



**CITY OF MARSHALL, TEXAS
REGULAR CITY COMMISSION MEETING
COMMISSION CHAMBERS, CITY HALL, 401 SOUTH ALAMO
THURSDAY, DECEMBER 12, 2019, 6:00 P.M.**

**AGENDA INFORMATION PACKET IS AVAILABLE FOR THE
PUBLIC TO REVIEW ON THE CITY'S WEB SITE AFTER 8:00 A.M.
ON WEDNESDAY BEFORE THE MEETING AT**

www.marshalltexas.net

1. **CALL TO ORDER AND ROLL CALL**
Page 1
2. **INVOCATION AND PLEDGES**
Page 2
3. **RECESS TO CONDUCT THE CITY OF MARSHALL EMPLOYEE
BENEFITS TRUST MEETING**
Page 3
4. **RECONVENE THE CITY COMMISSION MEETING**
Page 4
5. **CITIZEN COMMENTS**

House Bill 2840 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on an agenda the opportunity to do so before or during the body's consideration of the item. The "Citizens Comments" portion of the meeting meets the requirements of this law and is the public's opportunity to speak on any item on the agenda. Those who wish to speak will have three minutes to do so unless additional time has been requested.
Page 5
6. **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**
Page 6

7. **CONSENT AGENDA**

The items on the Consent Agenda require little or no deliberation by the Commission. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations, a copy of which is filed with the minutes of the meeting. A Commissioner may remove items from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.

- A. Consider approval of the minutes from the November 21, 2019 Special-Called meeting and December 5, 2019 Special-Called meeting.

Page 7

- B. Report regarding the status of the Memorial City Hall renovation project. (City Manager)

Page 13

- C. Consider approval of the annual Interlocal Agreement with the Marshall-Harrison County Health District. (City Manager)

Page 15

- D. Consider approval of appointments and reappointments to various City boards, commissions, and committees. (City Manager)

Page 21

- E. Consider approval of a Resolution authorizing the City to enter into an interlocal agreement with Region 2 Education Service Center for cooperative purchasing services through the Goodbuy Purchasing Program. (Police Chief)

Page 27

- F. Street Sweeping Activity Report. (Public Works Director)

Page 35

- G. Municipal Court Activity Report (Finance Director)

Page 39

8. **PRESENTATION**

- A. Check presentation from AEP/SWEPCO, in the amount of \$13,900, for recognition of the City's participation in the 2019 Load Management Program. (Public Works Director)

Page 42

9. **ORDINANCES**

A. Consider approval of an Ordinance amending the 2019 Annual Budget to appropriate funds for projects approved by the City Commission. (Finance Director)
Page 44

B. Consider approval of an Ordinance amending the 2019 Annual Budget to provide for year-end adjustments in selected departments. (Finance Director)
Page 46

10. **SECOND READING OF ORDINANCE**

A. Consider approval of an Ordinance amending Chapter 14, Garbage, Trash, and Weeds of the Code of Ordinances, revising the schedule of refuse rates, providing for monthly charges, and establishing an effective date of January 1, 2020. (Public Works Director)
Page 48

11. **RESOLUTION**

A. Consider approval of a Resolution ordering a Special Election for City Commissioner District 2. (City Secretary)
Page 54

B. Consider approval of a Resolution to suspend CenterPoint Energy's proposed effective date for its proposed increase in rates in the Beaumont/East Texas Division. (Public Works Director)
Page 60

12. **CITY MANAGER REPORTS AND REQUESTS FOR CITY COMMISSION CONSIDERATION**

A. Presentation of the City of Marshall audit report for the 2018 fiscal year. (Knuckols, Duvall, Hallum, & Co.)
Page 72

B. Consider approval of a contract with Casey Slone Construction Company for the Perkins Building project. (Director of Community & Economic Development)
Page 74

13. **CONSIDERATION OF ITEMS WITHDRAWN FROM THE CONSENT
AGENDA**

Page 111

14. **ADJOURNMENT**

Page 112

Posted: December 9 2019
5:00 p.m.
Y. Graham

This meeting will be conducted in accordance with the Americans with Disabilities Act. The facility is wheelchair accessible and disabled parking is available. Requests for sign interpretive services will be available with at least 48-hour notice prior to the meeting. To make arrangements for these services, please call Elaine Altman at 903-935-4519.

ITEM 1

CALL TO ORDER AND ROLL CALL

ITEM 2

INVOCATION AND PLEDGES

ITEM 3

**RECESS TO CONDUCT THE CITY OF
MARSHALL EMPLOYEE BENEFITS
TRUST MEETING**

ITEM 4

RECONVENE THE CITY COMMISSION MEETING

ITEM 5

CITIZEN COMMENTS

ITEM 6

ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA

ITEM 7A

CONSENT AGENDA

**CONSIDER APPROVAL OF THE
MINUTES FROM THE NOVEMBER 21,
2019 SPECIAL-CALLED MEETING AND
THE DECEMBER 5, 2019 SPECIAL-
CALLED MEETING**

MINUTES OF THE SPECIAL-CALLED MEETING OF THE
CITY COMMISSION OF THE CITY OF MARSHALL
THURSDAY, NOVEMBER 21, 2019
6:00 PM

Mayor Terri Brown called the Special-Called meeting to order in the Commission Chambers, City Hall at 6:00 p.m.

PRESENT:

MAYOR: Terri Brown, District 3

COMMISSIONERS:

Marvin Bonner, District 1	Amy Ware, District 4
Vernia Calhoun, District 5	Larry Hurta, District 6
Doug Lewis, District 7	

ABSENT: Gail Beil, District 2

ADMINISTRATIVE STAFF PRESENT:

Mark Rohr, City Manager	Reggie Cooper, Fire Chief
Scott Rectenwald, Acting City Attorney	Cliff Carruth, Police Chief
Jack Redmon, Support Services Director	
Randy Pritchard, Support Services Superintendant	
Wes Morrison, Community & Economic Development Director	
Elaine Altman, City Secretary/Finance Director	
Eric Powell, Public Works Director	
Mallori James, Tourism & Cultural Arts Director	

INVOCATION & PLEDGE: Mayor Brown & Izac Aguirre, Kindergarten student at David Crockett Elementary

308. CITIZEN COMMENTS

Leo Morris, 505 S. Carter, spoke regarding the animal shelter adoption center.

Vicki Brooks, 5963 Harris Lake, spoke regarding the importance of an animal shelter.

