNTY APPRAISAL DISTRICT  
REAL PROPERTY ACCOUNT INFORMATION  
**1182000000007**

Tax Year: 2015

 Print

Owner and Property Information			
Owner Name & Mailing Address:		Legal Description:	<b>ROW-ALL STREETS IN THIS SUBD (DEDICATED PER PLAT) (NM) FOURNACE GARDENS</b>
<b>CITY OF BELLAIRE 7008 S RICE AVE BELLAIRE TX 77401-4495</b>		Property Address:	<b>0 FOURNACE GARDENS DR HOUSTON TX 77081</b>

State Class Code				Land Use Code		
XV -- Other Exempt (Government)				1000 -- Residential Vacant		
Land Area	Total Living Area	Neighborhood	Neighborhood Group	Market Area	Map Facet	Key Map®
6,017 SF	0 SF	7446.03	1211	110 -- 1B Bellaire, West University, Southampton Areas		

**Value Status Information**

Capped Account	Value Status	Shared CAD
Pending	All Values Pending	No

**Exemptions and Jurisdictions**

Exemption Type	Districts	Jurisdictions	ARB Status	2014 Rate	2015 Rate
<b>Total</b>	001	HOUSTON ISD	Pending	1.196700	
	040	HARRIS COUNTY	Pending	0.417310	
	041	HARRIS CO FLOOD CNTRL	Pending	0.027360	
	042	PORT OF HOUSTON AUTHY	Pending	0.015310	
	043	HARRIS CO HOSP DIST	Pending	0.170000	
	044	HARRIS CO EDUC DEPT	Pending	0.005999	
	048	HOU COMMUNITY COLLEGE	Pending	0.106890	
	052	CITY OF BELLAIRE	Pending	0.393600	

**Valuations**

Value as of January 1, 2014			Value as of January 1, 2015		
	Market	Appraised		Market	Appraised
Land	0		Land		
Improvement	0		Improvement		
Total	0	0	Total	Pending	Pending

**Land**

Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	1000 -- Res Vacant Table Value	SF5	SF	6,017	1.00	1.00	1.00	--	1.00	Pending	Pending	Pending

**Building**

Vacant (No Building Data)												
---------------------------	--	--	--	--	--	--	--	--	--	--	--	--

HARRIS COUNTY APPRAISAL DISTRICT  
REAL PROPERTY ACCOUNT INFORMATION  
**1182000000001**

Tax Year: 2015

 Print

Owner and Property Information			
Owner Name & Mailing Address:		Legal Description:	LT 1 FOURNACE GARDENS
LATIF LUBAINA F DUBEY AMITABH 1 FOURNACE GARDENS DR BELLAIRE TX 77401-2600		Property Address:	1 FOURNACE GARDENS DR BELLAIRE TX 77401

State Class Code				Land Use Code		
A1 -- Real, Residential, Single-Family				1001 -- Residential Improved		
Land Area	Total Living Area	Neighborhood	Neighborhood Group	Market Area	Map Facet	Key Map®
3,965 SF	2,900 SF	7446.03	1211	110 -- 1B Bellaire, West Univesity, Southampton Areas	5255A	531D

## Value Status Information

Capped Account	Value Status	Notice Date	Shared CAD
No	Noticed	04/10/2015	No

## Exemptions and Jurisdictions

Exemption Type	Districts	Jurisdictions	ARB Status	2014 Rate	2015 Rate
Residential Homestead	001	HOUSTON ISD	Not Certified	1.196700	
	040	HARRIS COUNTY	Not Certified	0.417310	
	041	HARRIS CO FLOOD CNTRL	Not Certified	0.027360	
	042	PORT OF HOUSTON AUTHY	Not Certified	0.015310	
	043	HARRIS CO HOSP DIST	Not Certified	0.170000	
	044	HARRIS CO EDUC DEPT	Not Certified	0.005999	
	048	HOU COMMUNITY COLLEGE	Not Certified	0.106890	
	052	CITY OF BELLAIRE	Not Certified	0.393600	

## Valuations

Value as of January 1, 2014			Value as of January 1, 2015		
	Market	Appraised		Market	Appraised
Land	317,200		Land	317,200	
Improvement	287,977		Improvement	287,977	
Total	605,177	565,962	Total	605,177	605,177

## Land

Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	1001 -- Res Improved Table Value	SF1	SF	3,965	1.00	1.00	1.00	--	1.00	80.00	80.00	317,200.00

## Building

Building	Year Built	Type	Style	Quality	Impr Sq Ft	Building Details
1	1999	Residential Single Family	Residential 1 Family	Excellent	2,900 *	Displayed

\* All HCAD residential building measurements are done from the exterior, with individual measurements rounded to the closest foot. This measurement includes all closet space, hallways, and interior staircases. Attached garages are not included in the square footage of living area, but valued separately. Living area above *attached* garages is included in the square footage living area of the dwelling. Living area above *detached* garages is not included in the square footage living area of the dwelling but is valued separately. This method is used on all residential properties in Harris County to ensure

**Attachment: Fournace Place Gardens -Permit Parking (1588 : Permit Parking - Fournace Gardens Dr)**



the uniformity of square footage of living area measurements district-wide. There can be a reasonable variance between the RCAD square footage and your square footage measurement, especially if your square footage measurement was an interior measurement or an exterior measurement to the inch.

## Building Details (1)


Building Data	
Element	Detail
Cond / Desir / Util	Average
Foundation Type	Slab
Grade Adjustment	A+
Heating / AC	Central Heat/AC
Physical Condition	Average
Exterior Wall	Brick / Veneer
Cost and Design	New / Rebuilt
Element	Units
Room: Total	8
Room: Rec	1
Room: Half Bath	1
Room: Full Bath	3
Room: Bedroom	4
Fireplace: Metal Prefab	1

Building Areas	
Description	Area
BASE AREA PRI	1,069
OPEN MAS PORCH PRI	35
ONE STORY MAS PRI	180
OPEN FRAME PORCH PRI	32
MAS/BRK GARAGE PRI	462
CANOPY PRI	88
BASE AREA UPR	1,069
ONE STORY FRAME UPR	32
ONE STORY MAS UPR	462
ONE STORY MAS UPR	88

Building Features	
Description	Units
HOT TUB	1

HARRIS COUNTY APPRAISAL DISTRICT  
REAL PROPERTY ACCOUNT INFORMATION  
**118200000002**

Tax Year: 2015

 Print

## Owner and Property Information

Owner Name & Mailing Address: **LEWIS TODD S & AMANDA L  
2 FOURNACE GARDENS DR  
BELLAIRE TX 77401-2600**

Legal Description: **LT 2  
FOURNACE GARDENS**  
Property Address: **2 FOURNACE GARDENS DR  
BELLAIRE TX 77401**

State Class Code				Land Use Code		
A1 -- Real, Residential, Single-Family				1001 -- Residential Improved		
Land Area	Total Living Area	Neighborhood	Neighborhood Group	Market Area	Map Facet	Key Map®
3,965 SF	3,337 SF	7446.03	1211	110 -- 1B Bellaire, West Univesity, Southampton Areas	5255A	531D

## Value Status Information

Capped Account	Value Status	Notice Date	Shared CAD
No	Noticed	04/10/2015	No

## Exemptions and Jurisdictions

Exemption Type	Districts	Jurisdictions	ARB Status	2014 Rate	2015 Rate
<b>Residential Homestead</b>	001	HOUSTON ISD	Not Certified	1.196700	
	040	HARRIS COUNTY	Not Certified	0.417310	
	041	HARRIS CO FLOOD CNTRL	Not Certified	0.027360	
	042	PORT OF HOUSTON AUTHY	Not Certified	0.015310	
	043	HARRIS CO HOSP DIST	Not Certified	0.170000	
	044	HARRIS CO EDUC DEPT	Not Certified	0.005999	
	048	HOU COMMUNITY COLLEGE	Not Certified	0.106890	
	052	CITY OF BELLAIRE	Not Certified	0.393600	

## Valuations

Value as of January 1, 2014			Value as of January 1, 2015		
	Market	Appraised		Market	Appraised
Land	317,200		Land	317,200	
Improvement	322,530		Improvement	322,530	
Total	639,730	607,481	Total	639,730	639,730

## Land

Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	1001 -- Res Improved Table Value	SF1	SF	3,965	1.00	1.00	1.00	--	1.00	80.00	80.00	317,200.00

## Building

Building	Year Built	Type	Style	Quality	Impr Sq Ft	Building Details
1	1999	Residential Single Family	Residential 1 Family	Excellent	3,337 *	Displayed

\* All HCAD residential building measurements are done from the exterior, with individual measurements rounded to the closest foot. This measurement includes all closet space, hallways, and interior staircases. Attached garages are not included in the square footage of living area, but valued separately. Living area above *attached* garages is included in the square footage living area of the dwelling. Living area above *detached* garages is not included in the square footage living area of the dwelling but is valued separately. This method is used on all residential properties in Harris County to ensure

**Attachment: Fournace Place Gardens -Permit Parking (1588 : Permit Parking - Fournace Gardens Dr)**



the uniformity of square footage of living area measurements district-wide. There can be a reasonable variance between the HCAD square footage and your square footage measurement, especially if your square footage measurement was an interior measurement or an exterior measurement to the inch.

## Building Details (1)

Building Data	
Element	Detail
Cond / Desir / Util	Average
Foundation Type	Slab
Grade Adjustment	A+
Heating / AC	Central Heat/AC
Physical Condition	Average
Exterior Wall	Brick / Veneer
Cost and Design	New / Rebuilt
Element	Units
Room: Total	9
Room: Rec	1
Room: Half Bath	1
Room: Full Bath	3
Room: Bedroom	3
Fireplace: Metal Prefab	1

Building Areas	
Description	Area
BASE AREA PRI	1,325
CANOPY PRI	84
MAS/BRK GARAGE PRI	441
OPEN FRAME PORCH PRI	60
WOOD DECK PRI	272
ONE STORY MAS PRI	162
OPEN FRAME PORCH PRI	24
BASE AREA UPR	1,325
ONE STORY MAS UPR	441
ONE STORY FRAME UPR	60
ONE STORY MAS UPR	24

Texas Comptroller  
Leadership Circle

Account Number Address Owner Name ?

13-Digit Number

search

Tax Year: 2015 ▼

# HARRIS COUNTY APPRAISAL DISTRICT REAL PROPERTY ACCOUNT INFORMATION 1182000000003

Print E-mail

[File A Protest](#) [Similar Owner Name](#) [Nearby Addresses](#) [Same Street Name](#) [Related Map 5255A](#)

## Ownership History

### Owner and Property Information

Owner Name & Mailing Address: **PEREIRA BARBARA Y  
TRAN TUYEN V  
3 FOURNACE GARDENS DR  
BELLAIRE TX 77401-2600**

Legal Description: **LT 3  
FOURNACE GARDENS  
3 FOURNACE GARDENS DR  
BELLAIRE TX 77401**

State Class Code

Land Use Code

A1 -- Real, Residential, Single-Family

1001 -- Residential Improved

Land Area	Total Living Area	Neighborhood	Neighborhood Group	Market Area	Map Facet	Key Map®
6,327 SF	3,186 SF	7446.03	1211	110 -- 1B Bellaire, West Univesity, Southampton Areas	5255A	531D

## Value Status Information

Capped Account  
No

Value Status  
Noticed

Notice Date  
04/10/2015

Shared CAD  
No

## Exemptions and Jurisdictions

Exemption Type	Districts	Jurisdictions	ARB Status	2014 Rate	2015 Rate	Online Tax Bill
<b>Residential Homestead</b>	001	HOUSTON ISD	Not Certified	1.196700		
	040	HARRIS COUNTY	Not Certified	0.417310		
	041	HARRIS CO FLOOD CNTRL	Not Certified	0.027360		
	042	PORT OF HOUSTON AUTHY	Not Certified	0.015310		
	043	HARRIS CO HOSP DIST	Not Certified	0.170000		
	044	HARRIS CO EDUC DEPT	Not Certified	0.005999		
	048	HOU COMMUNITY COLLEGE	Not Certified	0.106890		
	052	CITY OF BELLAIRE	Not Certified	0.393600		

## Valuations

Value as of January 1, 2014

Value as of January 1, 2015

	Market	Appraised		Market	Appraised
Land	411,680		Land	411,680	
Improvement	310,195		Improvement	310,195	
Total	721,875	721,875	Total	721,875	721,875

5-Year Value History

Attachment: Fournace Place Gardens -Permit Parking (1588 : Permit Parking - Fournace Gardens Dr)

## Land

## Market Value Land

Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	1001 -- Res Improved Table Value	SF1	SF	3,965	1.00	1.00	1.00	--	1.00	80.00	80.00	317,200.00
2	1001 -- Res Improved Table Value	SF3	SF	2,362	1.00	0.50	1.00	--	0.50	80.00	40.00	94,480.00

## Building

Building	Year Built	Type	Style	Quality	Impr Sq Ft	Building Details
1	1999	Residential Single Family	101 -- Residential 1 Family	Excellent	3,186 *	Displayed

\* All HCAD residential building measurements are done from the exterior, with individual measurements rounded to the closest foot. This measurement includes all closet space, hallways, and interior staircases. Attached garages are not included in the square footage of living area, but valued separately. Living area above *attached* garages is included in the square footage living area of the dwelling. Living area above *detached* garages is not included in the square footage living area of the dwelling but is valued separately. This method is used on all residential properties in Harris County to ensure the uniformity of square footage of living area measurements district-wide. There can be a reasonable variance between the HCAD square footage and your square footage measurement, especially if your square footage measurement was an interior measurement or an exterior measurement to the inch.

## Building Details (1)

Texas law prevents us from displaying residential sketches on our website.  
You can see the sketch or get a copy at HCAD's information center at 13013 NW Freeway.

## Building Data

## Building Areas

Element	Details	Description	Area
Cond / Desir / Util	Average	BASE AREA PRI	1,262
Foundation Type	Slab	ONE STORY MAS PRI	394
Grade Adjustment	A+	ONE STORY MAS PRI	238
Heating / AC	Central Heat/AC	OPEN MAS PORCH PRI	94
Physical Condition	Average	MAS/BRK GARAGE PRI	460
Exterior Wall	Frame / Concrete Blk	ONE STORY MAS PRI	30
Exterior Wall	Brick / Masonry	OPEN MAS PORCH PRI	44
Cost and Design	New / Rebuilt	BASE AREA UPR	1,262
Element	Units	Extra Features	
Room: Total	8	Description	Units
Room: Rec	1	JACUZZI	1
Room: Full Bath	4	Gunit Pool	1
Room: Bedroom	4		
Fireplace: Metal Prefab	1		



HARRIS COUNTY APPRAISAL DISTRICT  
REAL PROPERTY ACCOUNT INFORMATION  
**1182000000004**

Tax Year: 2015

 Print

## Owner and Property Information

Owner Name & Mailing Address: **BALLANFANT KATHLEEN GAMBER  
4 FOURNACE GARDENS DR  
BELLAIRE TX 77401-2600**

Legal Description: **LT 4  
FOURNACE GARDENS**  
Property Address: **4 FOURNACE GARDENS DR  
BELLAIRE TX 77401**

State Class Code				Land Use Code		
A1 -- Real, Residential, Single-Family				1001 -- Residential Improved		
Land Area	Total Living Area	Neighborhood	Neighborhood Group	Market Area	Map Facet	Key Map®
6,327 SF	3,169 SF	7446.03	1211	110 -- 1B Bellaire, West University, Southampton Areas	5255A	531D

## Value Status Information

Capped Account	Value Status	Notice Date	Shared CAD
Yes	Noticed	04/10/2015	No

## Exemptions and Jurisdictions

Exemption Type	Districts	Jurisdictions	ARB Status	2014 Rate	2015 Rate
<b>Residential Homestead Over-65</b>	001	HOUSTON ISD *	Not Certified	1.196700	
	040	HARRIS COUNTY	Not Certified	0.417310	
	041	HARRIS CO FLOOD CNTRL	Not Certified	0.027360	
	042	PORT OF HOUSTON AUTHY	Not Certified	0.015310	
	043	HARRIS CO HOSP DIST	Not Certified	0.170000	
	044	HARRIS CO EDUC DEPT	Not Certified	0.005999	
	048	HOU COMMUNITY COLLEGE	Not Certified	0.106890	
	052	CITY OF BELLAIRE	Not Certified	0.393600	

\* Because the owner qualifies for an over-65 exemption, taxes may be frozen for this account.

## Valuations

Value as of January 1, 2014			Value as of January 1, 2015		
	Market	Appraised		Market	Appraised
Land	411,680		Land	411,680	
Improvement	299,066		Improvement	299,066	
Total	710,746	621,500	Total	710,746	683,650

## Land

Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	1001 -- Res Improved Table Value	SF1	SF	3,965	1.00	1.00	1.00	--	1.00	80.00	80.00	317,200.00
2	1001 -- Res Improved Table Value	SF3	SF	2,362	1.00	0.50	1.00	--	0.50	80.00	40.00	94,480.00

## Building

Building	Year Built	Type	Style	Quality	Impr Sq Ft	Building Details
1	1999	Residential Single Family	Residential 1 Family	Excellent	3,169 *	Displayed

\* All HCAD residential building measurements are done from the exterior, with individual measurements rounded to the

**Attachment: Fournace Place Gardens -Permit Parking (1588 : Permit Parking - Fournace Gardens Dr)**

closest foot. This measurement includes all closet space, hallways, and interior staircases. Attached garages are not included in the square footage of living area, but valued separately. Living area above *attached* garages is included in the square footage living area of the dwelling. Living area above *detached* garages is not included in the square footage living area of the dwelling but is valued separately. This method is used on all residential properties in Harris County to ensure the uniformity of square footage of living area measurements district-wide. There can be a reasonable variance between the HCAD square footage and your square footage measurement, especially if your square footage measurement was an interior measurement or an exterior measurement to the inch.

## Building Details (1)

Building Data	
Element	Detail
Cond / Desir / Util	Average
Foundation Type	Slab
Grade Adjustment	A+
Heating / AC	Central Heat/AC
Physical Condition	Average
Exterior Wall	Frame / Concrete Blk
Exterior Wall	Brick / Masonry
Cost and Design	New / Rebuilt
Element	Units
Room: Total	9
Room: Rec	1
Room: Half Bath	1
Room: Full Bath	3
Room: Bedroom	4
Fireplace: Metal Prefab	1

Building Areas	
Description	Area
BASE AREA PRI	1,244
ONE STORY MAS PRI	40
MAS/BRK GARAGE PRI	460
OPEN FRAME PORCH PRI	90
ONE STORY MAS PRI	263
ONE STORY MAS PRI	202
ONE STORY MAS PRI	176
OPEN MAS PORCH PRI	40
BASE AREA UPR	1,244



HARRIS COUNTY APPRAISAL DISTRICT  
REAL PROPERTY ACCOUNT INFORMATION  
**1182000000005**

Tax Year: 2015

 Print

## Owner and Property Information

Owner Name & Mailing Address: **BAKER JEFFREY L & CYNTHIA J  
5 FOURNACE GARDENS DR  
BELLAIRE TX 77401-2600**

Legal Description: **LT 5  
FOURNACE GARDENS**  
Property Address: **5 FOURNACE GARDENS DR  
BELLAIRE TX 77401**

State Class Code				Land Use Code		
A1 -- Real, Residential, Single-Family				1001 -- Residential Improved		
Land Area	Total Living Area	Neighborhood	Neighborhood Group	Market Area	Map Facet	Key Map®
3,965 SF	3,654 SF	7446.03	1211	110 -- 1B Bellaire, West Univesity, Southampton Areas	5255A	531D

## Value Status Information

Capped Account	Value Status	Notice Date	Shared CAD
No	Noticed	04/10/2015	No

## Exemptions and Jurisdictions

Exemption Type	Districts	Jurisdictions	ARB Status	2014 Rate	2015 Rate
<b>Residential Homestead</b>	001	HOUSTON ISD	Not Certified	1.196700	
	040	HARRIS COUNTY	Not Certified	0.417310	
	041	HARRIS CO FLOOD CNTRL	Not Certified	0.027360	
	042	PORT OF HOUSTON AUTHY	Not Certified	0.015310	
	043	HARRIS CO HOSP DIST	Not Certified	0.170000	
	044	HARRIS CO EDUC DEPT	Not Certified	0.005999	
	048	HOU COMMUNITY COLLEGE	Not Certified	0.106890	
	052	CITY OF BELLAIRE	Not Certified	0.393600	

## Valuations

Value as of January 1, 2014			Value as of January 1, 2015		
	Market	Appraised		Market	Appraised
Land	317,200		Land	317,200	
Improvement	342,133		Improvement	342,133	
Total	659,333	621,667	Total	659,333	659,333

## Land

Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	1001 -- Res Improved Table Value	SF1	SF	3,965	1.00	1.00	1.00	--	1.00	80.00	80.00	317,200.00

## Building

Building	Year Built	Type	Style	Quality	Impr Sq Ft	Building Details
1	2000	Residential Single Family	Residential 1 Family	Excellent	3,654 *	Displayed

\* All HCAD residential building measurements are done from the exterior, with individual measurements rounded to the closest foot. This measurement includes all closet space, hallways, and interior staircases. Attached garages are not included in the square footage of living area, but valued separately. Living area above *attached* garages is included in the square footage living area of the dwelling. Living area above *detached* garages is not included in the square footage living area of the dwelling but is valued separately. This method is used on all residential properties in Harris County to ensure

**Attachment: Fournace Place Gardens -Permit Parking (1588 : Permit Parking - Fournace Gardens Dr)**

## Building Details (1)

Building Data	
Element	Detail
Cond / Desir / Util	Average
Foundation Type	Slab
Grade Adjustment	A+
Heating / AC	Central Heat/AC
Physical Condition	Average
Exterior Wall	Brick / Veneer
Cost and Design	New / Rebuilt
Element	Units
Room: Total	9
Room: Rec	1
Room: Half Bath	1
Room: Full Bath	3
Room: Bedroom	4
Fireplace: Metal Prefab	1