Jana Hernandez, 5192 Buck Sherrod, spoke regarding the animal shelter adoption center.

Kenneth Moon, 704 S. Carter, spoke regarding the animal shelter adoption center and representation in District 2.

Amanda Smith, 38 Pine Burr Circle, spoke regarding the animal shelter adoption center.

Ed Smith, 38 Pine Burr Circle, spoke regarding former City Attorney Todd Fitts.

309. ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA

There were no items withdrawn from the Consent Agenda.

310. **CONSENT AGENDA**

Commissioner Lewis made a motion to approve the Consent Agenda. Commissioner Hurta seconded the motion, which passed with a vote of 6:0.

- A. Consider approval of the minutes from the November 7, 2019 Special-Called meeting.
- B. Report the status of the Memorial City Hall renovation project.
- C. Monthly financial report.
- D. Code Enforcement Report.

ORDINANCE

311. **CONSIDER APPROVAL OF AN ORDINANCE AMENDING CHAPTER 14, GARBAGE, TRASH, AND WEEDS OF THE CODE OF ORDINANCES, REVISING THE SCHEDULE OF REFUSE RATES, PROVIDING FOR MONTHLY CHARGES, AND ESTABLISHING AN EFFECTIVE DATE OF JANUARY 1, 2020.**

Eric Powell, Public Works Director, asked for approval of an Ordinance amending Chapter 14, Garbage, Trash, and Weeds of the Code of Ordinances, revising the schedule of refuse rates by 2.7%, providing for monthly charges, and establishing an effective date of January 1, 2020.

Commissioner Calhoun made a motion to approve the Ordinance amending Chapter 14, Garbage, Trash, and Weeds of the Code of Ordinances, revising the schedule of refuse rates by 2.7%, providing for monthly charges, and establishing an effective date of January 1, 2020. Commissioner Lewis seconded the motion, which passed with a vote of 6:0.

RESOLUTION

312. **CONSIDER APPROVAL OF A RESOLUTION CREATING A CHARTER REVIEW COMMITTEE TO CONSIDER WHAT CHANGES TO MAKE TO THE CHARTER AND TO MAKE RECOMMENDATIONS TO THE CITY COMMISSION.**

Mark Rohr, City Manager, presented a resolution creating a Charter Review Committee. He explained the duties and responsibilities of the committee.

Commissioner Lewis made a motion to approve the resolution creating a Charter Review Committee. Mayor Brown seconded the motion, which passed with a vote of 6:0.

CITY MANAGER REPORTS AND REQUESTS FOR CITY COMMISSION CONSIDERATION

313. **CONSIDER APPROVAL OF APPOINTMENTS TO THE CHARTER REVIEW COMMITTEE AND APPOINTMENTS OF TWO COMMISSIONERS TO SERVE AS EX-OFFICIO MEMBERS.**

Mark Rohr stated each commissioner will appoint one member to the seven-member Charter Review Committee. The Commission will also appoint two commissioners to serve as ex-officio members.

Mayor Brown appoints Diane Seal.
Commissioner Hurta appoints Garrett Boersma.
Commissioner Calhoun appoints Angelita Jackson.
Commissioner Bonner appoints Herbert Johnson.
Commissioner Lewis appoints Stacia Runnels.
Commissioner Ware appoints Scott Carlile.

Commissioners Calhoun and Ware previously expressed interest in the committee and will be the ex-officio members.

Commissioner Lewis made a motion to approve appointments to the Charter Review Committee. Commissioner Hurta seconded the motion, which passed with a vote of 6:0.

314. CONSIDER APPROVAL OF AN AGREEMENT FOR ANIMAL ADOPTION CENTER CONSULTING SERVICES TO ASSIST WITH THE DESIGN/BUILD PROCESS.

Mark Rohr asked for approval of an agreement with Shelter Planners of America for animal adoption center consulting services to assist with the Design/Build Process at a cost of \$45,950. He stated this firm was unanimously recommended by the Adoption Center Advisory Board. Mark informed the Commission Harrison County is reevaluating their contribution.

Commissioners asked questions and discussed.

Commissioner Calhoun made a motion to approve an agreement with Shelter Planners of America for animal adoption center consulting services to assist with the Design/Build Process at a cost of \$45,950. Commissioner Lewis seconded the motion.

Commissioners engaged in further discussion.

This item passed with a vote of 6:0.

315. PRESENTATION OF AND DISCUSSION OF A DOWNTOWN REDEVELOPMENT PLAN.

Mark Rohr presented a downtown redevelopment plan. He stated there are four components to the plan: streetscaping, building improvements, parking and events. Phase one of the plan will cost approximately \$2 million and will include the creation of a green space, outdoor theater and a pavement fountain/interactive water feature.

Commissioners asked questions and discussed.

Mayor Brown and Commissioners Calhoun, Hurta and Ware indicated a desire to move forward with this plan.

316. CONSIDERATION OF ITEMS WITHDRAWN FROM THE CONSENT AGENDA

There were no items withdrawn from the Consent Agenda.

317. ADJOURNMENT

Commissioner Lewis made a motion for adjournment. Commissioner Calhoun seconded the motion, which passed with a vote of 6:0.

APPROVED:

**Mayor of the City Commission
of the City of Marshall, Texas**

ATTEST:

City Secretary

Ordinance: O-19-22
Resolution: R-19-27

MINUTES OF THE SPECIAL-CALLED MEETING OF THE
CITY COMMISSION OF THE CITY OF MARSHALL
THURSDAY, DECEMBER 5, 2019
6:00 PM

Mayor Pro-Tem Doug Lewis called the Special-Called meeting to order in Conference Room D, Center of Applied Technology, 2660 East End Boulevard South at 6:00 p.m.

PRESENT:

COMMISSIONERS:

Marvin Bonner, District 1	Amy Ware, District 4
Vernia Calhoun, District 5	Larry Hurta, District 6
Doug Lewis, District 7	

ABSENT: Terri Brown, District 3

ADMINISTRATIVE STAFF PRESENT:

Mark Rohr, City Manager
Elaine Altman, City Secretary/Finance Director
Wes Morrison, Planning & Development Director
Stormy Nickerson, Management Analysis/Communications Coordinator

MEDCO BOARD PRESENT:

Hal Cornish, Chairman	Ed Hoffman, Vice Chairman
Brenda Brown, Secretary/Treasurer	Sam Moseley, Director
Jeremy Spears, Director	
Donna Maisel, CEcD, Executive Director	
Rush Harris, Director of Business Services	

REQUESTS FOR CITY COMMISSION CONSIDERATION

318. **MARSHALL ECONOMIC DEVELOPMENT CORPORATION UPDATE REGARDING ECONOMIC DEVELOPMENT ACTIVITIES.**

Donna Maisel, CEcD, Executive Director, presented a report regarding the 2019 economic development activities.

The Commission asked questions and discussed the report.

319. **GENERAL DISCUSSION REGARDING ECONOMIC DEVELOPMENT WITHIN THE CITY OF MARSHALL.**

The Commission engaged in discussion regarding economic development and trends in East Texas.

320. **ADJOURNMENT**

The meeting was adjourned.

APPROVED:

**Chairman of the City Commission
of the City of Marshall, Texas**

ATTEST:

City Secretary

ITEM 7B

CONSENT AGENDA

REPORT REGARDING THE STATUS OF THE MEMORIAL CITY HALL RENOVATION PROJECT

MEMORANDUM

To: Members of the City Commission

From: Mark Rohr, City Manager

Date: December 4, 2019

Subject: Report on the Status of the Memorial City Hall Renovation Project

This report is being provided to update the Commission on various aspects of the Memorial City Hall renovation project.

Construction Update

The Project Manager is working on a list provided by the architect for completion of the building.

Fundraising

Fundraising efforts total \$310,625 in donations, pledges, and gifts as of this date for Memorial City Hall recognition plaques.

Fundraising efforts for MCH benches total \$8,050 for the sale of 23 benches.

ITEM 7C

CONSENT AGENDA

APPROVAL OF THE ANNUAL INTERLOCAL AGREEMENT WITH THE MARSHALL-HARRISON COUNTY HEALTH DISTRICT

MEMORANDUM

To: Members of the City Commission

From: Mark Rohr, City Manager

Date: December 4, 2019

Subject: Consider Approval of the Annual Interlocal Agreement with the Marshall-Harrison County Health District

A copy of the proposed agreement with the Marshall-Harrison County Health District is attached. The 2020 agreement is the same as last year, with the City providing \$68,940.00 in funding for the operating expenses of the Health District to provide health services for the citizens of Marshall. This expenditure has been provided for in the 2020 City of Marshall Budget.

**INTERLOCAL AGREEMENT
REGARDING
MARSHALL-HARRISON COUNTY HEALTH DISTRICT**

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

CITY OF MARSHALL

This Agreement is made and entered into on this _____ day of _____, 2019, by and between City Of Marshall, Texas (hereinafter referred to as the "CITY") and Marshall-Harrison County Health District (hereinafter referred to as the "DISTRICT"). The effective date of this Agreement shall be January 1, 2020 and shall terminate on December 31, 2020

WHEREAS, the DISTRICT is a Public Health District established by the CITY and Harrison County (hereinafter sometimes collectively referred to as the "MEMBERS") pursuant to the Local Public Health Reorganization Act, Tex. Health & Safety Code Ann. § 121.001 et seq. (hereinafter referred to as the ACT); and,

WHEREAS, the MEMBERS of the DISTRICT have previously entered into a Cooperative Agreement as required by the ACT; and,

WHEREAS, by the execution of this Agreement, the MEMBERS wish to accomplish certain modifications of the Cooperative Agreement and to address issues relating to functions being carried out for third parties by the DISTRICT as an independent contractor.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, CITY and DISTRICT agree as follows:

1. The CITY shall continue to provide funding to the DISTRICT on an annual basis consistent with the budgeted funds available for such purposes. The MEMBERS shall provide such funds as they deem, in their sole discretion, to be necessary and appropriate for carrying out the public health responsibilities of the MEMBERS. The amount of funding to be paid by the City for the year 2020 is \$68,940.00, which shall be paid in monthly installments of \$5,745.00. The funds provided by the MEMBERS shall be used to pay the cost for staff salaries, supplies, suitable offices, health and clinic centers, health services and facilities, and maintenance to the extent that such costs are incurred in connection with the provision of public health functions authorized to be carried out by the MEMBERS.
2. Any person employed by the DISTRICT shall be considered an employee of the DISTRICT and shall not be an employee of the CITY. The DISTRICT shall pay all employee benefits and shall obtain workers' compensation insurance coverage, naming the CITY as co-insured.
3. The DISTRICT has the right to sue and be sued and may retain its own legal counsel. The DISTRICT may contract with attorneys who are retained or employed by the CITY to the extent that such employment does not create a conflict of interest that would require

counsel to be disqualified from representing the CITY.

4. The DISTRICT shall have the right, as an independent contractor, to contract with third parties (such as CHRISTUS Good Shepherd Medical Center-Marshall) for the provision of health services outside the scope of the services provided by the DISTRICT on behalf of the MEMBERS. To the extent that the DISTRICT engages in such activities, the DISTRICT shall obtain a contractual agreement with such third parties limiting the DISTRICT's tort and contractual liability to the consideration paid by the third party otherwise indemnifying the DISTRICT and the MEMBERS from any and all claims which may arise out of the services provided to such third parties.
5. As per the Local Public Health Reorganization Act, Tex. Health & Safety Code Ann. §121.006, the DISTRICT shall have the right to adopt ordinances or rules to charge fees for public health services. As such, the control of such fees will be at the discretion of the DISTRICT and in accordance with State guidelines.
6. The DISTRICT shall maintain the following insurance coverages for the duration of this Agreement:
 - a. Workers' Compensation and Employers Liability Insurance, as required by law;
 - b. Commercial General Liability:
 1. Bodily Injury and Property Damage \$1,000,000 each occurrence
 2. Combined \$1,000,000 aggregate
 - c. Public Officials and Employee Liability Insurance \$500,000 limit of liability.
7. The CITY is to be included as additional insured on all liability policies. The DISTRICT shall provide the MEMBERS with a Certificate of Insurance evidence compliance with the requirements of Paragraph 6. The DISTRICT shall secure insurance with an insurance company that is rated A-5 or better under Best's Insurance Rating System.
8. When insurance is provided, Certificates of Insurance are to be issued to the MEMBERS and shall include the following information:
 - a. Name of insurance company providing coverages and policy numbers;
 - b. Type and limits of coverage;
 - c. Policy period (includes effective and expiration dates);
 - d. Statement in Remarks Section of Certificate, if not otherwise provided for on Certificate, that general liability assumed by the insured in contracts with the other party;
 - e. A statement guaranteeing thirty (30) days notice, if policies are canceled or significantly changed before the expiration date;
 - f. Name, address and telephone number of the insurance agent, broker or company and signature of authorized representative; and,
 - g. Description of operations, locations, vehicles, restrictions, special items and remarks.
9. When insurance is provided by the DISTRICT, as described above, the policies shall contain a waiver of subrogation by the insurer in favor of the CITY.
10. The DISTRICT may own and acquire real and/or personal property to the extent permitted by the ACT; however, the MEMBERS shall have the right and privilege to perform and conduct audits of the funds received and disbursed by the DISTRICT.