Building Areas	
Description	Area
BASE AREA PRI	1,523
MAS/BRK GARAGE PRI	420
OPEN MAS PORCH PRI	30
ONE STORY MAS PRI	158
BASE AREA UPR	1,523
ONE STORY MAS UPR	420
ONE STORY MAS UPR	30



HARRIS COUNTY APPRAISAL DISTRICT  
REAL PROPERTY ACCOUNT INFORMATION  
**1182000000006**

Tax Year: 2015

 Print

Owner and Property Information			
Owner Name & Mailing Address:		Legal Description:	<b>LT 6 FOURNACE GARDENS</b>
<b>CHOW JIMMY K JOE LOUISE O 6 FOURNACE GARDENS DR BELLAIRE TX 77401-2600</b>		Property Address:	<b>6 FOURNACE GARDENS DR BELLAIRE TX 77401</b>

State Class Code				Land Use Code		
A1 -- Real, Residential, Single-Family				1001 -- Residential Improved		
Land Area	Total Living Area	Neighborhood	Neighborhood Group	Market Area	Map Facet	Key Map®
3,965 SF	2,900 SF	7446.03	1211	110 -- 1B Bellaire, West Univesity, Southampton Areas	5255A	531D

## Value Status Information

Capped Account	Value Status	Shared CAD
Pending	All Values Pending	No

## Exemptions and Jurisdictions

Exemption Type	Districts	Jurisdictions	ARB Status	2014 Rate	2015 Rate
<b>None</b>	001	HOUSTON ISD	Pending	1.196700	
	040	HARRIS COUNTY	Pending	0.417310	
	041	HARRIS CO FLOOD CNTRL	Pending	0.027360	
	042	PORT OF HOUSTON AUTHY	Pending	0.015310	
	043	HARRIS CO HOSP DIST	Pending	0.170000	
	044	HARRIS CO EDUC DEPT	Pending	0.005999	
	048	HOU COMMUNITY COLLEGE	Pending	0.106890	
	052	CITY OF BELLAIRE	Pending	0.393600	

## Valuations

Value as of January 1, 2014			Value as of January 1, 2015		
	Market	Appraised		Market	Appraised
Land	317,200		Land		
Improvement	297,495		Improvement		
Total	614,695	614,695	Total	Pending	Pending

## Land

Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	1001 -- Res Improved Table Value	SF1	SF	3,965	1.00	1.00	1.00	--	1.00	Pending	Pending	Pending

## Building

Building	Year Built	Remodeled	Type	Style	Quality	Impr Sq Ft	Building Details
1	1999	2013	Residential Single Family	Residential 1 Family	Excellent	2,900 *	Displayed

\* All HCAD residential building measurements are done from the exterior, with individual measurements rounded to the closest foot. This measurement includes all closet space, hallways, and interior staircases. Attached garages are not included in the square footage of living area, but valued separately. Living area above *attached* garages is included in the square footage living area of the dwelling. Living area above *detached* garages is not included in the square footage living area of the dwelling but is valued separately. This method is used on all residential properties in Harris County to ensure

**Attachment: Fournace Place Gardens -Permit Parking (1588 : Permit Parking - Fournace Gardens Dr)**



the uniformity of square footage of living area measurements district-wide. There can be a reasonable variance between the HCAD square footage and your square footage measurement, especially if your square footage measurement was an interior measurement or an exterior measurement to the inch.

## Building Details (1)

Building Data	
Element	Detail
Cond / Desir / Util	Very Good
Foundation Type	Slab
Grade Adjustment	A+
Heating / AC	Central Heat/AC
Physical Condition	Very Good
Exterior Wall	Brick / Veneer
Cost and Design	New / Rebuilt
Element	Units
Room: Total	8
Room: Rec	2
Room: Half Bath	1
Room: Full Bath	3
Room: Bedroom	3
Fireplace: Metal Prefab	1

Building Areas	
Description	Area
BASE AREA PRI	1,069
CANOPY PRI	88
MAS/BRK GARAGE PRI	462
OPEN FRAME PORCH PRI	32
ONE STORY MAS PRI	180
OPEN MAS PORCH PRI	35
BASE AREA UPR	1,069
ONE STORY MAS UPR	88
ONE STORY MAS UPR	462
ONE STORY FRAME UPR	32

**Mayor and Council**

7008 S. Rice Avenue  
Bellaire, TX 77401



Meeting: 05/18/15 06:00 PM  
Department: Finance Administration  
Category: Policy  
Department Head: Linda Symank  
DOC ID: 1477

**SCHEDULED  
ACTION ITEM (ID # 1477)**

---

**Item Title:**

Consideration of and possible adoption of a resolution of the City Council of the City of Bellaire, Texas, approving the Comprehensive Financial Management Policy Statements of the City of Bellaire, Texas, for the purpose of providing guidelines for operational and long-range planning.

**Background/Summary:**

The Development of Financial Management Policies was one of the FY2015 Management Projects. Team members included Diane White, Tracy Dutton, Bill Mize, and Linda Symank. Financial policies are statement or goals adopted by the governing body to provide guidelines for operational and long range planning. The development of the Comprehensive Financial Policy Statements (CFMPS) supports the City Council's priority of ensuring continued development of sound fiscal policies and effective budget over site.

The proposed CFMPS brings into one document all of the City's financial policies. These policies were developed considering legal requirements, best practices, and the City's financial operations. The Government Finance Officers Association strongly recommends CFMPS be part of the financial management of the City. Bond rating agencies review and consider the City's CFMPS in their Management assessment category for bond ratings.

Policy guidelines included in the proposed CFMPS pertain to accounting and financial reporting, financial consultants, budget and long range financial planning, revenues, expenditures, fund balance requirements, capital expenditures, debt management, and cash and investment management.

The Audit/Finance Board met on February 18 and on April 30th to review and discuss the proposed policy. The proposed policy includes changes proposed by the Board. With their recommended changes, on April 30th they voted to approve the adoption of the CFMPS by the City Council.

**Previous Council Action Summary:**

Reviewed and approved by the Audit/Finance Board.

**Fiscal Impact:**

N/A

**Recommendation:**

The Finance Management Policy team and the Audit/Finance Board recommend adoption of the CFMPS by the City Council.

**ATTACHMENTS:**

- Adoption of Comprehensive Financial Management Policy Statements (DOC)

- Comprehensive Financial Management Policy Statements (PDF)



# **RESOLUTION NO. 15-\_\_\_**

## **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, ADOPTING "COMPREHENSIVE FINANCIAL MANAGEMENT POLICY STATEMENTS" OF THE CITY OF BELLAIRE, TEXAS, TO SERVE AS GUIDELINES FOR OPERATIONAL AND LONG-RANGE PLANNING.**

**WHEREAS**, the City of Bellaire, Texas, desires to develop and adopt financial management policies to provide guidelines for operational and long-range planning; and

**WHEREAS**, a management team was appointed to develop Comprehensive Financial Management Policy Statements ("CFMPS") in support of the City's goal and the Bellaire City Council's priority of ensuring continued development of sound financial management of the City; and

**WHEREAS**, the CFMPS developed by the aforementioned management team provide guidelines for accounting and financial reporting, financial consultants, budget and long-range financial planning, revenues, expenditures, fund balance requirements, capital expenditures, debt management, and cash and investment management; and

**WHEREAS**, the Finance Department of the City of Bellaire, Texas, presented the management team's proposed CFMPS to the Bellaire Audit Finance Board for consideration; and

**WHEREAS**, the Bellaire Audit Finance Board provided recommended changes and voted to approve the CFMPS, as revised to include said changes, to the Bellaire City Council for approval and adoption; and

**WHEREAS**, the Finance Department of the City of Bellaire, Texas, and the FY 2015 Management Team recommend adoption of the written policy, attached hereto as Exhibit “A” and entitled “Comprehensive Financial Management Policy Statements”; and

**WHEREAS**, the City Council of the City of Bellaire, Texas, finds that adoption of the Comprehensive Financial Management Policy Statements is necessary and appropriate;

**NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS:**

1. **THAT** the recitals set forth above are found to be true and correct.
2. **THAT** the City Council of the City of Bellaire, Texas, hereby adopts the Comprehensive Financial Management Policy Statements, attached hereto as Exhibit “A,” to serve as guidelines for operational and long-range planning for the City of Bellaire, Texas.
3. **THAT** the Chief Financial Officer of the City of Bellaire, Texas, is designated as the official authorized to implement the Comprehensive Financial Management Policy Statements.
4. **THAT** this Resolution shall be effective immediately upon its passage and adoption.

**PASSED** and **APPROVED** this 18<sup>th</sup> day of May, 2015.

(SEAL)

**ATTEST:**

\_\_\_\_\_  
Tracy L. Dutton, TRMC  
City Clerk

**SIGNED:**

\_\_\_\_\_  
Dr. Philip L. Nauert  
Mayor

**APPROVED AS TO FORM:**

---

Alan P. Petrov  
City Attorney

## City of Bellaire

### COMPREHENSIVE FINANCIAL MANAGEMENT POLICY STATEMENTS

Comprehensive Financial Management Policy Statement (CFMPS) assembles all of the City's financial policies in one document. Financial policies are statements of principles or goals adopted by the governing body. Bellaire's CFMPS provides guidelines for operational and long range planning, ensuring that the City is financially able to meet its immediate and long-term service objectives. The City intends for this document to guide its fiscal management and will make best efforts to comply.

- I. **Accounting, Auditing and Financial/Fiscal Reporting and Monitoring:** Maintain accounting practices that conform to generally accepted accounting principles and comply with prevailing federal, state, and local statutes and regulations. Prepare and present regular reports that analyze and evaluate the City's financial performance and economic condition.
- II. **Financial Consultants:** The City will employ the assistance of qualified financial advisors and consultants as needed in the administration and management of the City's financial functions. These areas include but are not limited to audit services, debt administration, and delinquent tax collections. The principal factors in the selection of these consultants will include experience/expertise, ability to perform the services, references, methodology and price.
- III. **Budget and Long Range Financial Planning:** Establish guidelines for budgeting to ensure a financially sound City and establish a long-range financial planning process that assesses the long-term financial implications of current and proposed operating and capital budgets.
- IV. **Revenues and Resources:** Maintain a balanced and diverse revenue stream that minimizes the City's exposure to economic cycles and risk.
- V. **User Fees:** Design, maintain, and administer a fee structure for fee-based services that will assure a reliable, equitable, diversified and sufficient revenue stream to support desired City services.
- VI. **Expenditures and Services (non-capital):** Identify and set priorities for services, establish appropriate service levels and administer the expenditure of available resources to help ensure fiscal stability and the effective and efficient delivery of services.
- VII. **Fund Balance/Working Capital:** Maintain the fund balance and net assets of the various operating funds at levels sufficient to protect the City's creditworthiness as well as its ability to withstand emergencies or economic fluctuations.
- VIII. **Capital Expenditures and Improvements:** Annually review and monitor the state of the City's capital equipment and infrastructure, setting priorities for its replacement and renovation based on needs, funding alternatives, and availability of resources.

- IX. **Debt:** Establish guidelines for debt financing that will minimize the impact of debt payments on current revenues and protect the City's creditworthiness.
- X. **Cash Management/Investments:** Invest the City's operating cash in a manner that will ensure its absolute safety of principal, provide for the necessary liquidity needs of the City, and optimize yield relative to those constraints.
- XI. **Grants:** Seek, apply for and effectively administer federal, state and local grants, to support the City's priorities and policy objectives.



## I. ACCOUNTING, AUDITING AND FINANCIAL REPORTING

Maintain accounting practices that conform to generally accepted accounting principles and comply with prevailing federal, state, and local statutes and regulations. Prepare and present regular reports that analyze and evaluate the City's financial performance and economic condition.

### A. Accounting Practices and Principles

The City will maintain accounting practices that conform to generally accepted accounting principles (GAAP) as set forth by the Governmental Accounting Standards Board (GASB), the authoritative standard setting body for units of local government. All city financial documents, except monthly interim financial reports, including official statements accompanying debt issues, Comprehensive Annual Financial Reports and continuing disclosure statements will meet standards. Monthly interim financial reports are on a modified accrual basis and will be reported as budgeted. At year-end the general ledger and financials will be converted to full accrual basis.

### B. Financial and Management Reports

Monthly Financial Reports will be prepared and reviewed by the City Manager and will be made available for the City Council and public review.

Quarterly reports will be prepared and presented to the City Council that explain key economic and fiscal developments, note significant deviations from the budget, report on the status of the City's strategic and capital improvement projects, and when required, outline any remedial actions necessary to maintain the City's financial position.

### C. Annual Audit

Pursuant to State law, the City shall have its records and accounts audited annually and shall have an annual financial statement prepared based on the audit and filed with the City Clerk within 180 days after the last day of the fiscal year. The audit shall be performed by a certified public accounting (CPA) firm, licensed to practice in the State of Texas. The audit firm shall provide a management letter to the City prior to the filing of the audit. The audit firm shall also provide a Single Audit of Federal and State grants, when necessary. An official Comprehensive Annual Financial Report (CAFR) shall be issued no later than six (6) months following the end of the fiscal year. The Chief Financial Officer shall be responsible for establishing a process to ensure timely resolution of audit recommendations.

### D. Audit Finance Board (Chapter 2, Article VII, Division 3, Sec. 2-120 Audit Finance Board)

The Mayor shall appoint three council members and the City Council shall appoint a citizen member to serve on the Audit Finance Board. The role of the board is to advise the city council concerning audits of the city and any auditing matters as may be referred to it by the Chief Financial Officer of the City and/or the City Council. The Audit Finance Board shall be responsible for the following:

- Recommending an auditor to city council during those years in which an auditor must be appointed by the City.
- Reviewing the audit of the city prior to submission to the city council

- Assisting the auditor and city staff with the presentation of the audit to city council
- Providing a communication link between the auditor and city council regarding any major issues/concerns/findings that may arise.

#### E. Annual Financial Disclosure

As required by the Securities and Exchange Commission (SEC) Rule 15c2-12, the City, with support of the City's financial advisor and bond counsel, will provide certain annual financial information to various information repositories through disclosure documents that include the necessary information within six months of fiscal year end. The City will also provide timely notices, not in excess of ten business days after the occurrence of a material event as defined in Rule 15c2-12, paragraph (b)(5)(i)(c).

#### F. Signature of Checks

All checks shall have two signatures. Three persons shall be authorized to sign checks: the City Manager, the Chief Financial Officer, and the Assistant City Manager. Signatures shall be affixed to all City checks via facsimile signatures, made with a secure laser check printing system, or through handwritten signatures affixed to each check.

#### G. Compliance with Council Policy Statements

Policy statements adopted by City Council are guidelines, and occasionally exceptions may be appropriate and required. Exceptions to stated policies will be specifically identified and the need for the exception will be documented and explained to City Council and/or the City Manager.

## II. FINANCIAL CONSULTANTS

The City will employ the assistance of qualified financial advisors and consultants as needed in the administration and management of the City's financial functions. These areas include but are not limited to audit services, debt administration, and delinquent tax collections. The principal factors in the selection of these consultants will include experience/expertise, ability to perform the services, references, methodology and price.

#### A. Selection of Auditors

At least every five years, the City shall request proposals from qualified firms, including the current auditors if their past performance has been satisfactory. The City Council shall select an independent firm of certified public accountants to perform an annual audit of the accounts and records, and render an opinion on the financial statements of the City.

- It is the City's preference to rotate auditor firms every five years to ensure that the City's financial statements are reviewed and audited from an objective, impartial, and unbiased point of view. The rotation of the audit firm will be based upon the proposals received, the qualifications of the firm, the firm's ability to perform a quality audit and price.

- However, if through the proposal and review process, management and the Audit Finance Board select the current audit firm, then, it is the City's preference that the lead audit partner be rotated as well as the lead reviewer after a maximum of five years.
- Annually, the independent auditor will provide a letter of engagement to the City Council for annual audit services.

#### B. Arbitrage

Arbitrage calculation and reporting shall be contracted out to a qualified firm.

- The Chief Financial Officer and the Arbitrage Consultant shall complete a risk assessment of positive arbitrage on each bond issue annually to determine the necessity for a calculation of positive/negative arbitrage in the current year.
- All bond issues, in accordance with arbitrage regulations, shall have each fifth year and final arbitrage calculations completed.

#### C. Delinquent Tax Collection Attorney

Due to the nature of services and expertise required, the City shall hire a delinquent tax collection attorney to collect delinquent taxes, represent the City in filing bankruptcy claims, foreclose on real property, seize personal property, and represent the City in court cases and property sales.

- If the City chooses to contract directly for delinquent tax collection services, requests for proposals or statements of qualifications are to be solicited at least every five years.
- The City may contract with the same firm used previously if based on the review process, it is determined it offers the best value.

#### D. Bond Counsel

Bond Counsel to the City has the role of an expert who provides an objective legal opinion concerning the issuance and sale of bonds and other debt instruments. As bond counsel are specialized attorneys who have developed necessary expertise in a broad range of practice areas, the City will always contract such counsel for these services. Generally, bonds are not marketable without an opinion of bond counsel stating that the bonds are valid and binding obligations, stating the sources of payment and security for the bonds and that the bonds are exempt from State and Federal income taxes.

- Due to the complexity of the City's financial structure and the benefits that come with a working historical knowledge of the City, the City prefers to use the same bond counsel for many years.
- His/her contract will be considered annually.
- In order to ensure that the City is still receiving services for fair market value, staff will conduct a survey every five years of bond counsel fees and present a comparison and analysis to the City Manager.

#### E. Financial Advisory Services

The City issues various types of securities to finance its capital improvement program. Debt structuring and issuance requires a comprehensive list of services associated with municipal transactions, including but not limited to: method of sale; analysis of market conditions; size and structure of the issue; preparation of disclosure documents; coordinating rating agency relations; evaluation of and advice on the pricing of securities; assisting with closing and debt management; calculating debt service schedules; and advising on financial management.

- As financial advisors to governmental entities have developed the necessary expertise in a broad range of services, the City will use a consultant for these services.
- Due to the complexity of the City's financial structure and the benefits that come with a working, historical knowledge of the City, the contract with the Financial Advisor shall be considered evergreen, however with a termination clause.
- In order to ensure that the City is still receiving services for fair market value, staff will conduct a survey every five years of Financial Advisory fees and present a comparison and analysis to the City Manager.

### III. BUDGET AND LONG RANGE FINANCIAL PLANNING

Establish guidelines for budgeting to ensure a financially sound City and to establish a long-range financial planning process that assesses the long-term financial implications of current and proposed operating and capital budgets.

#### A. Balanced Budget

The City Manager shall file annually with City Council, a structurally balanced budget for the ensuing fiscal year pursuant to the prevailing state and local law. A structurally balanced budget is defined as a budget in which recurring revenues fund recurring expenditures and adherence to fund balance policies. Deferrals, short-term loans, or one-time sources will be avoided as budget balancing techniques. A structurally imbalanced budget proposal shall be accompanied by a plan to return the budget to structural balance and the resulting five year financial forecast that reflects steps to be taken to return the budget to structural balance.

#### B. Current Funding Basis

The City shall budget and operate on a current funding basis. Revenues and expenditures shall be budgeted on a cash basis. Expenditures shall be budgeted and controlled so as not to exceed current revenues. Recurring expenses will be funded exclusively with recurring revenue sources to facilitate operations on a current funding basis.

#### C. Use of Non-Recurring Revenues

Non-recurring revenue sources, such as a one-time revenue remittance or fund balance in excess of policy can only be budgeted and used to fund non-recurring expenditures, such as capital purchases or capital improvement projects. This will ensure that recurring expenditures are not funded by non-recurring sources.

#### D. Tax Rate

The City Manager will recommend a tax rate that the City finances require in order to operate efficiently, yet effectively, and pay its debt service for current and anticipated capital projects. The City shall strive to maintain stable, predictable tax revenues that do not fluctuate from year to year.

The tax rate will be adopted by the City Council in full compliance with Truth in Taxation Requirements, Texas Constitution Article VIII, Sec 21 and the Tax Code Chapter 26.

#### E. Revenue Forecasting

In order to protect the City from revenue shortfalls and to maintain a stable level of services, the City shall use a conservative, objective, and analytical approach when preparing revenue estimates. The process shall include analysis of probable economic changes and their impacts on revenues, historical collection rates, and trends. This approach should reduce the likelihood of actual revenues falling short of budget estimates and should avoid mid-year service changes.

#### F. Avoidance of Operating Deficits

The City shall take immediate corrective actions if at any time during the fiscal year expenditure and revenue projections are such that an operating deficit is projected at year end. Corrective actions in order of precedence are as identified in the Fund Balance Policy adopted by Resolution No. 11-15:

1. Budget amendment from Unassigned Fund Balance in excess of 60 day requirement
2. Reduce transfers to Capital Improvement Fund if project timing allows
3. Defer purchase of capital items
4. Reduce budgeted expenditures
5. Increase fees
6. Use of Minimum Unassigned Fund Balance – 60 Day of Normal Operating Expenditures

Excess fund balance, which is a one-time revenue source, may be used to fund an annual operating deficit only with prior approval of a plan to replenish the fund balance if it is brought down below policy level.

#### G. Five-year Forecast of Revenues and Expenditures

A five-year forecast of revenues and expenditures shall be prepared in conjunction with the annual budget process for the following funds:

- General Fund
- Debt Service Fund
- Enterprise Fund

The forecast assesses long-term financial implications of current and proposed policies, programs, and assumptions that develop appropriate strategies to achieve the City's goals. The forecast will provide an understanding of available funding, evaluate financial risk, assess the likelihood that services can be sustained, assess the level at which capital investment can be made, identify future

commitments and resource demands, and identify the key variables that may cause change in the level of revenue. The forecast will be used to identify anticipated financial issues so that a plan can be developed to correct anticipated issues before they become reality.

#### H. Budget Amendment or Adjustment

Under the provisions of State Law and the City's Code of Ordinances (Art. V. The Budget Sec.2 (d) Annual Budget and Art. VII. Finance Administration Sec.5 Transfer of Appropriations) the budget may be amended or adjusted.

Amendment of the budget involves an addition to or reduction of existing appropriations. At the request of the City Manager, the City Council may by resolution transfer unencumbered appropriation balance from one department to another or increase total appropriations with the identified funding source.

Adjustment of the budget involves a reallocation of existing appropriations between general classifications of expenditures within a department and does not change the budget total. No City Council action is needed as State Law and our Code of Ordinances allows budget adjustments to be done administratively.

## IV. REVENUES AND RESOURCES

The City will maintain a balanced and diverse revenue stream that minimizes the City's exposure to economic cycles and risk.

#### A. User Fees

For services that benefit specific users (private/individual or mixed services), the City shall establish and collect fees to recover the cost of those services.

#### B. Property and Sales Tax

Where services provide a general public benefit, the City shall finance those services through property and sales taxes.

#### C. Administrative Services Charges

The City shall establish a method to determine annually the administrative services charges due the General Fund from the Enterprise Fund for overhead and staff support. Where appropriate, the Enterprise Fund shall pay the General fund for direct services rendered.

#### D. Enterprise Fund Transfer for funding of Capital Improvement Projects

Annually during the budget and capital improvement development process, the amount to be transferred from the Enterprise Fund for capital funding will be determined and budgeted accordingly.

E. Enterprise Fund Transfer to the Debt Service Fund

When debt is issued for Enterprise projects, the amount will be determined and an annual allocation of debt service will be calculated and transferred from the Enterprise Fund to the Debt Service Fund for debt payment.

F. Water/Wastewater Revenue Billings

Water and wastewater revenues are billed in arrears, as customer meters are read monthly for the previous month's water usage. At year end, revenue is accrued to adjust revenues to full accrual basis but during the year, revenues are recorded on a cash basis.

G. Revenue Collections

The City shall maintain high collection rates for all revenues by monitoring monthly receivables. The City shall follow an aggressive, consistent, yet reasonable approach to collecting revenues to the fullest extent allowed by law for all delinquent taxpayers and others overdue in payments to the City.

H. Write-off of Uncollectible Receivables (excludes court fines and warrants)

Receivables shall be considered for write-off as follows:

- Undeliverable mail – accounts that remain outstanding for 6 months and all steps have been exhausted
- The release or extinguishment, in whole or in part, of any indebtedness, liability, or obligation as authorized by state law
- Accounts outstanding for 3 years, identified as uncollectible, and all attempts to collect have been taken
- The write-off of uncollected accounts is a bookkeeping entry only and does not release the debtor from any debt owed to the City.

I. Use of One-time or Unpredictable Revenues

The City will use one-time revenue for non-recurring expenditures and will exercise caution with the use of unpredictable revenues for recurring expenditures.

**V. USER FEES**

Design, maintain, and administer a fee structure for fee-based services that will assure a reliable, equitable, diversified and sufficient revenue stream to support desired City services.

For services that benefit specific users, the City shall establish and collect fees to recover the costs of those services. The City Council shall determine the appropriate cost recovery level and establish the fees. Where feasible and desirable, the City shall seek to recover full direct and indirect costs. User fees shall be reviewed on a regular basis to calculate their full cost recovery levels, to compare them to the current fee structure, and to recommend adjustments where necessary.

1. In determining a charge or fee each department should identify what factors are to be taken into account when pricing services. They should determine whether the City intends to recover the full cost of providing services. If the full cost of a service is not recovered, then an explanation of the department's rationale for this deviation should be provided.
2. The full cost of providing a service should be calculated in order to provide a basis for setting the charge or fee. Full cost incorporates direct and indirect costs, including operations and maintenance, overhead, and charges for the use of capital facilities.
3. Charges and fees should be reviewed and updated periodically based on factors such as the impact of inflation, other cost increases, the adequacy of the coverage of costs, and current competitive rates.
4. User Fees – General Fund
  - a. For services that benefit specific users (private/individual or mixed services), the City shall establish and collect fees to recover the costs of those services. Where services provide a general public benefit, the City shall finance those services through property and sales taxes.
  - b. Costs of Services are defined as full-cost; direct, indirect, and overhead.
  - c. Factors in setting of fees shall include but not be limited to: market and competitive pricing, effect on demand for services, and impact on users, which may result in recovering something less than full cost.
5. User Fees – Enterprise Funds
  - a. Utility rates and other fund user fees shall be set at levels sufficient to cover operating expenditures (direct and indirect), meet debt obligations and debt service coverage, provide pay-as-you-go funding for capital improvements, and provide adequate levels of working capital.
  - b. The City shall seek to eliminate all forms of subsidization to the Enterprise Fund from the General Fund.
  - c. The Five-Year Forecast shall serve as the basis for rate increase considerations.
  - d. If necessary, the Five-Year Forecast shall be built around smaller rate increases annually versus higher rate increases periodically.

Once a fee has been proposed for a particular service, the fee will be compared to market, evaluated for potential effects on users such as low-income households, market demands of service, etc. A fee will then be recommended to the City Manager and City Council based on all information gathered through the fee evaluation.



## **VI. EXPENDITURES AND SERVICES (non-capital)**

Identify and set priorities for services, establish appropriate service levels and administer the expenditure of available resources to help ensure fiscal stability and the effective and efficient delivery of service

### **A. Annual Expenditures**

The City will only propose operating expenditures which can be supported from on-going operating revenues. Before the City undertakes any agreements that would create fixed on-going expenses, the cost implications of such agreements will be fully determined for current and future years. Capital expenditures may be funded from onetime revenues, but the operating budget expenditure impacts of capital expenditures will be reviewed for compliance with this policy provision.

### **B. Departmental Service Plans**

Each department will on a three year cycle prepare a service plan. The service plan will define services, service levels, and describe the resources necessary to provide current (base) level of service. A three year projection of resources needed to provide those services will be prepared. Any anticipated changes in services or service levels will be listed. Every effort shall be made to link services to Council priorities. Service plans developed in a given year will be presented to the City Council prior to the development of the City Manager's proposed annual budget.

### **C. Maintenance of Capital Assets**

Within the resources available each fiscal year, the City shall maintain capital assets and infrastructure at a sufficient level to protect the City's investment, to minimize future replacement and maintenance costs, and to maintain service levels.

D. The City will assess administrative services provided by the General Fund to the Enterprise Fund. The cost of the service provided will be budgeted as a transfer to/transfer from each budget year.

### **E. Purchasing**

The City shall conduct its purchasing and procurement functions efficiently and effectively, fully complying with applicable State laws and City ordinances. Staff shall make every effort to capitalize on savings available through competitive processes and "best value" purchasing.

## **VII. FUND BALANCE/WORKING CAPITAL**

Maintain the fund balance and net assets of the various operating funds at levels sufficient to protect the City's creditworthiness as well as its ability to withstand emergencies or economic fluctuations. (City of Bellaire Fund Balance Policy)

A. The City will strive to maintain in the General Fund a minimum unassigned fund balance equal to 60 days of normal operating expenditures. This amount is projected each year at the end of the fiscal year, recognizing that fund balance levels can fluctuate from month to month in normal course of operations. During each budget process, the level of unassigned fund balance will be reviewed and if

based on current economic and financial conditions a change is determined to be in the best interest of the City, it will be proposed during the budget process for City Council approval.

B. The City will strive to maintain working capital sufficient to provide for reserves for emergencies and revenue shortfalls in the Enterprise Fund. The reserve will be a minimum of 60 days of normal operating expenditures in funds that have major infrastructure or assets. Funds without major infrastructure or assets will have no minimum balance requirement.

C. Debt Service Funds

The City shall maintain sufficient reserves in its Debt Service Fund, which shall equal or exceed the requirements dictated by its bond ordinances.

## **VIII. CAPITAL EXPENDITURES AND IMPROVEMENTS**

Annually review and monitor the state of the City's capital equipment and infrastructure, setting priorities for its replacement and renovation based on needs, funding alternatives, and availability of resources.

A. Capitalization Threshold for Tangible Capital Assets

Tangible capital items should be capitalized only if they have an estimated useful life of at least four years following the date of acquisition or significantly extend the useful life of the existing asset and cannot be consumed, unduly altered, or materially reduced in value immediately by use and have a cost of not less than \$10,000 for any individual item.

The capitalization threshold of \$10,000 will be applied to individual items rather than to a group of similar items. (i.e.: desks, chairs, etc.)

Computer software, regardless of cost, will not be capitalized.

B. Five-Year Capital Improvement Plan (CIP)

The City shall annually prepare a five-year capital improvement plan based on the needs for capital improvements and equipment, the status of the City's infrastructure, replacement and renovation needs, and potential new projects. For every project identified in the plan, a project scope and project justification will be provided. Also, project costs shall be estimated, funding sources identified and annual operation and maintenance costs computed.

Citizens, Parks and Recreation Advisory Board and the Planning and Zoning Commission will be provided opportunities to review the list of CIP projects for the Five-Year Capital Improvement Plan and may suggest additions and/or changes to the plan as appropriate before it is presented to City Council. Pursuant to the City Charter, the Planning & Zoning Commission makes recommendations to the City Manager and the City Council on the City's Five-Year Capital Improvement Plan.

The City Manager is charged with recommending a Capital Improvement Plan to City Council. Projects submitted, either by staff, through a neighborhood or citizen request, or through joint

participation, will be reviewed in conjunction with the entire capital improvement program and submitted to City Council for final consideration. The Five-Year Capital Improvement Plan shall be filed and adopted with the annual budget.

The Five-Year CIP shall be limited to the affordability limits identified in the long-range financial plans of the City, taking into consideration available cash, bond issuances, operating costs, etc.

Projects that are requested but cannot be funded in the Five Year CIP may be included in the CIP for future reference as an appendix of unfunded requests.

Annually, through the budget process and at year-end, projects are to be reviewed and if identified as complete will be closed by Finance and any remaining funds closed to fund balance, which can then be re-appropriated during the next fiscal year capital budget. Funds remaining from bond proceeds will only be used in accordance with the legal use of those funds.

Appropriations for capital projects are for the life of the project; therefore re-appropriation of capital funding for budgeted projects will not be necessary.

#### C. Replacement of Capital Assets on a Regular Schedule (Fleet and Technology)

The City shall annually prepare a schedule for the replacement of its fleet and high technology capital assets. Funding for the replacement of these assets will be accomplished through the use of an annual depreciation structure charged to each participating fund at 100% of annual depreciation based on lifecycle or useful life of the asset. Within the resources available each fiscal year, the City shall replace these assets according to the Vehicle and Equipment and Technology Replacement Policies.

#### D. Capital Expenditure Financing

The City recognizes that there are three basic methods of financing its capital requirements: Funding from current revenues; funding from fund balance as allowed by the Fund Balance Policy; or funding through the issuance of debt. Types of debt and guidelines for issuing debt are set forth in the Debt Policy Statements, below.

#### E. Capital Improvements/Project Reporting

Capital project status reports shall be updated monthly and included in each quarterly reporting by the City Manager to the City Council.

## IX. DEBT

Establish guidelines for debt financing that will minimize the impact of debt payments on current revenues and protect the City's creditworthiness...

#### A. Use of Debt Financing

Debt financing, to include general obligation bonds, revenue bonds, certificates of obligations, lease/purchase agreements, and other obligations permitted to be issued or incurred under Texas

law, shall only be used to acquire capital assets and refinance existing debt obligations. In deliberations to issue debt, the City will first consider whether it is prudent to finance such assets from other available sources including current revenues or fund balance. Such deliberations will consider the effect on the City's fund balance policy and liquidity, particularly in the context of prudent financial management and credit rating implications. When possible, the City will pay cash for capital expenditures and improvements within the financial affordability of each fund versus issuing debt. Debt maturing beyond the current fiscal year will not be used to fund current operating expenditures. The City, when appropriate, may issue short-term obligations maturing within the current fiscal year for cash flow management purposes.

## B. Debt Financing

### 1. Affordability

The City shall use an objective analytical approach to determine whether it can afford to issue new general-purpose debt, both General Obligation bonds and Certificates of Obligation. This process shall compare standards of affordability to the current values for the City. For tax-backed debt, such standards of affordability may include debt per capita, debt as a percent of taxable value, taxable value per capita, and tax rate. The process shall also examine the direct costs and benefits of the proposed expenditures. The decision on whether or not to issue new debt shall be based on these costs and benefits, current conditions of the municipal bond market, City's ability to "afford" new debt as determined by the aforementioned standards and a review of the project's cash requirements as determined by the project's proposed timeline.

### 2. Debt Capacity

The City shall complete an annual debt capacity assessment to ensure that proposed debt is affordable and contributes to the financial strength of the City. The debt capacity is the upper limit on the dollar amount of capital improvements that the City can afford to fund from debt.

Debt capacity calculations for long-term planning shall assume market rates or higher for the average annual interest costs at the time the capacity is determined. The analysis shall not assume future refunding of any outstanding bonds and shall consider debt service requirements on both current and proposed debt.

For tax supported debt, maximum capacity shall be determined by an amount of annual debt service that the City can absorb within the current or proposed tax rate allocation for debt based on assumed growth in assessed valuation.

For revenue debt, maximum capacity shall be determined by the amount of annual debt service that the City can absorb within a proposed rate structure that has been reviewed with City Council and which can support the proposed debt within the additional bonds test as defined in the revenue bond covenants. The City shall not exceed debt capacity as defined through bond covenants or fall below bond coverage ratios for additional revenue bonds. The City may choose to maintain target coverage margins in excess of legal requirements under bond covenants.

Factors that will be included in the annual debt capacity determination shall include:

- Existing debt obligations
- Evaluation of revenue and expenditure trends
- Debt per capita
- Debt to assessed value ratio
- Taxable value per capita
- Statutory or constitutional requirements
- Market factors such as interest rates, credit ratings or market status

#### C. General Obligation Bonds (GO)

General Obligation bonds require voter approval except refunding bonds.

1. General Obligation bonds must be issued to accomplish projects identified in the bond referendum and associated material.
2. General Obligation bonds must be issued for projects that are in accordance with the wording in the bond propositions.

#### D. Certificates of Obligation and Tax Notes

Certificates of Obligation may be issued without voter approval to finance any public works project or capital improvement, as permitted by State law. Should the City's capital funding evaluation support the issuance of Certificate of Obligations, they shall be issued only after determining the City's ability to assume additional debt based on the standards identified above.

Circumstances in which Certificates or Tax Notes might be issued include, but are not limited to the following:

- The City may issue CO's when there is insufficient funding on a general obligation bond-financed capital improvement;
- The City may issue CO's when "emergency" (urgent, unanticipated) conditions require a capital improvement to be funded rapidly;
- The City may issue CO's for projects when there is no other funding source available and the project is determined to be in the best interest of the City.
- The City may issue CO's or Tax Notes for projects to comply with regulatory mandates.

#### E. Revenue Bonds

For the City to issue revenue bonds, revenues, as defined in the ordinance authorizing the revenue bonds in question shall be established and maintained to provide debt service coverage at least to comply fully with all bond covenants. Annual adjustments to the City's rate structures for enterprise funds shall be considered during the budget process and will be made as necessary to maintain the coverage factor. The City may choose to maintain target coverage margins in excess of legal requirements under bond covenants.

#### F. Debt Structures

The City shall normally issue bonds with a life not to exceed 25 years for general obligation bonds and revenue bonds, but in no case longer than the useful life of the asset.

1. The City shall seek level or declining debt repayment schedules.
2. The City shall seek to retire its debt with as short an average life as possible.
3. There should be no debt structures that include increasing debt service levels in years beyond the first and second year, except as special situations may warrant.
4. There shall be no “balloon” bond repayment schedules, which consist of low annual payments and one large payment of the balance due at the end of the term.
5. There shall always be at least interest paid in the first fiscal year after a bond sale and principal payments starting generally no later than the second fiscal year after the bond issue.

#### G. Refunding

The City’s financial advisor shall monitor the municipal bond market for opportunities to obtain interest savings by refunding outstanding debt. As a general rule, the net present value savings of a particular refunding should exceed 3.0% of the refunded maturities unless (1) a debt restructuring is necessary or (2) bond covenant revisions are necessary to facilitate the ability to provide services or to issue additional debt.

#### H. Interest Earnings on Debt Proceeds

The expenditure of interest earnings on debt issued will be limited to funding changes to the bond financed Capital Improvement Plan in compliance with the voted propositions, cost overruns on bond projects, or be applied to debt service payments on the bonds issued.

#### I. Bond Elections

Timing of general obligation bond elections shall generally be determined by the inventory of current authorized, unissued bonds remaining to be sold and the Five-Year Capital Improvement Program. The total dollar amount of bond election propositions recommended to the voters may not exceed the City's estimated ability to issue the bonds within a 10-year period.

An analysis showing how the new debt combined with current debt impacts the City’s tax rate and debt capacity will accompany every future bond issue proposal.

#### J. Sale Process

The City shall use a competitive bidding process in the sale of debt unless the nature of the issue warrants a negotiated sale. The City may utilize a negotiated process when the issue is, or contains, a refinancing that is dependent on market/interest rate timing. The City may issue certain issues as direct placements to state or federal agencies. Except for direct placements to state or federal agencies, the City shall award the bonds based on a true interest cost (TIC) basis.

#### K. Rating Agency Presentations

Full disclosure of operations and open lines of communications shall be maintained with the rating agencies. City staff, with the assistance of financial advisors, shall prepare the necessary materials and presentation to the rating agencies. Credit ratings will be sought from one or more of the

nationally recognized municipal bond rating agencies, currently Moody's Investor Services, Standard & Poor's, and Fitch Inc., as recommended by the City's financial advisor.

#### L. Bond Ratings

The City will prudently manage the General and Enterprise Fund and attempt to issue and structure debt to help maintain or increase the current bond ratings.

#### M. Lease/Purchase Agreements

The City will use lease/purchase agreements when it is cost-efficient and provides for more attractive terms than other alternatives.

N. The City will comply with its continuing disclosure obligations to inform the Municipal Securities Rulemaking Board through the EMMA website (Electronic Municipal Market Access) of any and all continuing disclosure documents and annual financial statements.

## X. CASH MANAGEMENT AND INVESTMENTS

Invest the City's operating cash in a manner that will ensure its absolute safety of principal, provide for the necessary liquidity needs of the City, and optimize yield relative to those constraints.

#### A. Investment Management

1. All aspects of cash/investment management shall be designed to ensure safety and integrity of the City's financial assets.
2. Cash/Investment management activities shall be conducted in full compliance with prevailing local, state, and federal regulations. (See City Investment Policy and Investment Strategy)
3. The City will utilize competitive bidding practices wherever practical, affording no special advantage to any individual or corporate member of the financial or investment community.
4. The City will only do business with City authorized, as approved by the City Council, broker/dealers and/or financial institutions and who have executed a written certification of their review of the City's Investment Policy.
5. The City shall design and establish policies relating to a variety of cash/investment management issues, such as the eligibility and selection of various broker/dealers, safekeeping requirements, collateral requirements, delivery versus payment requirements, weighted average maturity requirements and such other aspects of the program, which necessitate standard setting in pursuit of appropriate prudence and enhanced protection of assets. (See Investment Policy)
6. Investments of the City shall be made with the exercise of judgment and care which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment.



**B. Investment Strategy**

The City of Bellaire maintains a consolidated portfolio in which it pools its funds for investment purposes. The City's investment program seeks to achieve safety of principal, adequate liquidity to meet cash needs, and reasonable yield commensurate with the preservation of principal and liquidity. Refer to the City's Investment Strategy as adopted by City Council annually for detail.

**C. Interest Income**

Interest earned from investments shall be distributed to the funds from which the funds were provided.

**D. Arbitrage Investments and Reporting**

The City's investment position as it relates to arbitrage is as follows: Investments on bond proceeds will be made with safety of principal and liquidity in mind, but with a competitive rate of return. Bond proceeds will be invested in separate instruments and not commingled with other investment purchases. Arbitrage rebate calculations will be performed as required on all debt issues and funds set aside annually for any positive arbitrage. Arbitrage will be rebated to the Internal Revenue Service, as necessary.

**E. Depository**

The City of Bellaire will select its official bank depository through a formal bidding process in order to provide the City with the most comprehensive, flexible, and cost-effective banking services available. The City will at a minimum, bid depository services every five years.

**F. Collateralization of Deposits**

1. The City of Bellaire shall have pledged collateral held at an independent third-party institution and evidenced by a written receipt.
2. The value of the pledged collateral should be marked to market monthly and shall be at least 103 percent of par or market value of the investments, whichever is greater.
3. Substitutions of collateral shall meet the requirements of the collateral agreement and have prior written approval. Collateral shall not be released until the replacement collateral has been received.
4. The pledge of collateral shall comply with the City's Investment Policy.

**XI. GRANTS**

The City will seek, apply for, and effectively administer federal, state and local grants, to support the City's priorities and policy objectives.

**A. Grant Guidelines**

The City shall apply and facilitate the application for only those grants that are consistent with the objectives and high priority needs identified by Council and City Management.



Grant funding will be considered to leverage City funds. Inconsistent and/or fluctuating grants should not be used to fund ongoing programs.

The potential for incurring ongoing costs, to include assumptions of support for grant-funded positions from local revenues, will be considered prior to applying for a grant.