EXECUTED this _____ day of _____, 2019, at Marshall, Harrison County, Texas.

CITY OF MARSHALL, TEXAS

By: _____
Mark Rohr, City Manager

Attest: _____
Elaine Altman City Secretary

MARSHALL-HARRISON COUNTY HEALTH DISTRICT

By: _____
Jennifer Hancock, RN, Executive Director

THE STATE OF TEXAS

CITY OF MARSHALL

BEFORE ME, the undersigned authority, on this day personally appeared **Mark Rohr**, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same on behalf of **CITY OF MARSHALL, TEXAS**, a political subdivision of the State of Texas, for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2019.

Notary Public in and for the State of Texas

THE STATE OF TEXAS

CITY OF MARSHALL

BEFORE ME, the undersigned authority, on this day personally appeared **Jennifer Hancock, RN, Executive Director**, is known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on behalf of **MARSHALL-HARRISON COUNTY HEALTH DISTRICT**, a public health district, for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2019.

Notary Public in and for the State of Texas

ITEM 7D

CONSENT AGENDA

APPROVAL OF APPOINTMENTS AND REAPPOINTMENTS TO VARIOUS CITY BOARDS, COMMISSIONS, AND COMMITTEES

MEMORANDUM

To: Members of the City Commission

From: Mark Rohr, City Manager

Date: December 5, 2019

Subject: Approval of Reappointments and New Appointments to the Various City Boards, Commissions, and Committees

The proposed reappointments and new appointments to various City boards, commissions, and committees were presented at the last regular meeting. The third and final step in the process is for the Commission to make the appointments to the various City boards, commissions, and committees. Recommendations for reappointments and new appointments are attached with the information on each board, commission, and committee.

CITY BOARDS, COMMISSIONS, & COMMITTEES

COMMUNITY DEVELOPMENT ADVISORY COMMITTEE

The Community Development Advisory Committee assists with establishing long-range goals and objectives for the Community Development Block Grant program and makes recommendations on the annual plan and budget for this annual federal grant. The term of service on this board is three years, beginning on January 1 after the appointment is made. There is no limit to the number of consecutive terms a member can serve. The current members of this committee are Loretta Martin, Bobbie Hurd, Deon Behrman, Lee Ferguson, Christy Godwin, and Keith Hill. The staff member who works with this committee is Wes Morrison Director of Community & Economic Development. Questions may be directed to Mr. Morrison at 903-934-7877 or at morrison.wes@marshalltexas.net.

The terms of Loretta Martin and Bobbie Hurd are expiring. Both are eligible for reappointment.

It is recommended that Loretta Martin and Bobbie Hurd be reappointed.

There is one additional vacancy on the board which needs to be filled.

PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission hears and makes recommendations on requests for zoning changes and special use permits. This commission also reviews and approves subdivision plats in the city limits and within one mile of the city limits. The term of service on this board is three years, beginning on June 1 after the appointment is made. A member can serve a maximum of two consecutive full terms. The current members of this commission are Melisa Lewis, Ronnie Oney, Charlie Oliver, Ed Hoffman, Kyle Dansby, Colin Brady, and Matthew Kuhn. The staff member who works with this commission is Wes Morrison, Director of Community & Economic Development. Questions may be directed to Mr. Morrison at 903-934-7877 or at morrison.wes@marshalltexas.net.

Appointments to the Planning and Zoning Commission are brought before the City Commission in May or June. The Planning and Zoning Commission is not part of the annual year-end appointment process. The appointment procedures for the Planning and Zoning Commission are provided for by ordinance in the Zoning Ordinance. It is required by ordinance that the appointments to the Planning and Zoning Commission be made in May or June each year, and that all members must be resident citizens and qualified to be voters in the City of Marshall.

ZONING BOARD OF ADJUSTMENT

The Zoning Board of Adjustment conducts hearings on appeals to enforcement of the city's Zoning Ordinance, decides on exceptions to the Zoning Ordinance, and grants variances to the Zoning Ordinance. The term of service on this board is three years, beginning on January 1 after the appointment is made. There is no limit to the number of consecutive terms a member can serve. The current members of this board are Sam Fogle, Tom Webster, Jimmy Robertson, Dale Person, Matthew Kuhn, and Bill Seibert. The staff member who works with this board is Wes Morrison, Director of Community & Economic Development. Questions may be directed to Mr. Morrison at 903-934-7877 or at morrison.wes@marshalltexas.net.

There are no appointments needed.

KEEP MARSHALL BEAUTIFUL BOARD

The Keep Marshall Beautiful Board, formerly Marshall Image Advisory Board, advises the City Commission on issues related to littering and property appearance. The term of service on this board is two years, beginning on January 1 after the appointment is made. A member can serve a maximum of two consecutive full terms. The current members of this board are Stormy Nickerson, Ashli Dansby, and John Endicott. The staff member who works with this board is Mallori James, Tourism & Cultural Arts Director. Questions may be directed to Mrs. James at 903-935-4417 or at james.mallori@marshalltexas.net

The term of Stormy Nickerson is expiring. She is eligible for reappointment.

It is recommended that Stormy Nickerson be reappointed.

Cody Owen, Susan Marshall, Angelita Jackson, and Nita Gardner-Wylie have expressed interest in serving on this board. It is recommended that Cody Owen, Susan Marshall, Angelita Jackson, and Nita Gardner-Wylie be appointed as new members on this board.