#### B. Grant Review

All grant submittals shall be reviewed for their cash match requirements, their potential impact on the operating budget, and the extent to which they meet the City's goals. If there is a cash match requirement, the source of funding shall be identified prior to application.

The City Manager shall approve all grant submissions and City Council shall approve all grant acceptances over \$25,000 and any grant acceptance regardless of the dollar amount if a budget adjustment is required.

#### C. Grant Termination and/or Reduced Grant Funding

In the event of reduced grant funding, City resources will be substituted only after all program priorities and alternatives are considered during the budget process, unless the City is obligated through the terms of the grant to maintain the positions.

The City shall terminate grant-funded programs and associated positions when grant funds are no longer available, and it is determined that the program no longer supports City goals and/or is no longer in the best interest of the City, unless the City has obligated itself through the terms of the grant to maintain the positions.

**Mayor and Council**

7008 S. Rice Avenue  
Bellaire, TX 77401



Meeting: 05/18/15 06:00 PM  
Department: Parks, Recreation and  
Facilities  
Category: Donation  
Department Head: Karl Miller  
DOC ID: 1558

**SCHEDULED  
ACTION ITEM (ID # 1558)**

---

**Item Title:**

Consideration of and possible action on the adoption of a resolution of the City Council of the City of Bellaire, Texas (the "City"), accepting a financial contribution in the amount of \$1,362,541 from the Evelyn's Park Conservancy Board to be utilized by the City for construction associated with Phase One of Evelyn's Park.

**Background/Summary:**

As previously discussed during the April 20, 2015 City Council meeting, Evelyn's Park Conservancy is providing the City of Bellaire with \$1,362,541 to be designated towards the construction of Evelyn's Park of which \$304,000 has been contributed from the Rubenstein Foundation to cover the costs associated with the construction of the Memorial Garden.

**Previous Council Action Summary:**

During the April 20, 2015 City Council meeting the Evelyn's Park Conservancy outlined their ability to provide a financial contribution towards phase one construction of Evelyn's Park.

**Fiscal Impact:**

Funds will be utilized along with General Obligation bonds money for the construction services related to the Evelyn's Park Phase One Construction Project.

**Recommendation:**

It is the recommendation of the Karl Miller, Director of Parks, Recreation and Facilities that City Council accepts the contribution of \$1,362,541 from Evelyn's Park Conservancy and allocate the money toward Phase One Construction of Evelyn's Park and the Memorial Garden.

**ATTACHMENTS:**

- Financial Contribution Resolution (DOC)



**RESOLUTION NO. 15-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, ACCEPTING A FINANCIAL CONTRIBUTION IN AN AMOUNT OF \$1,362,541 FROM EVELYN'S CONSERVANCY A 501 (c)(3) TO BE UTILIZED SPECIFICALLY FOR EVELYN'S PARK PHASE ONE CONSTRUCTION AND THE MEMORIAL GARDEN.**

**WHEREAS,** Evelyn's Conservancy a 501(c)(3) is providing this financial contribution for the purpose of funding a portion of Phase One Construction of Evelyn's Park located at 4400 Bellaire Boulevard, Bellaire, Texas 77401; and

**WHEREAS,** the City Council of the City of Bellaire, Texas, deems that the acceptance of this restricted financial contribution is in the best interest of the City of Bellaire, Texas, and its citizens; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS:**

**1. THAT** the City Council of the City of Bellaire, Texas, hereby accepts the restricted financial contribution of \$1,362,541 from the Evelyn's Conservancy, to be utilized specifically for Evelyn's Park Phase One Construction and the Memorial Garden.

**2. THAT** the City Council of the City of Bellaire, Texas, hereby expresses its gratitude of the City and its citizens to Evelyn's Conservancy

**PASSED, APPROVED, and ADOPTED** this 18<sup>th</sup> day of May, 2015.

(SEAL)

**ATTEST:**

**SIGNED:**

\_\_\_\_\_  
Tracy L. Dutton, TRMC  
City Clerk

\_\_\_\_\_  
Philip L. Nauert  
Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan P. Petrov  
City Attorney

Attachment: Financial Contribution Resolution (1558 : Evelyn's Park Conservancy Financial Contribution)

**Mayor and Council**7008 S. Rice Avenue  
Bellaire, TX 77401Meeting: 05/18/15 06:00 PM  
Department: City Manager's Office  
Category: Amendment  
Department Head: Diane K White  
DOC ID: 1586**SCHEDULED  
ACTION ITEM (ID # 1586)****Item Title:**

Consideration of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending the FY 2015 Budget for the City of Bellaire, Texas, by \$1,362,541 for the purpose of increasing the appropriation of the Evelyn's Park Phase One Construction Project from \$5,000,000 to \$6,362,541.

**Background/Summary:**

A total Guaranteed Maximum Price (GMP) of \$6,262,541 has been received for the Construction of Phase One of the Evelyn's Park Capital Improvement Project. This GMP has been provided by the Linbeck Group, LLC, and agreed upon by the Evelyn's Conservancy Board. The City of Bellaire issued General Obligation (G.O. Bonds) for this project in August of 2014 for \$5,000,000. The City has committed to fund a maximum of \$5,000,000 as described in the Development and Operating Agreement between the City of Bellaire and the Evelyn's Conservancy via Ordinance 14-035. In addition to the GMP; material and testing is required of \$50,000 which brings total construction cost to \$6,312,541. The Conservancy is providing the funding for the amount over the GMP plus material testing and The Rubenstein Foundation has donated to the Conservancy \$304,000 for the construction of the Memorial Garden.

This budget amendment will reflect the receipt of funds as adopted in Resolution 15-02 of \$1,362,541.

This budget amendment will amend the Capital Improvement Fund Revenues by \$1,362,541 and increase the allocation for the Evelyn's Park Capital Improvement Project Phase One Construction by \$1,362,541.

<b>Resources</b>	<b>Amount</b>	<b>Notes</b>
G.O. Bonds	\$5,000,000	Issued 2014
Evelyn's Conservancy Contribution for Phase One Construction & Rubenstein Foundation Donation	\$1,362,541	Received via Resolution 15-02
<i>Total Resources</i>	<i>\$6,362,541</i>	
<b>Uses</b>		
Pre-Construction City Expenditures/ Earmarked	(\$50,000)	Legal, Environmental, Pre-Construction Services, Abatement & Asbestos Consultant
Future Construction Expenditures	(\$50,000)	Materials Testing
GMP Phase One	(\$6,262,541)	GMP
<i>Total Uses</i>	<i>(\$6,362,541)</i>	

<i>Remaining Funds</i>	<i>\$0</i>	
------------------------	------------	--

**Previous Council Action Summary:**

Approval of Resolution 15-02

**Fiscal Impact:**

Increase Capital Improvement Fund Revenues by \$1,362,541 and increase the allocation to the Evelyn's Park Capital Improvement Phase One Construction Project by \$1,362,541.

**Recommendation:**

Adoption of attached ordinance

**ATTACHMENTS:**

- Budget Amendment to Evelyn's Park Contribution (DOCX)





**ORDINANCE NO. 15-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, AMENDING THE BUDGET FOR THE CITY OF BELLAIRE, TEXAS, FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014, AND ENDING SEPTEMBER 30, 2015,**

**INCREASING REVENUES FOR EVELYN'S PARK CAPITAL IMPROVEMENT PROJECT PHASE ONE CONSTRUCTION BY \$1,362,541; AND**

**ALLOCATING \$1,362,541 TO THE EVELYN'S PARK CAPITAL IMPROVEMENT PROJECT PHASE ONE CONSTRUCTION AS IT RELATES TO THE CONTRIBUTION MADE BY THE EVELYN'S CONSERVANCY AS OUTLINED IN RESOLUTION 15-02 TO SUPPLEMENT THE GUARANTEED MAXIMUM PRICE OF \$6,262,541 AND MATERIAL AND TESTING FOR \$50,000 FOR TOTAL PHASE ONE CONSTRUCTION COST OF \$6,312,541. TOTAL BUDGET FOR EVELYN'S PARK WITH THIS AMENDMENT AND PREVIOUS AND EARMARKED EXPENDITURES IS \$6,362,541.**

**WHEREAS**, on September 8, 2014 the City Council of the City of Bellaire, Texas, by Ordinance No. 14-049, duly adopted and approved the budget for the City of Bellaire, Texas, for the fiscal year beginning October 1, 2014, and ending September 30, 2015; and

**WHEREAS**, pursuant to *Section 102.010, Texas Local Government Code*, the City Council of the City of Bellaire, Texas, may amend the City's budget for municipal purposes; and

**WHEREAS**, such amendment shall not result in the authorization of expenditures in excess of the total of estimated income plus funds available from earlier years; **NOW, THEREFORE**,

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

1. That the recitals contained herein are found to be true and correct.
2. That the Capital Improvement Fund budget for the City of Bellaire, Texas, for the fiscal year beginning October 1, 2014, and ending September 30, 2015, is hereby amended by:
  - increasing revenues for Evelyn's Park Capital Improvement Project Phase One Construction by \$1,362,541;

- increasing the allocation of the Evelyn's Park Capital Improvement Program Phase One Construction by \$1,362,541.

3. That a true and correct copy of this Ordinance shall be filed with the City Clerk of the City of Bellaire, Texas, and maintained as a part of the budget for the City of Bellaire, Texas, for the fiscal year beginning October 1, 2014, and ending September 30, 2015.

4. That the City Clerk shall cause to be filed a true and correct copy of this Ordinance with the County Clerk of Harris County, Texas.

**PASSED** and **APPROVED** this 18th day of May 2015.

(SEAL)

**ATTEST:**

**SIGNED:**

\_\_\_\_\_  
Tracy L. Dutton, TRMC  
City Clerk

\_\_\_\_\_  
Dr. Philip L. Nauert  
Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan P. Petrov  
City Attorney

**Mayor and Council**

7008 S. Rice Avenue  
Bellaire, TX 77401



Meeting: 05/18/15 06:00 PM  
Department: Parks, Recreation and  
Facilities  
Category: Agreement  
Department Head: Michelle Jordan  
DOC ID: 1518 A

**SCHEDULED  
ACTION ITEM (ID # 1518)**

---

---

**Item Title:**

Consideration and possible action on a recommendation from the Parks, Recreation, and Facilities Department to approve construction phase services to be provided by Linbeck Group, LLC, for Phase One of Evelyn's Park, located at 4400 Bellaire Boulevard, Bellaire, Texas 77401, in an amount not to exceed \$6,262,541, and on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Exhibit 1 to Ordinance No. 14-071, AIA Document A133--2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor, by and between the City of Bellaire, Texas, as Owner, and Linbeck Group, LLC, as Construction Manager, regarding Phase One of the Evelyn's Park Project, 4400 Bellaire Boulevard, Bellaire, Texas 77401, for the purpose of accepting the guaranteed maximum price for said project in the amount of six million two hundred sixty-two thousand five hundred forty-one dollars (\$6,262,541) and Contract Time for the Work.

**Background/Summary:**

During the December 15, 2014 City Council meeting, Council authorized a contractual agreement with Linbeck Group, LLC, through Ordinance 14-071 that included pre-construction and construction services at Evelyn's Park, located at 4400 Bellaire Boulevard, Bellaire, Texas, 77401. At that time, and again at the March 2, 2015 Council Meeting, Council approved Linbeck to provide pre-construction phase services in order to develop a Guaranteed Maximum Price for the construction of the project and to work with the City Staff, Evelyn's Park Conservancy (EPC) representatives, SWA Group, and Lake Flato to value engineer the project. After an initial Guaranteed Maximum Price that was significantly over budget, several iterations of value engineering has been evaluated by all parties, with particular attention paid to keeping the original project scope intact. Linbeck has provided a value engineered Guaranteed Maximum Price (GMP) that has been reviewed by all parties and does not impact the original project scope.

The total value of the GMP is \$6,262,541. There will be an additional associated construction cost of approximately \$50,000 for construction materials testing, which brings the total construction cost to \$6,312,541. Of that amount, the City of Bellaire will be funding \$4,950,000 out of General Obligation Bonds. The City of Bellaire had \$5,000,000 of General Obligation Bonds to use towards the development of Evelyn's Park, of which approximately \$50,000 has been spent on legal services, environmental reports, and abatement services. Evelyn's Park Conservancy will be contributing the remaining \$1,362,541 in the form of a contribution to the City of Bellaire to be used toward the GMP Amendment to Construction Contract, which includes a donation of \$304,000 from the Rubenstein Foundation for construction of the memorial garden within the project. The funding from Evelyn's Park Conservancy (which will include the portion from the Rubenstein Foundation) will be received by the City of Bellaire prior to execution of the Contract Amendment with Linbeck.

*As of April 20, 2015*

Original Draft Price Proposal	\$ 6,800,000
Identified & Accepted VE (as of 4-20-2015)	\$ (400,000)
Trees For Houston Estimated Commitment	\$ (40,000)
Remaining VE Items (Yellow House, Benches)	??
Total Not to Exceed	\$ 6,360,000

*As of May 18, 2015*

Original GMP Value	\$ 6,884,570
Accepted VE items as presented on 4-20-2015 (includes Trees for Houston and yellow house)	\$ (599,324)
Additional VE (hydroseed in lieu of sod)	\$ (22,971)
Project Additions (electrical and paver surfacing)	\$ 36,225
<b>Subtotal</b>	\$ 6,298,500
Linbeck General Conditions Reduction	\$ (35,960)
<b>Total GMP Value</b>	<b>\$ 6,262,541</b>

Materials Testing during Construction	\$ 50,000
Total Project Construction Expense	\$ 6,312,541

The Agreement between Linbeck Group LLC and the City of Bellaire was authorized through Ordinance 14-071, and included Exhibit 1: Standard Form of Agreement Between Owner and Construction Manager as Constructor (AIA Document A133-2009). As part of Exhibit 1, Exhibit F: Owner Construction Manager Agreement - Owner Financial Information Form and Exhibit G: GMP Amendment to Agreement Between Owner and Construction Manager will need to be amended to reflect the Guaranteed Maximum Price.

Commencement of construction of the project is contingent upon the City of Bellaire executing the GMP Amendment and issuing Notice to Proceed, which is contingent upon receipt of funds from Evelyn's Park Conservancy. Once the Notice to Proceed is issued, the proposed construction schedule includes a ten (10) month construction timeline to achieve substantial completion.

### **Previous Council Action Summary:**

A presentation was made at the April 20, 2015 City Council Meeting by Michelle Jordan, Project Manager, and Conservancy representatives and architects outlining the value engineering efforts that have led to the determination of the Guaranteed Maximum Price. During that presentation, Council also heard reports on the financial status of EPC and their ability to fund their portion of the construction of phase one of Evelyn's Park. Council Members had the opportunity to ask questions about both the value engineering efforts and the Conservancy status and maintenance obligations to the Park. EPC also presented details about the potential solar panel addition to the project, and the related financial donation from Green Mountain Energy Sun Club.

### **Fiscal Impact:**

This approval of the GMP will encumber \$4,950,000 from G.O. Bonds

and \$1,312,541 from the Contribution made by the Evelyn's Conservancy Board via Resolution 15-02.

**Recommendation:**

Karl Miller, Director of Parks, Recreation, and Facilities and Michelle Jordan, Project Manager, recommend City Council approve the Guaranteed Maximum Price Amendment of \$6,262,541 and authorize Paul Hofmann, City Manager of the City of Bellaire to execute Revised Exhibit F: Owner-Construction Manager Agreement Attachment - Owner Financial Information Form and the Exhibit G: GMP Amendment to Agreement Between Owner and Construction Manager once the funding from Evelyn's Park Conservancy is received by the City of Bellaire.

**ATTACHMENTS:**

- Addendum No. 2 to AIA Document A133--2009 SFA between Owner and Construction Manager - Linbeck - Evelyns Park - GMP (DOCX)
- GMP Attachment for CC 5-18 Meeting (PDF)
- Linbeck AIA agreements signed 121514 (PDF)



# **ORDINANCE NO. 15-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, AMENDING EXHIBIT 1 TO ORDINANCE NO. 14-071, AIA DOCUMENT A133—2009 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR, BY AND BETWEEN THE CITY OF BELLAIRE, TEXAS, AS OWNER, AND LINBECK GROUP, LLC, AS CONSTRUCTION MANAGER, REGARDING PHASE ONE OF THE EVELYN’S PARK PROJECT, 4400 BELLAIRE BOULEVARD, BELLAIRE, TEXAS 77401, FOR THE PURPOSE OF ACCEPTING THE GUARANTEED MAXIMUM PRICE FOR SAID PROJECT IN THE AMOUNT OF SIX MILLION TWO HUNDRED SIXTY-TWO THOUSAND FIVE HUNDRED FORTY-ONE DOLLARS (\$6,262,541) AND CONTRACT TIME FOR THE WORK, IN A FORM AS ATTACHED HERETO AND MARKED EXHIBIT “A,” ENTITLED “ADDENDUM TWO, GMP AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER.”**

**WHEREAS**, on December 15, 2014, the City of Bellaire, Texas (hereinafter referred to as the “OWNER”) and Linbeck Group, LLC (hereinafter referred to as the “CONSTRUCTION MANAGER”), entered into an agreement titled “AIA Document A133—2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor,” for Phase One of the Evelyn’s Park Project, 4400 Bellaire Boulevard, Bellaire, Texas 77401, (hereinafter referred to as the “AGREEMENT”), which was passed and approved by Ordinance No. 14-071; and

**WHEREAS**, on March 2, 2015, the OWNER and CONSTRUCTION MANAGER authorized ADDENDUM ONE to the AGREEMENT for the purpose of extending the time period for Preconstruction Phase Services for an additional two (2) months or a total of four (4) months, with compensation not to exceed five thousand dollars (\$5,000) per month, which was passed and approved by Ordinance No. 15-010; and

**WHEREAS**, in accordance with Article 2, Construction Manager’s Responsibilities, Section 2, Subsection 2.2, Guaranteed Maximum Price Proposal and Contract Time, Subsection 2.2.6, of the AGREEMENT, the CONSTRUCTION MANAGER has prepared a Guaranteed Maximum Price Proposal and Contract Time for the Work for OWNER’S review and acceptance; and



**WHEREAS**, the OWNER desires to accept the CONSTRUCTION MANAGER'S Guaranteed Maximum Price Proposal in the amount of six million two hundred sixty-two thousand five hundred forty-one dollars (\$6,262,541) and Contract Time for the Work by amending the AGREEMENT and entering into an addendum, to be known as "ADDENDUM TWO, GMP AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER," in a form as attached hereto and marked Exhibit "A"; **NOW, THEREFORE**,

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

1. The recitals set forth above are true and correct.
2. ADDENDUM TWO, GMP AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER, as attached hereto and marked Exhibit "A," is hereby authorized and approved for the purpose of accepting the CONSTRUCTION MANAGER'S Guaranteed Maximum Price Proposal in the amount of six million two hundred sixty-two thousand five hundred forty-one dollars (\$6,262,541) and Contract Time for the Work.
3. The City Manager of the City of Bellaire, Texas, is hereby authorized to execute, for and on behalf of the City of Bellaire, Texas, as OWNER, ADDENDUM TWO, GMP AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER, to the AGREEMENT.
4. ADDENDUM TWO, GMP AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER, to the AGREEMENT shall become effective immediately upon passage of this Ordinance.

**PASSED** and **APPROVED** this 18<sup>th</sup> day of May, 2015.

(SEAL)

**ATTEST:**

\_\_\_\_\_  
Tracy L. Dutton, TRMC  
City Clerk

**SIGNED:**

\_\_\_\_\_  
Dr. Philip L. Nauert  
Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan P. Petrov  
City Attorney

## **GMP Amendment to Agreement Between Owner and Construction Manager**

Pursuant to the Agreement dated December 15, 2014 between **City of Bellaire** (*Owner*) and **Linbeck Group, LLC** (*Construction Manager*) for the **Evelyn's Park** (*the Project*), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

### **ARTICLE I GUARANTEED MAXIMUM PRICE**

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work and the Construction Manager's Fee is **Six million two hundred sixty two thousand five hundred forty one dollars (\$6,262,541.00)**.

The GMP is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibit A through G as follows:

Exhibit A	Drawings, Specifications and Addenda
Exhibit B	Assumptions and Clarifications
Exhibit C	Allowances
Exhibit D	Alternates
Exhibit E	Construction Schedule
Exhibit F	Guaranteed Maximum Price Summary
Exhibit G	Value Engineering / Budget Adjustment Worksheet

### **ARTICLE II DATE OF SUBSTANTIAL COMPLETION**

The date of Substantial Completion established by this Amendment is: Pending Notice to Proceed.


OWNER  
**CITY OF BELLAIRE**

CONSTRUCTION MANAGER  
**LINBECK GROUP, LLC**

BY:

\_\_\_\_\_  
Paul A. Hofmann, City Manager

BY:

  
\_\_\_\_\_  
David Stueckler, President & CEO

DATE:

DATE:

5/7/15

TB

# LINBECK

*City of Bellaire - Evelyn's Park – Job 02284*  
*Exhibit A – Drawings, Specifications and Addenda*  
*May 4, 2015*

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>	<u>Latest Revision</u>
<b><u>DRAWINGS:</u></b>			
S001	General Notes	12/16/14	4/10/15
S002	General Notes	12/16/14	
S003	Structural Symbols and Annotation	12/16/14	
S101	Even Building Foundation Plan	12/16/14	4/10/15
S102	Restroom Pavilion Foundation Plan	12/16/14	
S111	Event Building Roof Plan	12/16/14	4/10/15
S112	Restroom Pavilion Roof Plan	12/16/14	
S201	Building Sections	12/16/14	4/10/15
S202	Building Sections	12/16/14	
S301	Typical Details	12/16/14	
S302	Typical Details	12/16/14	
S303	Typical Foundation Details	12/16/14	
S304	Typical Foundation Details	12/16/14	
S305	Typical Foundation Details	12/16/14	
S306	Typical Foundation Details	12/16/14	
S307	Typical Masonry Details	12/16/14	
S308	Typical Wood Framing Details	12/16/14	4/10/15
S309	Typical Wood Framing Details	12/16/14	4/10/15
S400	Foundation Details	12/16/14	4/10/15
S401	Foundation Details	12/16/14	4/10/15
S410	Framing Details	12/16/14	
S411	Framing Details	12/16/14	4/10/15
A000	Index Sheet	12/16/14	4/1/15
A001	Life Safety	12/16/14	
A100	Site Plan	12/16/14	
A101	Site-Floor Plan	12/16/14	
A200	Floor Plan- Event Building	12/16/14	4/1/15
A202	Floor Plan- Restroom Pavilion	12/16/14	2/25/15
A220	Enlarged Plans- Restrooms	12/16/14	4/1/15
A221	Enlarged Plans- Café	12/16/14	4/1/15
A222	Enlarged Plans- Office	12/16/14	4/1/15
A240	Roof Plan- Event Building	12/16/14	4/1/15
A241	Roof Plan- Restroom Pavilion	12/16/14	
A260	Door Schedule	12/16/14	4/1/15
A261	Window Schedule	12/16/14	4/1/15
A262	Room Finish Schedule	12/16/14	4/1/15
A300	RCP- Event Building	12/16/14	4/1/15

# LINBECK

*City of Bellaire - Evelyn's Park – Job 02284*  
*Exhibit A – Drawings, Specifications and Addenda*  
*May 4, 2015*

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>	<u>Latest Revision</u>
A301	RCP- Community Restroom	12/16/14	
A400	Elevations	12/16/14	4/1/15
A401	Elevations	12/16/14	4/1/15
A402	Elevations	12/16/14	4/1/15
A500	Sections	12/16/14	4/1/15
A501	Sections	12/16/14	4/1/15
A502	Sections	12/16/14	
A600	Wall Sections	12/16/14	4/1/15
A601	Wall Sections	12/16/14	4/1/15
A602	Wall Sections	12/16/14	4/1/15
A603	Wall Sections	12/16/14	4/1/15
A605	Wall Sections	12/16/14	4/1/15
A700	Interior Elevations- Event Hall	12/16/14	1/16/15
A701	Interior Elevations- Café	12/16/14	4/1/15
A702	Interior Elevations- Office	12/16/14	2/25/15
A703	Interior Elevations- RR	12/16/14	4/1/15
A704	Interior Elevations- RR Pavilion	12/16/14	2/25/15
A800	Vertical Circulation	12/16/14	2/25/15
A900	Plan Details	12/16/14	4/1/15
A901	Plan Details	12/16/14	
A902	Plan Details	12/16/14	
A903	Plan Details	12/16/14	4/1/15
A910	Section Details	12/16/14	4/1/15
A911	Section Details	12/16/14	4/1/15
A912	Section Details	12/16/14	4/1/15
A913	Section Details	12/16/14	4/1/15
A914	Section Details	12/16/14	4/1/15
A915	Section Details	12/16/14	4/1/15
A950	Millwork	12/16/14	
A1240	Roof Plan- Alternate	12/16/14	
A1300	RCP- Alternate	12/16/14	
A1400	Elevations- Alternate	12/16/14	
A1500	Building Sections- Alternate	12/16/14	
A1600	Wall Sections- Alternate	12/16/14	
A1900	Details- Alternate	12/16/14	
D100	Floor Plan- Demo Plan	12/16/14	
M001	Symbol Legend- Mechanical	12/16/14	
M002	Schedules and Details- Mechanical	12/16/14	4/10/15



# LINBECK

*City of Bellaire - Evelyn's Park – Job 02284*  
*Exhibit A – Drawings, Specifications and Addenda*  
*May 4, 2015*

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>	<u>Latest Revision</u>
M101	Details- Mechanical	12/16/14	
M102	Details- Mechanical	12/16/14	
M103	Details- Mechanical	12/16/14	
M104	Details- Mechanical	12/16/14	
M200	Floor Plan- Event Building- Mechanical	12/16/14	
M201	Floor Plan- Mechanical Piping	12/16/14	
M202	Floor Plans- Pavilions- Mechanical	12/16/14	
M501	Controls, Mechanical	12/16/14	
M502	Controls, Mechanical	12/16/14	
E001	Symbol Legend- Electrical	12/16/14	4/10/15
E002	Lighting Fixture Schedule- Electrical	12/16/14	
E100	Site Plan- Electrical	12/16/14	4/10/15
E200	Floor Plan- Event Building- Power	12/16/14	4/10/15
E300	Floor Plan- Event Building- Lighting	12/16/14	
E401	Enlarged Kitchen- Electrical	12/16/14	
E402	Kitchen Equipment Schedule	12/16/14	
E501	Electrical One-Line Diagram	12/16/14	4/10/15
E601	Electrical Panel Schedules	12/16/14	4/10/15
E602	Electrical Panel Schedules	12/16/14	4/10/15
E701	Details- Electrical	12/16/14	
E702	Details- Electrical	12/16/14	
P001	Symbol Legend- Plumbing	12/16/14	4/10/15
P200	Underfloor Plan- Event Building- Plumbing	12/16/14	4/10/15
P201	Floor Plan- Event Building- Plumbing	12/16/14	4/10/15
P202	Floor Plan- Pavilions- Plumbing	12/16/14	4/10/15
P220	Enlarged Plans- Restrooms	12/16/14	
P300	Plumbing Details	12/16/14	
P401	Enlarged Kitchen- Plumbing	12/16/14	
P402	Kitchen Equipment Schedule	12/16/14	
P500	Sanitary Riser	12/16/14	
P501	Water Riser	12/16/14	4/10/15
LD100	Event Building RCP	12/16/14	
LD101	Community Pavilion RCP	12/16/14	
FS.1	Kitchen Equipment Floor Plan	12/16/14	
FS.2	Kitchen Equipment Listing	12/16/14	
FS.3	Kitchen Plumbing Rough-In Plan	12/16/14	
FS.4	Kitchen Electrical Rough-In Plan	12/16/14	
FS.5	Kitchen Exhaust Hoods	12/16/14	



# LINBECK

*City of Bellaire - Evelyn's Park – Job 02284*  
*Exhibit A – Drawings, Specifications and Addenda*  
*May 4, 2015*

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>	<u>Latest Revision</u>
FS.6	Kitchen Equipment Details	12/16/14	
FS.7	Kitchen Equipment Details	12/16/14	
L0.00	Cover Sheet	12/16/14	
L0.01	Existing Conditions	12/16/14	
L0.02	Alternates Plan	12/16/14	4/10/15
L1.00	Demolition Notes	12/16/14	
L1.01	Demolition Plan	12/16/14	
L2.00	Materials Legend	12/16/14	4/10/15
L2.01	Materials Plan	12/16/14	4/10/15
L3.00	Layout Legend	12/16/14	4/10/15
L3.01	Layout Plan	12/16/14	4/10/15
L3.02	Layout Plan	12/16/14	4/10/15
L3.03	Layout Plan	12/16/14	4/10/15
L3.04	Layout Plan	12/16/14	4/10/15
L3.05	Layout Plan	12/16/14	4/10/15
L3.06	Layout Plan	12/16/14	4/10/15
L3.07	Layout Plan	12/16/14	4/10/15
L3.08	Layout Plan	12/16/14	4/10/15
L3.09	Layout Plan	12/16/14	4/10/15
L4.00	Grading Legend	12/16/14	4/10/15
L4.01	Grading Plan	12/16/14	4/10/15
L4.02	Grading Plan	12/16/14	4/10/15
L4.03	Grading Plan	12/16/14	4/10/15
L4.04	Grading Plan	12/16/14	4/10/15
L4.05	Grading Plan	12/16/14	4/10/15
L4.06	Grading Plan	12/16/14	4/10/15
L4.07	Grading Plan	12/16/14	4/10/15
L4.08	Grading Plan	12/16/14	4/10/15
L4.09	Grading Plan	12/16/14	4/10/15
L4.10	Drainage Details	12/16/14	
L4.11	Drainage Details	12/16/14	4/10/15
L5.01	Site Sections	12/16/14	
L5.02	Site Sections	12/16/14	
L5.03	Site Sections	12/16/14	
L5.04	Site Sections	12/16/14	
L5.05	Site Sections	12/16/14	
L5.06	Hardscape Details	12/16/14	2/25/15
L5.07	Accessible Ramp Details	12/16/14	

# LINBECK

*City of Bellaire - Evelyn's Park – Job 02284*  
*Exhibit A – Drawings, Specifications and Addenda*  
*May 4, 2015*

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>	<u>Latest Revision</u>
L5.08	Site Wall Details	12/16/14	1/9/15
L5.09	Stair Details	12/16/14	
L5.10	Maintenance Area Details	12/16/14	4/10/15
L5.11	Sign and Trellis Details	12/16/14	4/10/15
L5.12	Entry Monument	12/16/14	
L5.13	Butterfly Wall Details	12/16/14	1/9/15
L5.14	Site Furnishings	12/16/14	
L5.15	Site Furnishings	12/16/14	
L5.16	Playground Details	12/16/14	4/10/15
L5.17	Observation Deck and Rails	12/16/14	
L5.17A	Play Area Enlargement	12/16/14	4/10/15
L5.18	Observation Deck and Rails	12/16/14	
L5.19	Fountain Details	12/16/14	1/9/15
WE1.1	Fountain Symbols and Notes	12/16/14	
WE2.1	Fountain Electrical Site Plan	12/16/14	
WE3.1	Fountain Eq. Space Power System	12/16/14	
WE4.1	Water Feature Electrical Details	12/16/14	
WP1.1	Fountain Plumbing Notes & Symbols	12/16/14	
WP2.1	Fountain Site Plan	12/16/14	
WP3.1	Fountain Equipment Site Plan	12/16/14	
WP4.1	Fountain Schematic Piping Diagram	12/16/14	
WP5.1	Fountain Installation Details	12/16/14	
WP5.2	Fountain Installation & Fab. Details	12/16/14	
L6.01	Irrigation Legend	12/16/14	1/26/15
L6.02	Irrigation Plan	12/16/14	1/26/15
L6.03	Irrigation Details	12/16/14	
L6.04	Irrigation Details	12/16/14	
L6.05	Irrigation Details	12/16/14	
L7.00	Planting Legend	12/16/14	4/10/15
L7.01	Planting Plan	12/16/14	4/10/15
L7.02	Planting Details	12/16/14	
L9.00	Lighting Legend	12/16/14	
L9.01	Lighting Plan	12/16/14	
L9.02	Lighting Details	12/16/14	1/19/15
L9.03	Lighting Details	12/16/14	
E0.1	Electrical Specifications	12/16/14	4/14/15
E0.2	Electrical General Notes	12/16/14	4/14/15
E1.1	Site Electrical Plan	12/16/14	4/14/15

# LINBECK

*City of Bellaire - Evelyn's Park – Job 02284*  
*Exhibit A – Drawings, Specifications and Addenda*  
*May 4, 2015*

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>	<u>Latest Revision</u>
E4.0	One-Line Diagrams & Load Analysis	12/16/14	4/14/15
E4.1	Panel & Conduit Schedules	12/16/14	4/14/15
C0.1	Construction Notes	12/15/14	
C1.0	Site Plan	12/15/14	
C2.0	Grading Plan	12/15/14	4/9/15
C2.1	Drainage Plan	12/15/14	4/9/15
C2.2	Drainage Map	12/15/14	4/9/15
C2.3	Flood Plain Mitigation	12/15/14	
C3.0	Utility Plan	12/15/14	4/9/15
C3.1	Plan & Profile/Traffic Control Plan	12/15/14	
C4.0	SWPPP	12/15/14	
C4.1	SWPPP Details	12/15/14	
C5.0	Details	12/15/14	
C5.1	Details	12/15/14	
C5.2	Details	12/15/14	4/9/15
C5.3	Details	12/15/14	
C5.4	Details	12/15/14	
S0.0	General Notes	12/16/14	
S0.1	Typical Details	12/16/14	
S0.2	Typical Details-Retaining Wall and Stair	12/16/14	
S1.0	Site Plan	12/16/14	
S2.0	Seat Walls	12/16/14	
S2.1	Sign and Trellis	12/16/14	
S2.2	Entry Monument	12/16/14	
S2.3	Butterfly Wall	12/16/14	
S2.5	Fountain Plan & Section	12/16/14	
S2.6	Playground Deck Plan	12/16/14	

## SPECIFICATIONS:

Project Manual	12/16/14	4/10/15
----------------	----------	---------

**End of Exhibit A**

**Division 100 – General Conditions**

1. The "Guarantee Maximum Price" (GMP) is based on GMP drawings dated December 16, 2014 as prepared by Lake | Flato Architects.
2. The Guaranteed Maximum Price (GMP) Estimate has also incorporated the following Addendums:
  - a. Addendum 1 dated 01-09-15.
  - b. Addendum 2 dated 01-16-15.
  - c. Addendum 3 dated 01-23-15.
  - d. Addendum 4 dated 02-13-15.
  - e. Addendum 5 dated 02-25-15.
  - f. Addendum 6 dated 04-10-15
3. The GMP includes the cost of a Construction Manager's performance and payment bond.
4. The GMP excludes the cost of all building permits.
5. The GMP includes the cost of Builder's Risk insurance.
6. The GMP excludes any assessment and impact fees required by regulatory agencies.
7. The GMP excludes cost of materials/quality control, third party testing and commissioning and testing services to be provided by Owner.
8. The GMP excludes prevailing wage rates.
9. The GMP excludes the cost of power, water, gas or other utilities used during the work that are provided from permanent utility sources.
10. The GMP includes the cost of parking fees for construction personnel.
11. All FFE (furniture, fixtures and equipment) will be furnished and installed by the Owner.
12. The relocation of Comcast lines and AT&T lines shall be contracted by the Owner directly with these entities. No costs are included in the GMP to address these relocations.
13. The GMP excludes the following additional scope that was included with Addendum #6:
  - a. Additional stump seating;
  - b. Additional ground coverage;
14. GMP excludes cost regarding CenterPoint infrastructure.
15. The GMP excludes trees, ornamental trees and overstock trees as shown on L7.00.
16. The Alternate pricing listed in Exhibit G valid until June 30, 2015.

**Division 200 – Demolition**

1. The GMP excludes lead abatement and asbestos abatement.
2. All Hazardous abatement to be done by Owner prior to construction start. Linbeck will require a certification document to prove abatement is complete.

**Division 300 – Concrete**

1. The GMP includes Form liners as detailed below  
(As listed in Form Liners Manual) <http://www.formliners.com/catalog.php>
  - a. No. 16020 Rough Sawn Plank
2. The GMP includes 8" concrete pads for heat pump equipment.
3. The GMP includes 10' deep light pole foundations.



4. The GMP includes 10' deep site concrete piers.

**Division 400 – Masonry**

1. All CMU is bid as lightweight per ASTM C90. All CMU is standard gray with no special colors or finishes.

**Division 500 – Structural Steel**

1. All Exterior Structural Steel to be galvanized.
2. The GMP Includes Pivoting shutter doors with 2"x2" 11 gauge HSS Steel.
3. The GMP Includes Sliding Steel doors with 2"x2" 11 gauge HSS Steel.
4. The GMP Includes Custom 3/8" Aluminum seats on concrete bench to be powder coated finish.
5. The GMP Includes Custom Benches and chairs made of 3/8" Carbon Steel and powder coated dark brown. Includes allowance for laser cut text.
6. All deck is quoted as non-cellular deck products.
7. The GMP excludes fixed access to the equipment platform.

**Division 600 – Carpentry**

1. Café Millwork
  - a. The GMP includes a display unit with glass allowance of \$1,500.
2. Event Center Wood Paneling
  - a. The GMP includes custom site stained wood panels (standard manufacturer stains).
  - b. The GMP includes sanded edge treatments.
  - c. The GMP includes acoustic fabric under stained wood panels.
  - d. The GMP includes 3/4" sanded oak plywood w/ sanded edges.
  - e. The GMP excludes fire rated oak panels.
  - f. The GMP includes installation of panels by screw attachments only.
  - g. The GMP excludes any special patterns or designs on the Wood Panels.
3. The GMP excludes FSC certification and reporting.
4. The GMP excludes any reglets at wood panel walls.
5. The GMP includes solid surface countertops in event center bathroom and not stainless steel.
6. The GMP includes all bronze cladding and other metal cladding to be 1/4" with Standard Pattern.

**Division 700 – Thermal Moisture & Protection**

1. The GMP includes the following for air barrier membrane.
  - a. Membrane flashing at:
    - i. Base
    - ii. Perimeters of doors and windows
    - iii. Shelf angles
    - iv. Wall-to-roof transitions

- b. Joint Sealants Polyurethane sealants and caulking at:
  - i. Sidewalk expansion joints
  - ii. Site concrete paving to building isolation joints
  - iii. Site concrete paving expansion joints
  - iv. Curb expansion joints
- c. Standing Seam Metal Roof includes the following:
  - i. 26 gauge standing seam roof from Pre – Engineered Building Manufacturers Standard Colors
  - ii. We have included perimeter gutters w/ rain chain downspouts

**Division 800 – Glass & Glazing**

- 1. The GMP includes 3,995 SF of storefront glass.

**Division 900 – Walls, Ceilings and Acoustical**

- 1. The GMP includes medium orange peel finish for all drywall walls.

**Division 900 – Floors**

- 1. All remaining unused flooring, approximately 1% to 2%, will be provided as attic stock in lieu of the specified 5% attic stock.
- 2. We have included sealed floors and polished floors as shown in finish schedule.

**Division 900 – Painting and Wall covering**

- 1. Pavilion and entry canopies will have a paint-over galvanized finish.
- 2. The GMP includes site stained oak wall MDF strips and site stained oak wall panels.

**Division 2300 – Electrical**

- 1. The GMP includes installing new bused weather-head / CT Electrical service per CenterPoint Standards.
- 2. All site electrical and lighting included that is shown on the electrical drawings. Any lights or electrical elements shown on the landscape drawings are not included in the GMP.
- 3. Per the Architect, light fixtures shown on the landscaping drawings are not included.
- 4. The GMP excludes all security wiring; devices are furnished and installed by others. GMP includes back boxes and conduit in concealed spaces for the security items shown on the drawings only.
- 5. The GMP excludes Tele Data, Security, Audio and CATV systems.
- 6. The GMP includes conduit and string through inaccessible spaces/ceilings. All other required infrastructure (J-hooks, straps, cable tray, cable baskets, etc.) in accessible areas and accessible ceilings is by Owner.
- 7. All electrical work is in compliance with NFPA70E.

**Division 2400 – HVAC I Plumbing I Fire Protection**

- 1. The GMP includes a NEBB certified air balance.



2. Per the Owner, enhanced commissioning for the MEP systems is not to be included.  
The GMP does includes start-up and TAB per the specifications.
3. The GMP includes the manufacturer's standard internal vibration isolation on equipment as shown.
4. The GMP includes life safety dampers as shown on the drawings.
5. The GMP includes concealed heads with flexible connectors and standard color cover plates in acoustical suspended ceiling (located in catering/kitchen area) are included.
6. The GMP includes sprinkler pipe as schedule 40 threaded connections at 2" and smaller, and victaulic pipe connections for 2 1/2" and larger.
7. The GMP includes design for the Fire Protection system for a minimum water supply of 1000 GPM at a residual pressure of 50 psi.
8. The GMP includes fire sprinkler system designed for a light and ordinary hazard per NFPA 13, as indicated on the drawings.
9. The GMP includes risers to include a riser check valve, electric bell, main drain assembly, test and drain assembly, wall mounted Fire department connection complete with check valve, ball drip and ID plate, flow switch, control valve with tamper switch.
10. The GMP excludes fire protection heads at composite wood roof eaves or ceilings.
11. The GMP excludes Sprinkler heads lower than 7'-0" AFF will be protected with head guards.

**Division 2600 – Sitework**

1. The GMP excludes the lift station, assumed not required.
2. The GMP includes foundations for the memorial garden foundations.
3. The GMP includes ground slide only.
4. The GMP excludes procurement and installation of wood "Dragonfly" climbing structure.
5. The GMP includes concrete Butterfly Wall. Aluminum donor panels and anchor pins excluded.

**End of Exhibit B**

The GMP includes the following Allowances. When the actual costs are determined, the GMP will be adjusted by Change Order to incorporate the actual cost and the corresponding Construction Manager's General Conditions, Contingency and Fee. The Allowance amounts listed below include furnishing and installing the scope of Work, unless otherwise noted.

1. Site Lighting Controllers	\$2,500
2. Building Lighting Controllers	\$2,500
3. Light Fixture – BZ1	\$2,500
4. Light Fixture – BZ3	\$500

**End of Exhibit C**

The following Alternates are offered as possible cost reductions or enhancements to the Project. Based on the acceptance or rejection of each alternate, the GMP will be adjusted by Change Order.