HISTORIC LANDMARK PRESERVATION BOARD

The Historic Landmark Preservation Board is responsible for the historic landmark preservation plan and makes recommendations on establishing historic landmark preservation districts in the city limits. Members of this board must have knowledge and experience in history, art, architecture, or real estate planning and development; and have demonstrated interest, competence, or knowledge in historic preservation. The term of service on this board is two years, beginning on January 1 after the appointment is made. There is no limit to the number of consecutive terms that a member can serve. The current members of his board are Tony Crosby, Faye Whitaker, Ralph Newman, Rita Lewis, Annys Fisher, Travis Keeney, and Mary Lynn Vassar. The staff member who works with this board is Mr. Wes Morrison Director of Community & Economic Development. Questions may be directed to Mr. Morrison at 903-934-7877 or at morrison.wes@marshalltexas.net.

The terms of Tony Crosby, Ralph Newman, Rita Louise, and Mary Lynn Vassar are expiring. All are eligible for reappointment.

It is recommended that Tony Crosby, Ralph Newman, Rita Louise, and Mary Lynn Vassar be reappointed.

VISIT MARSHALL ADVISORY BOARD

The Visit Marshall Advisory Board, formerly Convention and Visitor Bureau Board of Directors, is responsible for establishing operating policies for Visit Marshall and for evaluating the progress of Visit Marshall in the attainment of its goals. This board consist of seven tourism related representatives. The term of service on this board is two years, beginning on January 1 after the appointment is made. A member can serve a maximum of three consecutive full terms. The current members are George Carter, Ayesha George, Jill Davis, Wes Smith, Joseph Filippazo, Ryan Smith, and Barbara Judkins. The staff member who works with this board is Mallori James, Tourism & Cultural Arts Director. Questions may be directed to Mrs. James at 903-935-4417 or at james.mallori@marshalltexas.net.

The terms of Jill Davis, Joseph Filippazo, and Barbara Judkins are expiring. All are eligible for reappointment.

It is recommended that Jill Davis, Joseph Filippazo, and Barbara Judkins be reappointed.

PARKS ADVISORY BOARD

The Parks Advisory Board serves as an advisory committee to the City Commission and City staff in establishing plans or procedures concerning usage, planning, goals, and objectives of parks and recreation services. The term of service on this board is two years, beginning on January 1 after the appointment is made. There is no limit to the number of consecutive terms a member can serve. The current members of this board are James Runnels, Mike Haynes, Beckie Bates, Colin Brady, Jerry Calderon, and Melisa Lewis. The staff member who works with this board is Randy Pritchard, Support Services Superintendent. Questions may be directed to Mr. Pritchard at 903-934-7920 or at pritchard.randy@marshalltexas.net.

The terms of Colin Brady, Jerry Calderon, and Melisa Lewis are expiring. All are eligible for reappointment. Becky Bates has resigned from the board.

It is recommended that Colin Brady, Jerry Calderon, and Melisa Lewis be reappointed.

Gloria Moon and LaDarius Carter have expressed interest in serving on this board. It is recommended that Gloria Moon and LaDarius Carter be appointed as new members on this board.

MARSHALL PUBLIC LIBRARY BOARD OF TRUSTEES

The Marshall Public Library Board of Trustees serves as the advisory board for the Marshall Public Library. Of the seven members on this board, at least five members must be full-time residents of the City of Marshall. The term of service on this board is two years, beginning on January 1 after the appointment is made. A member can serve a maximum of two consecutive full terms. The current members of this board are Ken Poindexter, Eva Oliver, Charles Cornish, Dr. Gerald Nissley, Christina Deel, Jennifer Hoskins, and Scherry Earl. The staff member who works with this board is Anna Lane, Library Director. Questions may be directed to Ms. Lane at 903-935-4465 or at alane@marshallpubliclibrary.org.

The terms of Charles Cornish, Dr. Gerald Nissley, and Scherry Earl are expiring. Scherry Earl is eligible for reappointment.

It is recommended that Scherry Earl be reappointed.

Ruby Pye and Peggy Emerson have expressed interest in serving on this board. It is recommended that Ruby Pye and Peggy Emerson be appointed as new members on this board.

ITEM 7E

CONSENT AGENDA

**APPROVAL OF A RESOLUTION
AUTHORIZING THE CITY TO ENTER
INTO AN INTERLOCAL AGREEMENT
WITH REGION 2 EDUCATION SERVICE
CENTER FOR COOPERATIVE
PURCHASING SERVICES THROUGH
THE GOODBUY PURCHASING
PROGRAM**



CITY OF MARSHALL

COMMISSION AGENDA INFORMATION SHEET

MEETING DATE: 12/12/19

PROJECT: GoodBuy Purchasing Co_Op

DESCRIPTION: The Police Department has received a bid for purchasing Police Cars from a vendor under the GoodBuy purchasing Co-Op. The city is not currently a member of this Co-Op.

COST: None

**RECOMMENDED
ACTION:**

Approve interlocal agreement between Goodbuy Co-Op and the City of Marshall.

CITY CONTACT: Cliff Carruth – Chief of Police

cc: File

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF MARSHALL CITY
COMMISSION FOR A SHARED SERVICE ARRANGEMENT FOR
PARTICIPATION IN THE GOODBUY PURCHASING
COOPERATIVE (A PROGRAM OF THE EDUCATION SERVICE
CENTER, REGION 2)**

WHEREAS, the City of Marshall (Hereinafter “Member”) pursuant to the authority by Article 791et.seq.of the Inter-local Cooperation Act, as amended, desires to participate in the Goodbuy Purchasing Cooperative.

WHEREAS, the City of Marshall has elected to be a Member of the Goodbuy Purchasing Cooperative, a program created by local governments in accordance with the Inter-local Cooperation Act 791, Texas Government Code.

WHEREAS, the Member is of the opinion that participation in the Goodbuy Purchasing Cooperative will be highly beneficial to the taxpayers of the local government through the efficiencies and potential savings to be realized through participation in this Shared Service Arrangement Resolution; and

WHEREAS, the Member desires to participate and join with other local governments in a cooperative inter-local agreement and a shared service agreement for the purpose of fulfilling and implementing their respective public governmental purposes, needs, objectives, programs, functions and services.

NOW, THEREFORE, BE IT RESOLVED, that the Member does request the Goodbuy Purchasing Cooperative include its stated needs for all categories of instructional goods and services, whereby the Member may be allowed to purchase those items from the Goodbuy Purchasing Cooperative contracts; and that the Goodbuy Purchasing Cooperative is authorized to sign and deliver all necessary requests and other documents in connection therewith for and on behalf of the Members that have elected to participate in this agreement.