1. Solar Panels and Electrical Infrastructure	\$120,750
2. L7 Uplight Alternates and Floodlights	\$28,750
3. String Lighting and Poles	\$20,700
4. Stump Seating	\$14,375
5. Ground Cover	\$97,750

**End of Exhibit D**

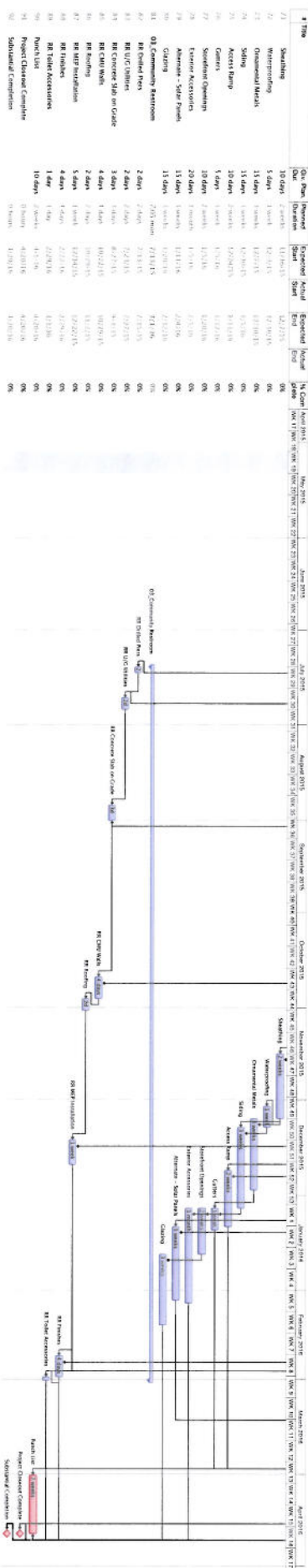
Exhibit E

EVELYN'S PARK CONSTRUCTION SCHEDULE - 05/04/15



Exhibit E

EVELYN'S PARK CONSTRUCTION SCHEDULE - 05/04/15



End of Exhibit E



## LINBECK

*Evelyns Park*  
*Exhibit F - Guaranteed Maximum Price Summary*  
 Site & Event Center

GMP  
 Estimate Date: 05/04/15

Estimator: J. Henderson

Gross Building Area: 7,700 SF  
 Story Height: 1

Division	Work Category	Labor	Sub Contract	Purchase Contract	Material	Equipment	Total	\$/CSF	% of Total
Division 01	General Conditions	\$2,100	\$0	\$32,991	\$14,659	\$0	\$49,750	6.46%	0.79%
Division 01	Project Personnel	\$438,107	\$0	\$0	\$5,257	\$0	\$443,364	57.58%	7.08%
Division 01	Temporary Facilities	\$3,683	\$4,683	\$0	\$79,546	\$0	\$87,912	11.42%	1.40%
Division 02	Demolition	\$0	\$50,000	\$0	\$1,359	\$0	\$51,359	6.67%	0.82%
Division 03	Concrete Formwork	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%
Division 03	Concrete Reinforcing	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%
Division 03	Concrete Placement & Finish	\$0	\$679,340	\$0	\$16,971	\$0	\$696,311	90.43%	11.12%
Division 03	Precast Concrete	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%
Division 04	Masonry & Stone	\$0	\$30,000	\$0	\$815	\$0	\$30,815	4.00%	0.49%
Division 05	Metals	\$0	\$245,100	\$0	\$7,164	\$0	\$252,264	32.76%	4.03%
Division 06	Carpentry	\$0	\$124,078	\$0	\$3,508	\$0	\$127,586	16.57%	2.04%
Division 07	Thermal & Moisture Protection	\$0	\$64,400	\$0	\$1,924	\$0	\$66,324	8.61%	1.06%
Division 08	Doors Frames & Hardware	\$3,450	\$45,075	\$0	\$2,618	\$0	\$51,143	6.64%	0.82%
Division 08	Glass & Glazing	\$0	\$168,496	\$0	\$4,737	\$0	\$173,233	22.50%	2.77%
Division 09	Finishes - Plaster & Drywall	\$0	\$72,150	\$0	\$2,042	\$0	\$74,192	9.64%	1.18%
Division 09	Finishes - Ceilings & Floors	\$0	\$64,200	\$0	\$1,910	\$0	\$66,110	8.59%	1.06%
Division 09	Finishes - Paint & Wall Coverings	\$0	\$90,075	\$0	\$2,622	\$0	\$92,697	12.04%	1.48%
Division 10	Building Specialties	\$2,760	\$27,500	\$0	\$977	\$0	\$31,237	4.06%	0.50%
Division 11	Equipment	\$0	\$209,000	\$0	\$3,135	\$0	\$212,135	27.55%	3.39%
Division 12	Furnishings	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%
Division 14	Conveying Systems	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%
Division 21	Fire Suppression Systems	\$0	\$46,625	\$0	\$1,267	\$0	\$47,892	6.22%	0.76%
Division 22	Plumbing	\$0	\$181,000	\$0	\$4,947	\$0	\$185,947	24.15%	2.97%
Division 23	HVAC	\$0	\$304,675	\$0	\$8,228	\$0	\$312,903	40.64%	5.00%
Division 26	Electrical	\$0	\$881,675	\$0	\$22,500	\$0	\$904,175	117.43%	14.44%
Division 27	Communication	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%
Division 28	Electronic Safety & Security	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%
Division 31	Earthwork	\$22,000	\$360,431	\$0	\$11,174	\$0	\$393,605	51.12%	6.29%
Division 32	Exterior Improvements	\$0	\$1,037,254	\$0	\$28,990	\$0	\$1,066,244	138.47%	17.03%
Division 33	Utilities	\$0	\$478,571	\$0	\$12,288	\$0	\$490,859	63.75%	7.84%
Subtotal		\$472,100	\$5,164,328	\$32,991	\$238,638	\$0	\$5,908,057	\$767.28	94.34%
Escalation							\$0	0.00%	0.00%
Fee							\$177,242	23.02%	2.83%
Contingency							\$177,242	23.02%	2.83%
Total							\$6,262,541	\$813.32	100.00%

End of Exhibit F



## LINBECK

## Exhibit G

City of Bellaire - Evelyn's Park

Value Engineering / Budget Adjustment Worksheet

May 4, 2015

Note: Adjustments for Alternates and New Scope include applicable Linbeck fee and General Conditions costs

Description	Adjustments			Estimate	Comments
	Pending	Rejected	Accepted		
<b>I. Original Budget</b>				<b>\$6,884,570</b>	
<b>II. Event Center</b>					
1. Reduce General Conditions					Reduction totaling \$152,037 included
2. Provide prefabricated canopy units at Café Porch, north elevation of Events Building, and Restroom Building in lieu of structural steel canopy as indicated			(\$5,000)		Addendum #6 documents reflect agreed VE
3. Provide alternate toilet partitions in lieu of specified ones.		(\$4,600)			Metal Partitions Floor Mounted Powder Coated
4. Provide alternate pricing Ambienta Cubicle™ - Restroom Compartments		\$2,736			<a href="http://levey-ambienta.com/ambientacubicles.html">http://levey-ambienta.com/ambientacubicles.html</a>
5. Provide manual flush in lieu of electronic flush toilet fixtures / sinks			(\$4,647)		Addendum #6 documents reflect agreed VE
6. Eliminate Building Management System			(\$40,000)		Addendum #6 documents reflect agreed VE
7. Revise Outside Air Units per Lake Flato narrative: - Switch to DX split system - Eliminate kitchen exhaust makeup air unit OAU 3 and OAU 4 - Reduce tonnage to HP-4 from 32 - 16 tons		(\$55,000)			Determined to not be feasible
8. Revise Outside Air Units per Lake Flato narrative: With Electrical Option A		\$20,810			Reviewing to Addison and Controls and VRS system compatibility. Evaluating increase in Electrical Load
9. Revise Outside Air Units per Lake Flato narrative: With Electrical Option B		(\$3,000)			Reviewing to Addison and Controls and VRS system compatibility. Evaluating increase in Electrical Load
10. Provide alternate light fixture package at building		(\$20,000)			Second alternate light fixture package to be defined and evaluated at a later date
11. Provide aluminum main electrical feed in lieu of copper		(\$7,500)			Electrical Feed from switchgear to panels only. Copper to be used for distribution
12. Provide alternate electrical box in lieu of Brooks		\$0			OHMS Electric has provided an Equal product in their current pricing
13. Provide alternate vendors in lieu of Square D per Lake Flato list: - Siemens - Schneider - Eaton / Cutler Hammer - General Electric			(\$10,000)		Addendum #6 documents reflect agreed VE

Description	Adjustments			Estimate	Comments
	Pending	Rejected	Accepted		
14. Provide single electrical service in lieu of separate service with separate meters instead of sub meters. Intent to monitor usage.		(\$5,000)			(Material Price Only) Need further investigation
15. Reduce total service to 1000 Amps		(\$7,000)			To reduce main switchgear to 1000 amps (Material Price Only)
16. Provide electric feed to south fountain from building in lieu of separate line feed		\$0			After further review Current Design is most economical
17. Eliminate exterior trench drain at Event Room Doors (at Grid Line C)			(\$3,500)		Addendum #6 documents reflect agreed VE
18. Eliminate fire suppression at Roof Eaves			(\$9,500)		Per Fire Marshall additional heads at exterior overhangs for event Building and Café not required. Fire Marshall does require a backflow meter at the assembly.
19. Provide non-thermally broken glazing system in lieu of thermally broken system (Kawneer Trifab 451T)		(\$5,000)			New Energy Code will require Thermally broken
20. Provide polished (not ground) concrete floor at Restroom in lieu of tile			(\$4,800)		Addendum #6 documents reflect agreed VE
21. Provide FRP at Café Kitchen in lieu of wall tile			(\$3,800)		Addendum #6 documents reflect agreed VE
22. Provide Architectural Components Group, "Linear Open Series 1" at Event Room ceiling in lieu of specified system			(\$10,000)		Addendum #6 documents reflect agreed VE
23. Provide polished concrete (not ground) at Event Room in lieu of ground and polished concrete as specified			(\$18,400)		Addendum #6 documents reflect agreed VE
24. Provide Top Cast (by Grace) at exterior concrete at building in lieu of sandblast concrete as specified			\$0		Medium Sandblasting and Top Cast cost the same for the low SF ( 1,960)
25. Provide painted galvanized exterior steel in lieu of galvanized exterior steel with High Performance Coating as specified		(\$2,000)			Kits are \$180 for 2 gallons (Coverage 600 sf) Material Cost only because labor will be the same
26. Provide High Performance no galvanizing		(\$5,000)			Galvanizing steel recommended
27. Alternate Hardware Selections			(\$35,000)		Pricing Reflects Addendum #6 documents
<i>Subtotal - Event Center Adjustments</i>	\$0	(\$90,554)	(\$144,647)		
<b>III. Site and Landscape</b>					



Description	Adjustments			Estimate	Comments
	Pending	Rejected	Accepted		
28. Planting VE: 2.1 - Reduce Shrub and Groundcover Areas (replace with sod/seeded grass mix per plan markup) 2.2 - Reduce Shrub and Groundcover sizes and increase spacing 2.3 - Omit sod at all lawn/turf areas; substitute with hydroseeded turf grass 2.4 - Omit shrub/groundcover beds on west side of Event Building and N/W Parking Lot			(\$47,476)		Addendum #6 documents reflect agreed VE
29. Irrigation VE: 3.1. Re-route main line at SW corner of site away from existing trees (reduce hand excavation)			(\$1,200)		Addendum #6 documents reflect agreed VE
30. Irrigation VE: 3.2. Substitute drip irrigation at shrub/groundcover beds except at locations with preserved existing trees 3.3. Utilize full-rotor head layout at great lawn 3.4. Review controller specification for possible savings			(\$6,579)		
31. Earthwork VE: 4.1. Reduce fill at existing tree locations (+/- 3" grade differential max)			\$0		Elevations not changed on most recent drawings
32. Earthwork VE: 4.2. Reduce height of all berms by 6"			\$0		Addendum #6 documents do not reflect agreed VE: Grade heights not revised.
33. Earthwork VE: 4.3. Reduce Elevation at building and parking lot by 3"		(\$7,200)			650 CY reduction for Berm Height Reduction
34. Earthwork VE: 4.4. Reduce Northwest Berm by 2' (create enlarged swale)		(\$4,888)			444 CY reduction for Berm Height Reduction
35. Site Utilities VE: 5.1. Reduce water line scope as noted 5.2. Omit water meter/tap at NW corner of site 5.4. Omit water and sanitary stub-outs for future fountain and lake facilities			\$0		Addendum #6 documents do not reflect agreed VE: Water meter and main water line increased in size from 2" to 3" (offsetting other cost savings).
36. Site Utilities VE: 5.3. Re-Route sanitary feed to restroom as noted			(\$1,662)		Addendum #6 documents reflect agreed VE
37. Site Utilities VE: 5.5. Water line feed to proposed fountain to be routed off of building water line			(\$1,300)		Addendum #6 documents reflect agreed VE
38. Site Utilities VE: 5.6. Omit hose bib at service yard (provide irrigation quick coupler at that location)			(\$1,500)		Addendum #6 documents reflect agreed VE

Description	Adjustments			Estimate	Comments
	Pending	Rejected	Accepted		
39. Storm Drainage VE: 5.7 Omit 'bioswale'; substitute with cobble lined swale to storm inlet			(\$7,500)		Addendum #6 documents do not reflect agreed VE: Only partial scope changes related to bioswale included.
40. Storm Drainage VE: 5.8 Revise drainage locations and pipe lengths per revisions sketch 5.9 Delete 16 area drains			(\$80,000)		Addendum #6 documents do not reflect agreed VE: Invert elevations not revised as discussed previously.
41. Electrical VE: 6.1. Verify that there is no overlap in pricing of site electrical/site lighting with Architectural Lighting			\$0		6.1 No overlap between Site Lighting / Building
42. Electrical VE: 6.2. Replace Event Power bollard at lawn with rack/enclosure per detail provided			(\$3,050)		Addendum #6 documents reflect agreed VE
43. Electrical VE: 6.3. Relocate north electrical service to mid-block (Newcastle) location per sketch		(\$12,000)			
44. Electrical VE: 6.4 Tree uplights at promenade to be Alternate 6.5 Provide 'or-equal' light fixtures			\$0		Refer to Alternate list below
45. Electrical VE: 6.7 Delete Switchgear change to Gutter / Disconnect for Electrical Mains		\$0			
46. Hardscape Materials VE: 7.1 Reduce width of decomposed granite paths at meadow garden; reduce by 4' (net 6' width)			(\$8,500)		Addendum #6 documents reflect agreed VE
47. Hardscape Materials VE: 7.2 Omit wood deck at top of slide; substitute with p.i.p concrete slab with architectural finish. Delete Rails, Piers and overlook structure.			(\$44,977)		Addendum #6 documents reflect agreed VE
48. Hardscape Materials VE: 7.3 Revise log benches detail (utilize on site logging w/ pins anchoring to subgrade)			(\$15,000)		Addendum #6 documents reflect agreed VE
49. Hardscape Materials VE: 7.4 Substitute 'Rainscreen' fence at service yard with horizontal cedar board fence; 8' height with metal posts			(\$8,500)		Addendum #6 documents reflect agreed VE
50. Hardscape Materials VE: 7.6 Change P2 - Stone Paving to DG Paving with Steel Edge			\$0		Addendum #6 documents do not reflect agreed VE: Stone P2 not revised to be DG w/ steel edge



Description	Adjustments			Estimate	Comments
	Pending	Rejected	Accepted		
Hardscape Materials VE: 7.7 Columbia Cascade makes two alternatives for embankment slides: a. E1644-162-EMB (this is a double slide, so it may save some money as opposed to buying two separate slides)		(\$1,125)			Minimal Cost Difference with this product
Hardscape Materials VE: a. Columbia Cascade makes two alternatives for embankment slides b. 1650-193-01-EMB		(\$271)			No Cost Difference with this product
Hardscape Materials VE: 7.9 Trash Receptacle – Landscape Forms Lakeside		(\$8,546)			
54. Provide High Performance no Galvanizing		(\$5,000)			As related to all site Structural Steel
55. Trees for Houston (TFH) - Donation of trees and installation			(\$148,212)		Full deduct included in GMP per TFH, EPC, and COB
56. Reduced bench count and revised trash can specification			(\$16,000)		Addendum #6 documents reflect agreed VE
57. Monument Placement by Artist			(\$9,800)		Addendum #6 documents reflect agreed VE
<b>Subtotal - Site and Landscape Adjustments</b>	\$0	(\$45,609)	(\$394,677)		
<b>IV. Miscellaneous Value Engineering Items</b>					
58. Replicate Café (Yellow House)			(\$60,000)		Additional savings via reduced General Conditions
59. Delete East Parking		(\$37,000)			
60. Delete Pavilion Bathroom		(\$79,240)			
<b>Subtotal - Miscellaneous Adjustments</b>	\$0	(\$116,240)	(\$60,000)		
<b>Subtotal - Event Center, Site and Landscape, and Misc.</b>	\$0	(\$252,403)	(\$599,324)		
<b>Linbeck Fee Adjustment (3%)</b>			(\$17,980)		
<b>Construction Contingency Adjustment (3%)</b>			(\$17,980)		
<b>Revised GMP (w/ Accepted VE Items)</b>				\$6,249,287	

Description	Adjustments			Estimate	Comments
	Pending	Rejected	Accepted		
V. Alternates					
61. Alternate "A" - Hydroseed in lieu of sod			(\$22,971)		Accepted, per 5/1/15 team meeting
62. Alternate "B" - Solar panels and electrical infrastructure		\$120,750			Rejected, per 5/1/15 team meeting
63. Alternate "C" - L7 Uplight alternates and floodlights		\$28,750			Rejected, per 5/1/15 team meeting
64. Alternate "D" - String lighting and poles		\$20,700			Rejected, per 5/1/15 team meeting
Subtotal	\$0	\$170,200	(\$22,971)	(\$22,971)	
VI. Potential New Scope (per Addendum #6)					
65. Electrical Items: Added Circuits for door contacts for Security Hardware, Power to Security Panel, 100 Amp recept and 100 amp circuit, Power to added fan coil unit.			\$22,425		Accepted, per 5/1/15 team meeting
66. Pavers			\$8,625		Accepted, per 5/1/15 team meeting
67. Fan coil unit			\$5,175		Accepted, per 5/1/15 team meeting
68. Stump seating		\$14,375			Rejected, per 5/1/15 team meeting
69. Ground cover		\$97,750			Rejected, per 5/1/15 team meeting
Subtotal	\$0	\$112,125	\$36,225	\$36,225	
Approved GMP Total		\$6,262,541			





# **ORDINANCE NO. 14-071**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, AUTHORIZING THE MAYOR OF THE CITY OF BELLAIRE, TEXAS, TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF BELLAIRE, TEXAS, A "STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR (AIA DOCUMENT A133 – 2009)" WITH LINBECK GROUP, LLC, FOR PRE-CONSTRUCTION AND CONSTRUCTION SERVICES ASSOCIATED WITH PHASE ONE OF EVELYN'S PARK LOCATED AT 4400 BELLAIRE BOULEVARD, BELLAIRE, TEXAS 77401, IN AN AMOUNT NOT TO EXCEED \$10,000.00 (\$5,000.00 PER MONTH) FOR PRE-CONSTRUCTION SERVICES AND IN AN AMOUNT NOT TO EXCEED 3% OF THE ACTUAL COST OF WORK ASSOCIATED WITH THE CONSTRUCTION OF PHASE ONE OF EVELYN'S PARK.**

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

**Section 1.** The Mayor of the City of Bellaire, Texas, is hereby authorized to execute, for and on behalf of the City of Bellaire, Texas, a "Standard Form of Agreement Between Owner and Construction Manager as Constructor (AIA Document A133 – 2009)," with Linbeck Group, LLC, for pre-construction services and construction services associated with Phase One of Evelyn's Park located at 4400 Bellaire Boulevard, Bellaire, Texas 77401, in an amount not to exceed \$10,000.00 (\$5,000.00 per month) for pre-construction services and in an amount not to exceed 3% of the actual cost of work associated with the construction of Phase One of Evelyn's Park.

**Section 2.** The following documents comprise the entire Agreement between the City of Bellaire, Texas, and Linbeck Group, LLC, for pre-construction and construction phases for Phase One of Evelyn's Park, and are attached hereto and marked Exhibit "1":

- a. AIA Document A133 – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price;
- b. AIA Document A201 – 2007, General Conditions of the Contract for Construction;
- c. Personnel Categories and Rates;
- d. Insurance Requirements; and
- e. Owner's Financial Information.

PASSED, APPROVED, and ADOPTED this, the 15<sup>th</sup> day of December, 2014.

(SEAL)



SIGNED:

Dr. Philip L. Nauert  
Mayor

APPROVED AS TO FORM:

Alan P. Petrov  
City Attorney

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)



## **EXHIBIT 1**

**AIA Document A133 – 2009  
(Standard Form of Agreement)**

**AIA Document A201 -- 2007  
(General Conditions for Construction)**

**Personnel Categories and Rates**

**Insurance Requirements**

**Owner's Financial Information**

Construction Manager:

Linbeck Group, LLC

Project:

Phase One for Evelyn's Park

Approved by:

Ordinance No. 14-071 dated December 15, 2014

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)



# AIA® Document A133™ – 2009

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

**AGREEMENT** made as of the 15 day of December in the year 2014  
(In words, indicate day, month and year.)

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

City of Bellaire, Texas  
7008 South Rice Avenue  
Bellaire, TX 77401

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

Linbeck Group, LLC  
3900 Essex Lane  
Houston, TX 77027

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

Evelyn's Park  
4400 Bellaire Blvd.  
Bellaire, TX 77401

The Architect:  
(Name, legal status and address)

Architect of Record: Lake Flato Architects  
311 3<sup>rd</sup> Street  
San Antonio, TX 78205

Landscape Architect: SWA  
1245 West 18<sup>th</sup> Street  
Houston, TX 77008

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

Karl Miller  
City of Bellaire, TX  
7008 5<sup>th</sup> Street  
Bellaire, TX 77401  
713-662-8109  
C: 713-240-2286  
kmiller@ci.bellaire.tx.us

### **ADDITIONS AND DELETIONS:**

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

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

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

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)

Init.