FURTHER, BE IT RESOLVED, that the City Commission of the Member does hereby authorize its City Manager or other officer to execute this Agreement.

FINALLY, BE IT RESOLVED that the execution of this Resolution shall evidence the election of the Member and eligible local governments to become members of the Multi-Regional Purchasing Program Shared Service Agreement upon the terms and conditions stated. The Marshall City Commission has, and at the time of adoption of this Resolution had, full power and lawful authority to adopt the foregoing Resolution and to confer the obligations, powers, and authority to the persons named, who hereby grant the power to exercise the same.

I certify that the foregoing is a true and correct copy of the Resolution duly adopted by the Marshall City Commission on the _____ day of December, 2019, and that the same now appears of record in its official minutes.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2019.

Mayor of the City Commission
of the City of Marshall, Texas

ATTEST:

City Secretary



Purchasing Program of the Education Service Center, Region 2

Interlocal Participation Agreement for the GoodBuy Purchasing Cooperative

The GoodBuy Purchasing Cooperative (“GoodBuy”), is a Purchasing Cooperative authorized by Tex. Gov’t Code §§ 791.001 *et seq.* as amended, operated by the Education Service Center, Region 2 (“Region 2 ESC”), a state agency, as authorized by Tex. Educ. Code (“TEC”) §8.002 and TEC §44.031(a)(4). The purpose of this Agreement is to facilitate compliance with state bidding requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Program Members. Program Members may purchase goods and services from any and all GoodBuy vendors, under the same terms, conditions, and price as stated in each GoodBuy awarded contract. GoodBuy excludes engineering, architectural, land surveyors, doctors, nurses and construction services. The purchase of goods through GoodBuy includes the purchase of any services reasonably required for the installation, operation, or maintenance of purchased goods, where such services are included in the awarded Vendor contract.

MEMBERSHIP

1. **Program Members.** Program Members must be qualifying local governmental entities of the State of Texas or another State; or qualifying private non-profit entities with tax exempt status under IRS Code Section 501(c)(3), operating private schools or child care facilities.
2. To become a Program Member requires the approval of this Agreement by the governing body of the Member, and by the Region 2 ESC Board of Directors. Each Program member must submit a copy of this Agreement signed by an authorized representative of the Member, along with a signed copy of a Resolution approved by the Program Member’s governing body, to Region 2 ESC, as a condition of membership, as set forth below.
3. **Non-governmental Members.** In addition to the membership requirements set forth in Paragraph 2 above, all non-governmental entities seeking membership in GoodBuy must produce such documents as may be required from time to time by GoodBuy, to demonstrate each such non-governmental entity is eligible to become a Program Member under applicable law.
4. **Membership Term.** This Agreement shall be for one calendar year, which shall run from September 1 through August 31 of each calendar year, and shall become effective upon approval by both the Program Member’s governing body, and the Region 2 ESC Board of Directors. This Agreement shall automatically renew for successive one-year terms, unless sooner terminated as provided in this Agreement. The terms and conditions of this Agreement shall apply to the initial term of Membership and all renewals, unless the terms and conditions are modified in writing, and approved by the governing body of GoodBuy, the Region 2 ESC Board of Directors. There is no fee for Program Membership.
5. **Termination of Membership.** Either the Program Member or Region 2 ESC may elect to non-renew this Agreement by sixty (60) days written notice of non-renewal delivered to the designated representative of the other party, as set forth below. This Agreement may also be terminated by either party upon thirty (30) days prior written notice to the designated representative set forth below, with or without cause. If the Program Member terminates its participation during the term of this Agreement or if GoodBuy terminates participation of the Program Member under any provision of this Article, the Program Member shall bear the full financial responsibility for any purchases by the Program Member occurring after the termination date.



Purchasing Program of the Education Service Center, Region 2

Services Provided by GoodBuy:

GoodBuy will:

- Provide the organization and administrative structure of the program, including all staff necessary for the efficient operation of the program;
- Solicit requests from Program Members for adding categories/commodities and relevant specifications, and quantity demands for goods and services that could be included in the GoodBuy program;
- Prepare specifications for procurement of goods and services to be included in the GoodBuy program;
- Publish solicitations for prices and bids from potential Vendors of goods and services to be included in the GoodBuy program;
- Qualify potential Vendors and their goods or services, based on published bid criteria, and including the conducting of due diligence of potential Vendors;
- Tabulate price quotes, unit prices, and other information provided by potential Vendors of goods and services, to determine awarded Vendors for specific goods and services;
- Making all Vendor background research information and bids, and GoodBuy awarded Vendor contract analysis information available to Program Members;
- Maintain and publish the list of all GoodBuy awarded contracts, including all relevant information about the goods and services available under each awarded Vendor contract; and
- Provide Members with procedures for ordering, delivery, and billing for Member purchases from GoodBuy vendors.

Region 2 ESC is the designated entity that shall supervise the GoodBuy performance of this Agreement.

Any written notice to the GoodBuy Purchasing Cooperative shall be made by first class mail, postage prepaid, and delivered to: GoodBuy Purchasing Cooperative, Education Service Center, Region 2, 209 N. Water St., Corpus Christi, Texas 78401-2528 or by e-mail sent and actually received by GoodBuy to a GoodBuy Relations Representative at goodbuy@esc2.net.

Member Obligations:

- Each Program Member warrants that all Vendor payments, or other disbursements required under this Agreement will be made from current revenues budgeted and available to that Member.
- Program Members commit to purchase goods and services that become part of the official GoodBuy products and services list when it is in the best interest of the member entity.
- Each Program Member agrees to prepare purchase orders or provide other documentation issued to the appropriate vendor from the official awarded Vendor list provided by GoodBuy clearly noting contract number on it, as may be required by Member policy and procedures; provide a copy of each such Purchase Order, or Member approved order confirmation, Vendor Invoice or other proof of purchase for a purchase to the GoodBuy representative no later than 60 business days of the Member purchase from a GoodBuy Vendor;
- Accept shipments of products or delivery of services ordered from vendors in accordance with standard GoodBuy purchasing procedures.



Purchasing Program of the Education Service Center, Region 2

- Pay Vendors in a timely manner for all goods and services received.
- Report promptly in writing to GoodBuy any and all instances in which a Program Member has rejected goods or services delivered to the Member by any awarded GoodBuy Vendor, or has cancelled any previously approved Purchase Order or invoice Order for goods or services to be provided by any awarded GoodBuy Vendor, to the designated GoodBuy representative.
- It is also a condition precedent to the approval of this Agreement for each Program Member by the Board of Directors of Region 2 ESC, that each prospective Program Member shall designate the person or persons who have express authority to represent and bind the Program Members in the administration and operation of this Agreement, with respect to GoodBuy purchasing, and Region 2 ESC will not be obligated to contact any other individual(s) regarding GoodBuy matters. A Program Member may change the designated Member representative listed below at any time by submitting written notice to goodbuy@esc2.net.

Program Member Name: City of Marshall Texas

Program Member Designated GoodBuy representative(s):

Name: Yvette Graham

Title: Purchasing Manager

Email: ygraham@marshalltexas.net

Telephone: 903-935-4421

Facsimile: 903-938-3531

Contact Information: Yvette Graham

(Address) PO Box 698

City: Marshall

State: TX 75671

The Program Member shall provide proof of goods and services purchased via any GoodBuy contract (purchase orders, monthly activity reports, order confirmations, invoices, etc.) to GoodBuy (all purchases conducted through GoodBuy Awarded Vendor contracts). These reports may be modified from time to time as deemed appropriate by GoodBuy.

GENERAL TERMS AND CONDITIONS

- 1. Governing Law and Venue.** The Program Member and GoodBuy agree that this Agreement is governed by the law of the State of Texas and the published policies and procedures of GoodBuy. Any and all suits arising from this Agreement shall be brought in a court of competent jurisdiction and venue shall lie in Nueces County, Texas.
- 2. Cooperation and Access.** The Program Member and GoodBuy agree that they will cooperate in compliance with any reasonable requests for information and/or records made by GoodBuy or the Program Member. GoodBuy reserves the right to audit the relevant records of any Program Member, and vice-versa.
- 3. Defense and Prosecution of Claims.** The ESC shall not be responsible or obligated to defend any claims against the Member or prosecute any claims on behalf of the Member.
- 4. Legal Counsel.** The Region 2 ESC shall not be responsible or obligated to provide or act as legal counsel to the Member with respect to any matter regarding this Agreement.
- 5. Purchase Contracts.** The Region 2 ESC and GoodBuy shall not be a party to any contracts made by the Member for the purchase of goods or services with any vendor through the GoodBuy program.



Purchasing Program of the Education Service Center, Region 2

6. No Warranty. The Region 2 ESC and/or GoodBuy does not warrant, sponsor, or endorse the goods or services of any GoodBuy Vendor.
7. It is the responsibility of the Program Member purchasing from GoodBuy awarded vendors ensure that the applicable purchasing requirements for the Member are met in accordance with all applicable local, state and federal procurement law.
8. Mediation. All claims and disputes arising under this Agreement shall be submitted to non-binding mediation before a neutral mediator in Nueces County, Texas, with the party demanding mediation of a claim being obligated to pay all costs and expenses of mediation.
9. Compliance with Procurement Laws. GoodBuy shall use its best effects to solicit prices for goods and services in compliance with all applicable laws and regulations governing purchase contracts by Members, and will keep a record of its procurement methodology for inspection by any Member. Each Member is responsible for determining, in consultation with its legal counsel, whether purchasing through this cooperative will satisfy the requirements of any applicable law or regulation governing the Program Member.
10. This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties.
11. If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect
12. No Party to this Agreement waives or relinquishes any immunity or defense on behalf of itself, its directors, officers, employees, representatives and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.
13. THE GOODBUY PURCHASING COOPERATIVE, ITS ENDORSERS, AND SERVICING CONTRACTORS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT, OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
14. THE PARTIES AGREE THAT IN REGARD TO ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES
15. **GoodBuy and Region 2 ESC, their ENDORSERS AND SERVICING CONTRACTORS, DO NOT WARRANT THAT THE OPERATION OR USE OF PROGRAM SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.**



Purchasing Program of the Education Service Center, Region 2

16. Merger: The Interlocal Participation Agreement, Board Resolution, Terms and Conditions, and General Provisions represent the complete understanding of the GoodBuy Purchasing Cooperative, and Program Member electing to participate in the Program.

17. Representation of Authorization: By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

TO BE COMPLETED BY THE GOODBUY PURCHASING COOPERATIVE, as acting on behalf of all other Program Members

By: _____ Date: _____
GoodBuy Relations Representative, Region 2 ESC

Email: _____ Telephone: _____

Facsimile: _____

(Name of Program Member)

TO BE COMPLETED BY PROGRAM MEMBER

By: _____ Date: _____
(Signature of authorized representative of Program Member)

ITEM 7F

CONSENT AGENDA

STREET SWEEPING ACTIVITY REPORT



TO: Members of the City Commission

FROM: Eric Powell, PE 
Director of Public Works

DATE: December 6, 2019

SUBJECT: Street Sweeping Activity Report

The Street Sweeping Activity Report for the month of November 2019 is attached for review by the City Commission.

STREET SWEEPING ACTIVITY REPORT

NOVEMBER 2019

STREET NAME	NUMBER OF TIMES SWEPT
N. Allen Blvd.	1
S. Allen Blvd.	1
Ambassador Blvd.	1
Austin St. (Downtown)	7
Belle Court	1
Bolivar St. (Downtown)	7
N. Bolivar	1
S. Bolivar	1
Briarwood Dr.	1
Bridle Path	1
Buena Vista Dr.	1
Burleson St. (Downtown)	7
Carter St.	2
Carters Ferry Rd.	1
Cotton Court	1
Country Club Dr.	1
Courthouse Square (Houston St.)	7
Emory St.	1
Fisher Dr.	1
Fitzgerald St.	1
Forest Trail	1
Franklin St.	1
S. Garrett St.	2
Indian Springs Rd.	1
Idylwild Terrace	1
Jasper Dr.	1
Jeff Davis St.	1
Jefferson Ave.	1
Johnson St.	3
Leland Dr.	1
Kay Dr.	1
Memorial Dr.	1
Molly Maye Dr.	1
Nathan St.	1
Oakwood Dr.	1

December 2, 2019

Park Dr.	1
Parker St.	1
Pine Burr Circle	1
Pine Burr Terrace	1
Pinewood Dr.	1
Plantation Lane	1
Poplar St.	1
Randall Circle	1
Rebel Lane	1
Rosborough Springs Rd.	1
Rosewood Circle	1
Rusk St. (Downtown)	7
Sanford St.	2
Scenic Loop	1
Sherman Dr.	1
Stuart Lane	1
E. Travis St.	1
University Ave.	1
Van Zandt Ave.	1
Warren Dr.	1
N. Washington (Downtown)	7
Washington Place East	1
Washington Place North	1
Wellington St. (Downtown)	7
Wildwood Terrace	1
Wiley Ave.	2

ITEM 7G

CONSENT AGENDA

MUNICIPAL COURT ACTIVITY REPORT

MEMORANDUM

To: Mark Rohr, City Manager

From: Elaine Altman, Finance Director

Date: December 6, 2019

Subject: November 2019 Municipal Court Activity Report

The attached report identifies the type and number of cases filed, financial information, number of trials/hearings, warrants and dispositions for the month of November. The report also includes OCA (Office of Court Administration – Austin, TX) monthly data compiled indicating total active and inactive cases.