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

Tom Butler  
 Linbeck Group, LLC  
 3900 Essex Lane, Suite 1200  
 Houston, TX 77027  
 Telephone Number: 713.621.2350  
 Fax Number: 713.840.7525  
 Mobile Number: 713.824.2640  
 tbutler@linbeck.com

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

Graham Beach  
 Lake Flato Architects  
 311 3rd Street  
 San Antonio, TX 78205  
 gbeach@lakeflato.com

The Owner and Construction Manager agree as follows.

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)

Init.



## TABLE OF ARTICLES

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

## ARTICLE 1 GENERAL PROVISIONS

## § 1.1 The Contract Documents

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

## § 1.2 Relationship of the Parties

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

## § 1.3 General Conditions

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

**§ 1.4 Priority of Construction Contract Documents** If the Contract Documents contain any inconsistency, ambiguity or discrepancy, the following priority shall apply: (1) written Modifications issued after execution of this Agreement; (2) the Exhibits to this Agreement; (3) this Agreement (excluding the A201-2007); (4) the A201-2007; (5) the Drawings; and (6) the Specifications.

## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

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

### **§ 2.1 Preconstruction Phase**

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

### **§ 2.1.2 Consultation**

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

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

### **§ 2.1.4 Phased Construction**

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

### **§ 2.1.5 Preliminary Cost Estimates**

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

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

### **§ 2.1.6 Subcontractors and Suppliers**

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

Init.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 2.1.8 Extent of Responsibility

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

#### § 2.1.9 Notices and Compliance with Laws

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

#### § 2.2 Guaranteed Maximum Price Proposal and Contract Time

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

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

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

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

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

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information

Init.

presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

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

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

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

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

## § 2.3 Construction Phase

### § 2.3.1 General

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

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

### § 2.3.2 Administration

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

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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



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

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

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

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

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

#### § 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases. The Construction Manager shall not provide professional services that constitute the practice of architecture or engineering, unless the Contract Documents specifically requires such services and the GMP specifically includes such services. If such professional services are required, Owner shall limit Construction Manager's liability for such services to the amount and extent of the professional liability insurance proceeds obtained from the Subcontractor (or from such Subcontractor's consultant) performing such professional services.

#### § 2.5 Hazardous Materials

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

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

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

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract in the form attached as **Exhibit F**. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

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

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

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

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

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

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

### **§ 3.2 Owner's Designated Representative**

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

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

### **§ 3.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. If the Owner retains an engineer to provide engineering services, Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and engineer, and any further modifications to the agreement.

## **ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

### **§ 4.1 Compensation**

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

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

Owner shall pay Construction Manager an amount not to exceed Five Thousand Dollars (\$5,000) per month for two (2) months to perform the Preconstruction Phase services.

Init.



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

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

## § 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

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

Owner shall pay Construction Manager a fee equal to three percent (3.0%) of the Cost of the Work in the GMP (as adjusted by Change Orders).

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

Construction Manager's Fee on additive changes shall be three percent (3%).

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

Any limitations will be included in the GMP proposal.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
Any unit prices will be included in the GMP proposal.		

## § 5.2 Guaranteed Maximum Price

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

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

Savings are calculated by subtracting the actual Cost of the Work from the Cost of the Work in the GMP at Final Completion. Owner shall retain one hundred percent (100%) of any savings.

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

**§ 5.2.3 Construction Manager's Contingency ("Contingency")**

- a. The Contingency is an amount included in the GMP and listed as a separate line item in the Schedule of Values. The Contingency applies to actual Costs of the Work that exceed estimated Costs of the Work in the GMP. Construction Manager shall furnish to Owner written documentation supporting Construction Manager's use of the Contingency.
- b. The Contingency does not apply to (i) costs incurred due to unforeseen, unusual, or latent conditions or (ii) costs due to changes in the scope or quality of the Work. If Construction Manager encounters such conditions or Owner directs such changes, then the GMP shall be adjusted according to the Contract Documents.
- c. Owner shall retain any unused Contingency.

**§ 5.3 Changes in the Work**

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

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

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

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

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

**ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

**§ 6.1 Costs to Be Reimbursed**

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

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

Init.

## § 6.2 Labor Costs

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

§ 6.2.2 Wages or salaries of the Construction Manager's executive, estimating, supervisory and administrative personnel at the hourly rates specified in **Exhibit D**, but only for that portion of the time performing the Work. Owner acknowledges that Construction Manager's personnel are employed by Aquinas Management Services, LLC. *(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

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

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

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

§ 6.2.5 All rates and benefits are subject to annual adjustment in accordance with Construction Manager's employment policies.

## § 6.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

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

#### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The insurance coverage and agreed premium rates are described in Exhibit E.

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

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

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

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

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

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

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

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

§ 6.6.10 Costs incurred in performing pre-employment physicals and in conducting drug/alcohol testing directly related to the Project.

§ 6.6.11 Project fees payable to the Associated General Contractors of America.

#### § 6.7 Other Costs and Emergencies

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



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

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

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

#### § 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Except as provided in this Agreement, costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

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

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

#### § 6.10 Related Party Transactions

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

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

Init.



### § 6.11 Accounting Records

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

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

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

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the thirtieth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

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

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. Construction Manager does not guarantee individual line items in the GMP. Construction Manager may adjust line items in the schedule of values submitted with the Applications for Payment.

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

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

- .1 Take the actual costs incurred in performing the Work. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;

Init.

- .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. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent (10%) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

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

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

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

## § 7.2 Final Payment

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

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

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

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

Init.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 60-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the undisputed amount.

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

#### ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007 and **Exhibit E**.  
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Construction Manager shall provide a performance and payment bond in the amount of the GMP.	

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☒ [ **XX** ] Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ [ ] Litigation in a court of competent jurisdiction

☐ [ ] Other: (Specify)

#### § 9.3 Initial Decision Maker

Intentionally deleted.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

The parties agree not to employ the provisions relating to the Initial Decision Maker.

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)

**ARTICLE 10 TERMINATION OR SUSPENSION****§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price**

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

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

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

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

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

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

**§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

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

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

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

Init.



**§ 10.3 Suspension**

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

**ARTICLE 11 MISCELLANEOUS PROVISIONS**

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

**§ 11.2 Ownership and Use of Documents**

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

**§ 11.3 Governing Law**

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

**§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 11.5 Other provisions:****§ 11.5.1 ATTORNEY FEES**

If any action at law or in equity, including arbitration proceedings, is necessary to enforce or interpret the terms of this Agreement, the Court or arbitrator(s) shall determine the prevailing party and award to such prevailing party its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in such proceeding, in addition to any other relief to which such party is entitled.

**§ 11.5.2 MULTIPLE ORIGINAL COUNTERPARTS**

This Agreement may be executed in multiple original counterparts. Faxed or electronically scanned signatures are sufficient and acceptable.

**§ 11.5.3 PARTIAL INVALIDITY DOES NOT INVALIDATE CONTRACT DOCUMENTS**

The invalidity of any part or portion of the Contract Documents does not impair or affect the validity, enforceability or effect of the remainder of the Contract Documents.

**§ 11.5.4 SURVIVAL**

All provisions that by their nature survive termination of the Agreement or final completion of the Work, such as warranties, indemnities, confidentiality provisions, and arbitration provisions, shall remain in force and effect after final completion or termination of the Agreement.

**§ 11.5.5** The Construction Manager's team will consist of the project manager and project superintendent specifically named in the Construction Manager's proposal and mentioned in the interview with the Owner. Any changes to the Construction Manager's project manager and project superintendent must have the Owner's prior approval.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:



- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

N/A

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

N/A

- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

Exhibit A – N/A

Exhibit B – N/A

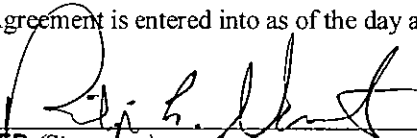
Exhibit C – N/A

Exhibit D – Construction Personnel Categories and Rates

Exhibit E – Insurance Requirements and Rates

Exhibit F – Owner's Financial Disclosure

This Agreement is entered into as of the day and year first written above.

  
OWNER (Signature)

  
CONSTRUCTION MANAGER (Signature)

Dr. Phil Nauert, Mayor, City of Bellaire, Texas  
(Printed name and title)

David M. Stueckler, President and CEO  
(Printed name and title)

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)

Init.

# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Evelyn's Park  
4400 Bellaire Blvd.  
Bellaire, TX 77401

### THE OWNER:

*(Name, legal status and address)*

City of Bellaire  
7008 5th Street  
Bellaire, TX 77401

### THE ARCHITECT:

*(Name, legal status and address)*

Architect of Record: Lake Flato Architects  
311 3<sup>rd</sup> Street  
San Antonio, TX 78205

Landscape Architect: SWA  
1245 West 18<sup>th</sup> Street  
Houston, TX 77008

### 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.

### TABLE OF ARTICLES

- |    |  |
|----|--|
| 1  | GENERAL PROVISIONS                               |
| 2  | OWNER  |
| 3  | CONTRACTOR                                       |
| 4  | ARCHITECT  |
| 5  | SUBCONTRACTORS                                   |
| 6  | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7  | CHANGES IN THE WORK                              |
| 8  | TIME   |
| 9  | PAYMENTS AND COMPLETION                          |
| 10 | PROTECTION OF PERSONS AND PROPERTY               |
| 11 | INSURANCE AND BONDS                              |
| 12 | UNCOVERING AND CORRECTION OF WORK                |
| 13 | MISCELLANEOUS PROVISIONS                         |
| 14 | TERMINATION OR SUSPENSION OF THE CONTRACT        |
| 15 | CLAIMS AND DISPUTES                              |

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)

Init.

**INDEX**

(Topics and numbers in bold are section headings.)

**Acceptance of Nonconforming Work**9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3****Access to Work****3.16**, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, **15.2**

Addenda

1.1.1, **3.11.1**

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, **15.1.4****Additional Inspections and Testing**9.4.2, 9.8.3, **12.2.1**, **13.5**

Additional Insured

11.1.4

**Additional Time, Claims for**3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5****Administration of the Contract**3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

**Allowances****3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

**Applications for Payment**4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, **13.5.1****Arbitration**8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4****ARCHITECT****4**

Architect, Definition of

**4.1.1**

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, **12.1**, **12.2.1**, **13.5.1**, **13.5.2**, **14.2.2**, **14.2.4**, **15.1.3**, **15.2.1**

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, **15.1.3**, **15.2**

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, **12.2.1**, **13.5.2**, **13.5.3**, **14.2.4**

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, **15.2**, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, **12.1.2**, **12.2.1**

Architect's Copyright

1.1.7, **1.5**

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, **13.5.2**, **15.2**, **15.3**

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, **13.5**

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, **13.5.2**

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, **1.5**, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, **13.5**, **15.2**

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, **11.3.7**

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, **13.5**

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

**Award of Subcontracts and Other Contracts for Portions of the Work****5.2****Basic Definitions****1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, **15.3.2**, **15.4.1****Boiler and Machinery Insurance****11.3.2**

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

**Bonds, Performance, and Payment**7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Init.

**Capitalization****1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7,

9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

**Change Orders**

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8,

5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1,

9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2,

15.1.3

**Change Orders, Definition of****7.2.1****CHANGES IN THE WORK**

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1,

9.3.1.1, 11.3.9

**Claims, Definition of****15.1.1****CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

**Claims for Additional Cost**

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

**Claims for Additional Time**

3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, 15.1.5

**Concealed or Unknown Conditions, Claims for****3.7.4**

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,

11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

**Cleaning Up****3.15, 6.3**

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,

6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,

15.1.4

**Commencement of the Work, Definition of****8.1.2****Communications Facilitating Contract****Administration**

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,

9.10, 12.2, 13.7, 14.1.2

**COMPLETION, PAYMENTS AND****9**

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,

13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,

11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,

14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,

9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

**Consolidation or Joinder****15.4.4****CONSTRUCTION BY OWNER OR BY  
SEPARATE CONTRACTORS**

1.1.4, 6

**Construction Change Directive, Definition of****7.3.1****Construction Change Directives**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3,

9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Contingent Assignment of Subcontracts**

5.4, 14.2.2.2

**Continuing Contract Performance****15.1.3****Contract, Definition of****1.1.2****CONTRACT, TERMINATION OR  
SUSPENSION OF THE**

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating  
to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of

1.5.2, 2.2.5, 5.3

**Contract Documents, Definition of****1.1.1****Contract Sum**

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7,

9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

**Contract Sum, Definition of****9.1**

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,

8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2,

15.1.5.1, 15.2.5

**Contract Time, Definition of****8.1.1****CONTRACTOR****3****Contractor, Definition of**

3.1, 6.1.2

## Packet Pg. 170



Execution and Progress of the Work  
 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,  
 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,  
 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3  
 Extensions of Time  
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
 10.4.1, 14.3, 15.1.5, 15.2.5  
**Failure of Payment**  
 9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2  
 Faulty Work  
 (See Defective or Nonconforming Work)  
**Final Completion and Final Payment**  
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,  
 12.3.1, 14.2.4, 14.4.3  
 Financial Arrangements, Owner's  
 2.2.1, 13.2.2, 14.1.1.4  
 Fire and Extended Coverage Insurance  
 11.3.1.1  
**GENERAL PROVISIONS**  
**1**  
**Governing Law**  
**13.1**  
 Guarantees (See Warranty)  
**Hazardous Materials**  
 10.2.4, 10.3  
 Identification of Subcontractors and Suppliers  
 5.2.1  
**Indemnification**  
 3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,  
 11.3.7  
**Information and Services Required of the Owner**  
 2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,  
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3  
**Initial Decision**  
**15.2**  
**Initial Decision Maker, Definition of**  
 1.1.8  
 Initial Decision Maker, Decisions  
 14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
 Initial Decision Maker, Extent of Authority  
 14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,  
 15.2.5  
**Injury or Damage to Person or Property**  
**10.2.8, 10.4.1**  
 Inspections  
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
 9.9.2, 9.10.1, 12.2.1, 13.5  
 Instructions to Bidders  
 1.1.1  
 Instructions to the Contractor  
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2  
**Instruments of Service, Definition of**  
**1.1.7**  
 Insurance  
 3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

## Insurance, Boiler and Machinery

### 11.3.2

## Insurance, Contractor's Liability

### 11.1

Insurance, Effective Date of

8.2.2, 11.1.2

## Insurance, Loss of Use

### 11.3.3

## Insurance, Owner's Liability

### 11.2

## Insurance, Property

10.2.5, 11.3

Insurance, Stored Materials

9.3.2

## INSURANCE AND BONDS

### 11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

## Interest

### 13.6

## Interpretation

1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12, 15.1.4

Judgment on Final Award

15.4.2

## Labor and Materials, Equipment

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,

9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1,

10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,

13.6.1, 14, 15.2.8, 15.4

Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 13.7, 15.4.1.1

Limitations of Liability

2.3.1, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,

4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2,

11.2, 11.3.7, 12.2.5, 13.4.2

Limitations of Time

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,

5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,

11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

## Loss of Use Insurance

### 11.3.3

Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

## Materials, Hazardous

10.2.4, 10.3

Materials, Labor, Equipment and  
 1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1,  
 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,  
 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2  
 Means, Methods, Techniques, Sequences and  
 Procedures of Construction  
 3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2  
 Mechanic's Lien  
 2.1.2, 15.2.8  
**Mediation**  
 8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**,  
 15.4.1  
**Minor Changes in the Work**  
 1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**  
**MISCELLANEOUS PROVISIONS**  
**13**  
**Modifications, Definition of**  
**1.1.1**  
 Modifications to the Contract  
 1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,  
 10.3.2, 11.3.1  
**Mutual Responsibility**  
**6.2**  
**Nonconforming Work, Acceptance of**  
 9.6.6, 9.9.3, **12.3**  
 Nonconforming Work, Rejection and Correction of  
 2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
 12.2.1  
 Notice  
 2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7,  
 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2,  
 14.1, 14.2, 15.2.8, 15.4.1  
**Notice, Written**  
 2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7,  
 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14,  
 15.2.8, 15.4.1  
**Notice of Claims**  
 3.7.4, 10.2.8, **15.1.2**, 15.4  
 Notice of Testing and Inspections  
 13.5.1, 13.5.2  
 Observations, Contractor's  
 3.2, 3.7.4  
 Occupancy  
 2.2.2, 9.6.6, 9.8, 11.3.1.5  
 Orders, Written  
 1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2,  
 14.3.1  
**OWNER**  
**2**  
**Owner, Definition of**  
**2.1.1**  
**Owner, Information and Services Required of the**  
 2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,  
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1,  
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority  
 1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2,  
 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3,  
 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4,  
 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2,  
 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7  
 Owner's Financial Capability  
 2.2.1, 13.2.2, 14.1.1.4  
**Owner's Liability Insurance**  
**11.2**  
 Owner's Relationship with Subcontractors  
 1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2  
**Owner's Right to Carry Out the Work**  
**2.4**, 14.2.2  
**Owner's Right to Clean Up**  
**6.3**  
**Owner's Right to Perform Construction and to**  
**Award Separate Contracts**  
**6.1**  
**Owner's Right to Stop the Work**  
**2.3**  
 Owner's Right to Suspend the Work  
 14.3  
 Owner's Right to Terminate the Contract  
 14.2  
**Ownership and Use of Drawings, Specifications**  
**and Other Instruments of Service**  
 1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17,  
 4.2.12, 5.3.1  
**Partial Occupancy or Use**  
 9.6.6, **9.9**, 11.3.1.5  
**Patching, Cutting and**  
**3.14**, 6.2.5  
 Patents  
 3.17  
**Payment, Applications for**  
 4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,  
 14.2.3, 14.2.4, 14.4.3  
**Payment, Certificates for**  
 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
 9.10.3, 13.7, 14.1.1.3, 14.2.4  
**Payment, Failure of**  
 9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2  
 Payment, Final  
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1,  
 13.7, 14.2.4, 14.4.3  
**Payment Bond, Performance Bond and**  
**7.3.7.4**, 9.6.7, 9.10.3, **11.4**  
**Payments, Progress**  
 9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3  
**PAYMENTS AND COMPLETION**  
**9**  
 Payments to Subcontractors  
 5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2  
 PCB  
 10.3.1

**Performance Bond and Payment Bond**

7.3.7.4, 9.6.7, 9.10.3, 11.4

**Permits, Fees, Notices and Compliance with Laws**

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF**  
**10**

Polychlorinated Biphenyl

10.3.1

**Product Data**, Definition of**3.12.2****Product Data and Samples, Shop Drawings**

3.11, 3.12, 4.2.7

**Progress and Completion**

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

**Progress Payments**

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**Project**, Definition of**1.1.4**

Project Representatives

4.2.10

**Property Insurance**

10.2.5, 11.3

**PROTECTION OF PERSONS AND PROPERTY**  
**10**

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work

3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field****Conditions by Contractor**

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

**Rights and Remedies**

1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

**Royalties, Patents and Copyrights****3.17**

Rules and Notices for Arbitration

15.4.1

**Safety of Persons and Property****10.2**, 10.4**Safety Precautions and Programs**

3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4

**Samples**, Definition of**3.12.3****Samples, Shop Drawings, Product Data and**

3.11, 3.12, 4.2.7

**Samples at the Site, Documents and****3.11****Schedule of Values**

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

**Shop Drawings**, Definition of**3.12.1****Shop Drawings, Product Data and Samples**

3.11, 3.12, 4.2.7

**Site**, Use of**3.13**, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

**Specifications**, Definition of**1.1.6****Specifications**

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

**Subcontractor**, Definition of**5.1.1****SUBCONTRACTORS****5**

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

**Subcontractual Relations****5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

**Subrogation**, Waivers of

6.1.1, 11.3.7

**Substantial Completion**4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7**Substantial Completion, Definition of 9.8.1**

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

**Sub-subcontractor, Definition of****5.1.2**

Subsurface Conditions

3.7.4

**Successors and Assigns****13.2****Superintendent**

3.9, 10.2.6

**Supervision and Construction Procedures**1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

**Suspension by the Owner for Convenience****14.3**

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

**Taxes**

3.6, 3.8.2.1, 7.3.7.4

**Termination by the Contractor**

14.1, 15.1.6

**Termination by the Owner for Cause**5.4.1.1, **14.2**, 15.1.6**Termination by the Owner for Convenience****14.4**

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

**TERMINATION OR SUSPENSION OF THE CONTRACT****14****Tests and Inspections**3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5****TIME****8****Time, Delays and Extensions of**3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

**Time Limits on Claims**3.7.4, 10.2.8, **13.7**, 15.1.2

Title to Work

9.3.2, 9.3.3

**Transmission of Data in Digital Form****1.6****UNCOVERING AND CORRECTION OF WORK****12****Uncovering of Work****12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 7.3.4

Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

**Use of Site****3.13**, 6.1.1, 6.2.1**Values, Schedule of****9.2**, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

**Waivers of Subrogation**6.1.1, **11.3.7****Warranty**

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1

Weather Delays

15.1.5.2

**Work, Definition of****1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

**ARTICLE 1 GENERAL PROVISIONS****§ 1.1 BASIC DEFINITIONS****§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement with the attached Exhibits, together with the Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, and such other documents all as listed in the Agreement (see Section 1.1 and Article 16 of the Agreement), and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

**§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

**§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

**§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

**§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person (if any) identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2 (to the extent such provisions require any action by an Initial Decision Maker).

**§ 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. Except as otherwise provided in Section 1.3 of the Agreement, the Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by



the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service that describe the Work. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service prepared by or through the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work and to keep one record set after completion of construction or termination of the Contract. All copies made under this authorization shall bear the applicable copyright notice, if any, shown on the Instruments of Service. To the extent that the Owner directs the Contractor to use the Instruments of Service for another project or for additions to this Project outside the scope of the Work without the specific written consent of the Architect and the Architect's respective consultants, the Owner indemnifies and shall defend the Contractor against any claim, liability, or cost arising from or relating to any actual or asserted violation or infringement of any copyright or proprietary right in and to the Instruments of Service.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

Init.

## § 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, provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; (4) or to the extent such information is required for Contractor to comply with the requirements of Sections 35.521(k)(1) and (m) of the Texas Business and Commerce Code (2007). Securing and maintaining adequate financing and furnishing such evidence shall be conditions precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior written notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor, free of charge, such copies of the Contract Documents as are reasonably necessary for the execution of the Work.

## § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents and after giving Contractor a five-day written notice and opportunity to correct the Work, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

## § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 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 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 Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express

authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 [Intentionally deleted.]

## § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, review the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These activities are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by the Contractor as a request for information in such form as the Architect may reasonably require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may reasonably require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor knowingly fails to provide such information as required by Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had provided such information as so required (subject to any limitation on the recovery of damages as provided in the Contract Documents). The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, insufficiency, 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 consistent with the prevailing construction industry performance standards for similar project in the area. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating the performance of 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, the Contractor and its Subcontractors shall be 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. Each Subcontractor is responsible to Contractor and Owner

Init.

for the acts and omissions and the safety of Subcontractor's employees and subcontractors. Nothing in the Contract Documents shall be construed to relieve Subcontractor of its responsibility for and control over its employees and subcontractors.

§ 3.3.3 The Contractor shall be responsible for review 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 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

#### § 3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents (subject to such substitutions approved or authorized under the Contract Documents) and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 Notwithstanding any other provision in the Contract Documents, Contractor does not warrant the performance or suitability of the materials or equipment specified by Owner or Owner's design professionals. Contractor's warranty is not transferable and cannot be assigned.

3.5.3 Contractor will obtain from the applicable subcontractors and suppliers any warranties and guarantees which are specified or required by the Contract Documents to extend for more than one (1) year. Contractor will assign such extended warranties and guarantees directly to Owner. Contractor shall not expedite, correct, coordinate or perform any Work covered by such extended warranties or guarantees, unless Owner requests Contractor to do so. All associated costs shall be Costs of the Work.

**3.5.4 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION 3.5, THE CONTRACTOR MAKES NO OTHER WARRANTY, REPRESENTATION OR GUARANTEE OF ANY KIND REGARDING THE WORK.**

#### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 The Contractor shall secure and pay for only those permits, fees, licenses, and inspections, including the building permit and other permits and governmental fees, as specifically required by the Contract Documents.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

Init.



§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities without notice to the Architect and the Owner as required herein, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness and in sufficient time to avoid delaying 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. Owner shall confirm important communications in writing.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.



### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents, unless such submittal is approved in writing by the Architect or the Owner and provides the only written depiction of how the Work will be performed. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has (1) reviewed them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor, in making this representation, is relying on the Architect's coordination of drawings and specifications.

§ 3.12.7 Unless otherwise authorized by Owner, the Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive or other written communication from the Owner has been issued authorizing the deviation. Notwithstanding the foregoing, it shall not be Contractor's responsibility to determine whether an authorized deviation constitutes a minor change in the Work and Contractor shall be entitled to rely on such written approved from the Architect. 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; however, Architect shall promptly notify Contractor in writing if Architect identifies any errors or omissions during the submittal review and approval process.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required and expressly set forth by the Contract Documents on which the Guaranteed Maximum Price was established 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 shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals for the 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 specified in the Contract Documents.

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching as required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

Init.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor for the reasonable costs of such clean up activities.

#### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

#### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees as a Cost of the Work. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof only when due to the fault or neglect of the Contractor, 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 knows 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 except as provided in Section 3.18.1.1 below, the Contractor shall indemnify and hold harmless the Owner, and its employees 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 employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

3.18.1.1 With respect to design or engineering Work performed by a Subcontractor or its consultant, Contractor's indemnity obligation and liability shall be limited to the amount of the proceeds recoverable from the professional liability insurance coverage furnished by the Subcontractor or its consultant.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### ARTICLE 4 ARCHITECT

#### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. 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 successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

#### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

Init.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Contractor will not be responsible for Architect's failure to perform in accordance with the requirements of the Owner-Architect Contract and with the Contract Documents.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to recommend that Owner 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, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness in order to avoid delaying the Work, while allowing sufficient time in the Architect's professional judgment to permit adequate review. 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 as directed by the Owner, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

Init.



§ 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 and in accordance with the Construction Schedule.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness and in accordance with the Construction Schedule. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner with a copy to 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 Owner will promptly reply to the Contractor in writing stating (1) whether or not the Owner 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 has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

Init.



**§ 5.3 SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.

**§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS****§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules 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 that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

**§ 6.2 MUTUAL RESPONSIBILITY**

**§ 6.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

Init.

§ 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 known discrepancies or defects shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the reasonable cost of such clean up activities may be equitably allocated 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 written authorization or direction by the Owner 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 signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

7.2.2 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 signed by the Owner, 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.

Init.

§ 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 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit for changes as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's independent professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. Architect shall certify and Owner shall pay amounts not in good faith dispute.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

Init.

**§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. It shall not be Contractor's responsibility to determine whether an authorized deviation constitutes a minor change in the Work and Contractor shall be entitled to rely on such written order from the Architect. If Contractor believes the change requires an adjustment in the Contract Sum or an extension of the Contract Time, Contractor shall notify Owner in writing and provide documentation for such adjustment(s) and the Contract shall be modified by Change Order.

**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 (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ 8.3 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 transportation, unavoidable casualties, adverse weather conditions, or any other causes beyond the Contractor's control; including the interpretations and decisions of governmental authorities with jurisdiction over the Project; or by delay caused by pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time and the GMP shall be adjusted by Change Order.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**ARTICLE 9 PAYMENTS AND COMPLETION****§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.



## § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

## § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

## § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

## § 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, based upon the good faith and diligent exercise of its reasonable professional judgment, 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 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, after providing written notice to Owner;
- .2 third party claims filed 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 unless such subcontractor claims are bonded;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage not covered by insurance or bonds to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 Unless Contractor has furnished a statutory payment bond or has otherwise furnished a statutory lien release bond, if the Architect withholds certification for payment under Section 9.5.1.3 as a result of a claimant perfecting a lien claim against the Owner and its property, the Owner may, at its sole option and no earlier than thirty (30) days after the lien affidavit is recorded, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled (to the extent such payment is received from the Owner), reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 [Intentionally deleted.]

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work (subject to receipt of payment from the Owner). If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary

Init.

liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount due the Contractor or awarded by binding dispute resolution, then the Contractor may, upon written notice to the Owner, 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.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete and shall prepare a comprehensive list of items to be completed or corrected prior to final payment (the "Punchlist"). If the Architect's or Owner's inspections 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 Punchlist shall so identify such item and Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish consistent with the Contract Documents, 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 properly assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

§ 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 Partial occupancy or use of a portion or portions of the Work shall constitute acceptance of Work, subject to Punchlist items and warranty claims as to that portion of the Work.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If no statutory payment bond or lien release bond has been furnished and such lien affidavit has not been released, 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 liens by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

#### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

##### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor and its Subcontractors shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor's activities and conduct shall not be construed as the exercise of supervision, direction or control over Subcontractor's employees. Neither

Init.

Owner nor Contractor shall have any responsibility or liability to Subcontractor for the activities or conduct of Subcontractor's employees, even if Contractor and/or Owner participate in such activities or conduct.

## § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 to the extent caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

## § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

## § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 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

Init.



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. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's sole fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 [Intentionally Deleted]

§ 10.3.6 If the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

During the performance of the Work, Contractor shall maintain insurance policies providing the coverages and limits specified below, subject to the terms, conditions and exclusions stated in such policies. The policies shall be issued by insurers licensed to do business in the State of Texas.

§ 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 set forth in **Attachment E** 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:  
(Paragraphs deleted)

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in **Attachment E**. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after Substantial Completion, and, with regard to any completed operations (to the extent expressly required in **Attachment E**).



§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor in accordance with the Contractor's information and belief with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner as additional insureds for claims caused to the extent of the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused to the extent of the Contractor's negligent acts or omissions during the Contractor's completed operations, in accordance with **Attachment E**.

## § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 In addition to the requirements in **Attachment E**, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others (provided that Owner defines such insurance coverage and such added values are in writing prior to the occurrence of a claim), 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 until Substantial Completion of the Project or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever comes first. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as their interests might appear. Such insurance shall not cover loss to tools, machinery, scaffolding, hoists, forms, staging, shoring, and similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. [If Owner is required to furnish such builder's risk coverage by the Insurance Requirements attached to the Agreement and such coverage does not include loss to such construction equipment, Contractor may separately secure coverage and the premium cost thereof shall be a Cost of the Work.]

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, subject to policy terms, exclusions and conditions, 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 Contractor's services and expenses required as a result of such insured loss subject to policy terms, conditions, and exclusions.

§ 11.3.1.2 If the Owner does not intend to purchase or request Contractor to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit and at risk to the Contractor.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be added to the Guaranteed Maximum Price by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the party required to furnish such insurance shall file with the other party a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the other party.

### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. Such waiver is valid and enforceable with regard to 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, to the extent such parties have executed or entered into similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the property insurance required hereunder shall be adjusted by the Owner and the Contractor as joint payees and as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

Init.

§ 11.3.9 If required in writing by the Owner or the Contractor, the party adjusting such loss as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of such party's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. Such party shall deposit in a separate account proceeds so received, which the party shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The party adjusting the loss shall have power to adjust and settle a loss with insurers unless the Owner or the Contractor shall object in writing within five days after occurrence of loss to the exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in strict accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as required by law.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced as a Cost of the Work without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be a Cost of the Work 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 SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be reimbursable to the Contractor as Cost of the Work up to the Guaranteed Maximum Price.

##### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 Subject 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.

Init.

§ 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 that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear as Cost of the Work up to the Guaranteed Maximum Price, the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

#### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

#### § 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 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 or in part 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, licensed lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents, including those obligations incurred prior to the date of the assignment. The Contractor shall execute all mutually agreed consents reasonably required to facilitate such assignment.

#### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

#### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.



§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals as Cost of the Work up to the Guaranteed Maximum Price. 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 that 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.

§ 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 as a Cost of the Work up to the Guaranteed Maximum Price.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

Init.



- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**14.1.5 DEFAULT BY OWNER.** Subject to Owner's right to withhold payment to Contractor under the Contract, if Owner fails to pay undisputed amounts due to Contractor and Owner has failed to cure such failure within fifteen (15) days following Contractor's written notice to Owner to cure such failure, Contractor may terminate the Contract upon delivery of written notice of termination provided such notice is delivered to Owner prior to Contractor's receipt of payment of all undisputed amounts owing to Contractor as set forth in the written notice to cure. In the event of such termination, Contractor shall recover from Owner as provided in Section 14.1.3 above.

## § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority having jurisdiction over the Project; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker (if an Initial Decision Maker is established by the Agreement) 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 all materials, equipment, tools, and construction equipment and machinery thereon paid for by the Owner;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall be entitled to payment for Work actually is finished, subject to Owner's rights, if any, to withhold payment as expressly authorized by the Contract Documents.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker (if an Initial Decision Maker is established by the Agreement), 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

*(Paragraphs deleted)*

profit, overhead, and all associated costs and expenses.

### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party (and to the Initial Decision Maker if an Initial Decision Maker is established by the Agreement). Claims by either party must be initiated within a reasonable time after occurrence of the event giving rise to such Claim or the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract with regard to matters not in good faith dispute and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker (if an Initial Decision Maker is established by the Agreement).

**§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include, to the extent reasonably determinable by the Contractor, 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.

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions (including the physical conditions of the jobsite caused by the adverse weather) had an adverse effect on the scheduled construction.

**§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those alleging an error or omission by any person serving as the Initial Decision Maker or arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision (but if an Initial Decision Maker is established by the Agreement). Except for those Claims excluded by this Section 15.2.1 and if an Initial Decision Maker is established by the Agreement, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** If an Initial Decision Maker is established by the Agreement, the Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker (if an Initial Decision Maker is established by the Agreement) may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data (if an Initial Decision Maker is established by the Agreement), such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

Init.

§ 15.2.5 The Initial Decision Maker (if an Initial Decision Maker is established by the Agreement) will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. If an Initial Decision Maker is established by the Agreement, the initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 If an Initial Decision Maker is established by the Agreement, either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

## § 15.3 MEDIATION

§ 15.3.1 [Intentionally deleted.]

§ 15.3.2 Although not a condition precedent to institution of an arbitration proceeding or any other legal or equitable proceedings, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement, and with a mutually agreed mediator. Either party may request mediation by delivering a written request to the other party to the Contract. Mediation may occur prior to or concurrently with an arbitration proceeding. A request for mediation shall not stay or delay an arbitration except by agreement of the parties or order of the arbitrator for good cause shown.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. If the dispute involves a claim in an amount below \$500,000, the arbitrator shall be an attorney with at least ten (10) years of construction law experience. If the dispute involves a claim in an amount equal to or greater than \$500,000, there shall be three (3) arbitrators who must all be attorneys with at least ten (10) years of construction law experience.

§ 15.4.1.1 A demand for arbitration shall be made no later than the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)



**15.4.1.2 Procedures for Arbitration.** The applicable Construction Industry Arbitration Rules of the American Arbitration Association which shall govern or control all arbitrations of Claims or disputes arising under this Agreement are amended or modified as set forth below.

**15.4.1.2.1** The arbitrator or panel of arbitrators shall establish reasonable procedures and requirements for the production of relevant documents, require the exchange of information concerning witnesses to be called. For arbitrations involving monetary claims in excess of \$50,000: (1) the parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration and (2) the parties may use all methods of discovery available under the Federal Rules of Civil Procedure and shall be governed thereby. Prior to the deposition of any expert witness, the party proposing to call such a witness shall provide a full and complete report by the expert, together with the expert's calculations and other data by which the expert reached any opinions concerning the subject matter of the arbitration. The report shall be provided no less than ten (10) days prior to the date set for the expert witness' deposition. Any disputes arising from such discovery shall be decided by the arbitrator (or panel) and such decision shall be final as in all other matters.

**15.4.1.2.2** There shall be a prehearing meeting between the parties at which each party shall present a memorandum disclosing the factual basis of its claim and defenses and disclosing legal issues raised. The memorandum shall also disclose the names of any expert a party shall present as a witness during the proceedings. At the prehearing meeting, the arbitrator (or panel) shall make rulings and set schedules for hearing consistent with their powers as set forth herein.

**15.4.1.2.3** The Texas Rules of Evidence shall be applied by the arbitrator (or panel) but liberally construed to allow for the admission of evidence that is helpful in resolving the controversy. Rulings on the admission of evidence made by the arbitrator (or panel) at the hearing shall be final and not subject to any appeal. At the time of the award, the arbitrator (or panel) shall prepare and provide to the parties findings of fact and conclusions of law supporting the award.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 15.4.4 CONSOLIDATION OR JOINDER**

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.



**LINBECK**

*Evelyn's Park*  
***Owner-Construction Manager Agreement***  
*Exhibit D – Personnel Categories and Rates*

<u>Classification</u>	<u>Hourly Rate</u>
Project Executive	\$130.00
Project Manager	\$ 90.00
Chief Estimator	\$130.00
Assistant Superintendent	\$ 65.00
Project Engineer	\$ 65.00
Safety Director	\$ 66.00
Estimator / Cost Analyst	\$ 65.00
Engineer	\$ 60.00
Administration	\$ 50.00
Project Support Services	\$ 72.00

These rates are subject to modification at the beginning of each Linbeck fiscal year (January 1).

End of Exhibit D

# L I N B E C K

## *Evelyn's Park Owner/Construction Manager Agreement Exhibit E – Insurance Requirements*

### 1. PRACTICE PROGRAM

Construction Manager is providing General Liability and Excess Liability insurance coverage (“Casualty Insurance”) and other liability insurance coverage (“Other Insurance”). Construction Manager is also providing Workers’ Compensation insurance coverage (“WC Insurance”) for its personnel.

The premium for the Casualty Insurance and Other Insurance (“Insurance Premium”) is calculated by multiplying the agreed percentage rate of 1.50% (“Insurance Percentage Rate”) by the aggregate Cost of the Work. The Cost of the Work is defined in the Contract. The Insurance Percentage Rate is fixed for the duration of the Work and is not subject to audit.

The premium for WC Insurance is calculated by multiplying (1) the standard WC classification rates for the State where the Project is located **times** (2) the increased limits rate **times** (3) the waiver of subrogation rate **times** (4) the WC modifier **times** (4) any surcharges for the State where the Project is located. The multiplicative product of (1), (2), (3), (4) and (5) is the Workers’ Compensation rate (the “WC Rate”). The WC Rate is revised on an annual basis at renewal.

During the performance of the Work, Construction Manager shall maintain insurance policies providing the coverages and limits specified below, subject to the terms, conditions and exclusions stated in such policies. The policies shall be issued by insurers licensed to do business in the State of Texas.

#### COVERAGE

#### MINIMUM AMOUNTS AND LIMITS

##### **A. Workers’ Compensation**

Workers’ Compensation	Statutory limits
Employer’s Liability	\$1,000,000 each accident
	\$1,000,000 disease
	\$1,000,000 each employee

This policy shall include a Waiver of Subrogation in favor of Owner.

##### **B. Commercial General Liability**

Bodily Injury/ Property Damage (Occurrence Basis)	\$2,000,000 each occurrence or equivalent, subject to a \$2,000,000 aggregate
---	--

# LINBECK

*Evelyn's Park  
Owner/Construction Manager Agreement  
Exhibit E – Insurance Requirements*

This policy shall include Owner as an additional insured, state that this insurance is primary insurance with regard to any other insurance carried by Owner, and shall include the following coverages:

- (1) Premises/Operations;
- (2) Independent Contractors;
- (3) Completed Operations for a period of two (2) years following the Substantial Completion of the Work;
- (4) Contractual Liability;
- (5) Property Damage;
- (6) Personal Injury Liability;
- (7) Advertising Liability; and
- (8) No Exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards.

## **C. Comprehensive Automobile Liability**

Bodily Injury	\$1,000,000 Combined Single Limit
---------------	-----------------------------------

This policy shall cover all owned, hired and non-owned vehicles. This policy shall include Owner as an additional insured and state that this insurance is primary insurance with regard to any other insurance carried by Owner.

## **D. Excess Liability Insurance**

Bodily Injury/	\$5,000,000 per occurrence
Property Damage	\$5,000,000 aggregate
(Occurrence Basis)	

This policy shall be written on a following form umbrella excess basis above the coverages described in **Paragraphs A, B, and C** above, and shall include Owner as an additional insured.

## **E. Certificates of Insurance**

Construction Manager shall furnish evidence of the required insurance coverage to Owner in the form of Certificates of Insurance issued by the insurance carriers. The Certificates of Insurance will confirm the required Additional Insured and Waiver of Subrogation endorsements.

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)

**F. Subcontractor's Insurance**

Construction Manager's subcontractors shall provide coverage similar to that required of Construction Manager; provided, however, the limits of such insurance may be adjusted in accordance with the nature of each subcontractor's operations. Construction Manager shall maintain Certificates of Insurance from Construction Manager's subcontractors, and shall provide to Owner a copy of each subcontractor Certificate of Insurance upon Owner's request.

**2. SUBCONTRACTOR DEFAULT INSURANCE**

Contractor will provide Subcontractor Default Insurance coverage during the performance of the Work. The following premium rates apply to the Subcontractor Default Insurance:

**Subcontractor Default Insurance Rates**

	Rate
Portion of each individual subcontract, material contract or service contract value from \$0 to \$500,000	1.500%
Portion of each individual subcontract, material contract or service contract value from \$500,001 to \$2,000,000	1.195%
Portion of each individual subcontract, material contract or service contract value above \$2,000,001	0.875%

The Subcontractor Default Insurance premium rates are fixed for the duration of the Work and are not subject to audit.

**3. DEFINED TERMS**

Unless otherwise provided in the Contract, all capitalized and/or defined terms used in this **Exhibit E** shall have the same meaning given to such capitalized and/or defined terms in the Contract.

**End of Exhibit E**

**LINBECK**

*Evelyn's Park*  
**Owner-Construction Manager Agreement**  
*Exhibit F – Owner Financial Information*

**City of Bellaire, Texas** (“Owner”) confirms to **Linbeck Group, LLC** (“Construction Manager”) the following information with regard to construction of the **Evelyn's Park** (the “Project”):

1. The name, address and business telephone number of the primary obligor:

City of Bellaire  
7008 South Rice Avenue  
Bellaire, TX 77401

2. A description, legally sufficient for identification, of the property on which the Project is being constructed:

Evelyn's Park  
4400 Bellaire Boulevard  
Bellaire, TX 77401

3. The name and address of any surety on any payment bond provided under Chapter 53, of the Texas Property Code to which any notice of claim should be sent: n/a

4. Information with regard to any loan obtained for construction of the improvements:

Issued General Obligation Bonds, Series 2013

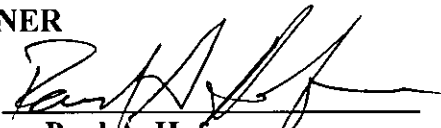
5. The amount and location of funds available to pay the construction contract with Construction Manager:

- (a) Amount: \$5,000,000  
(b) Location of Funds: City of Bellaire Texpool Investment Account

6. Owner advises the Construction Manager that funds are available to Owner and have been authorized for the full construction contract amount for construction of the Project.

Owner executed this document on 12/11/14.

**OWNER**

By:   
Name: **Paul A. Hofmann**  
Title: **City Manager**

Attachment: Linbeck AIA agreements signed 121514 (1518 : Evelyn's Park- GMP Construction Services)