Monthly Report For Nov 2019

Cases Filed

STEP Site	Traffic	Penal	City Ordinance	Parking	Other	Total
1	293	22	5	2	1	323

Financial

State Costs	City Costs	Fines	Tech Fund	Bld Security	Total
\$12,153.69	\$6,719.73	\$15,859.10	\$602.87	\$452.26	\$35,787.65

Trials/Hearings

Jury	Bench	Appealed	Total
0	42	0	42

Warrants

Issued	Recalled	Served	Fees Collected	Amount Collected	Outstanding
261	32	50	\$1,124.90	\$12,645.00	\$2,683,415

Dispositions

Paid	Time Served	Dismissed	Appealed	Total
118	25	110	0	256

OFFICE OF COURT ADMINISTRATION - AUSTIN, TX

* OCA MONTHLY DATA COMPILED FROM OCT 2019 REPORT (SUBMITTED 11/19/19)

SHOWS THE FOLLOWING DATA.

ACTIVE CASES: 1,338

INACTIVE CASES: 4,962

ITEM 8A

PRESENTATION

**PRESENTATION FROM AEP/SWEPCO, IN
THE AMOUNT OF \$13,900, FOR
RECOGNITION OF THE CITY'S
PARTICIPATION IN THE 2019 LOAD
MANAGEMENT PROGRAM**



TO: Members of the City Commission

FROM: Eric Powell, PE 
Director of Public Works

DATE: December 6, 2019

SUBJECT: Check presentation from AEP/SWEPCO, in the amount of \$13,900.00, for recognition of the City's participation in the 2019 Load Management Program

For several years, we have participated in AEP/SWEPCO's Load Management program by scheduling some of our raw water pumping from the Big Cypress Raw Water Pump Station into "off-peak" electric demand periods. The program has been very beneficial to AEP/SWEPCO because it helps to reduce their high peak demand load on their electrical grid. The program has also been very beneficial to the City of Marshall because we are compensated for managing our electrical use periods which reduces our demands on their electrical power grid; an actual win-win.

AEP/SWEPCO has made check presentations to the City in each of the last ten (10) years, ranging from approximately \$12,000 to \$20,000 each year. The Load Management Check payment for 2018 was \$14,600, but their 2019 check is a bit lower at \$13,900.

AEP/SWEPCO would like to present a check to the City of Marshall in recognition of another successful Load Management Program this past summer.

ITEM 9A

ORDINANCES

APPROVAL OF AN ORDINANCE AMENDING THE 2019 ANNUAL BUDGET TO APPROPRIATE FUNDS FOR PROJECTS APPROVED BY THE CITY COMMISSION

MEMORANDUM

To: Mark Rohr, City Manager

From: Elaine Altman, Finance Director

Date: December 6, 2019

Subject: Consider Approval of Amendments to the 2019 Annual Budget

On Wednesday, December 11, 2019, the Finance Department will run preliminary November Revenue and Expense Reports. The Department has expedited the November financial close to provide eleven months of data to evaluate and use to determine year-end adjustments / budget amendments. Budget amendments generated based on these reports will be emailed to the Commission as soon as they are completed.

ITEM 9B

ORDINANCES

APPROVAL OF AN ORDINANCE AMENDING THE 2019 ANNUAL BUDGET TO PROVIDE FOR YEAR-END ADJUSTMENTS IN SELECTED DEPARTMENTS

MEMORANDUM

To: Mark Rohr, City Manager

From: Elaine Altman, Finance Director

Date: December 6, 2019

Subject: Consider Approval of Amendments to the 2019 Annual Budget

On Wednesday, December 11, 2019, the Finance Department will run preliminary November Revenue and Expense Reports. The Department has expedited the November financial close to provide eleven months of data to evaluate and use to determine year-end adjustments / budget amendments. Budget amendments generated based on these reports will be emailed to the Commission as soon as they are completed.

ITEM 10A

SECOND READING OF ORDINANCE

**APPROVAL OF AN ORDINANCE
AMENDING CHAPTER 14, GARBAGE,
TRASH, AND WEEDS OF THE CODE OF
ORDINANCES, REVISING THE
SCHEDULE OF REFUSE RATES,
PROVIDING FOR MONTHLY CHARGES,
AND ESTABLISHING AN EFFECTIVE
DATE OF JANUARY 1, 2020**



TO: Members of the City Commission

CC: Mark Rohr, City Manager

FROM: Eric G. Powell, PE Director 

DATE: November 15, 2019

SUBJECT: Republic Services Rate Increase - 2020

PROJECT: Consider approval of an Ordinance amending Chapter 14, Garbage, Trash, and Weeds of the Code of Ordinances, revising the schedule of refuse rates, providing for monthly charges, and establishing an effective date of January 1, 2020. (Public Works Director)

DESCRIPTION: The attached Rate Ordinance provides for a 2.7% rate increase for refuse charges with an effective date of January 1, 2020 as a result of an allowed Consumer Price Index (CPI) annual adjustment provided in Section 14 of the Solid Waste Contract with Republic Services, based on the March 2019 – Dallas-Ft Worth CPI for all items. The amended rates will become effective with water bills that are payable in February 2020.

14.00 RATE ADJUSTMENTS

Annual CPI

Any other provision of this Contract notwithstanding, beginning on January 1, 2019 and continuing on January 1 of each succeeding year during the term of this Contract, the rate schedule and fees charged by Contractor for refuse service in the City (collectively, the "Rates") shall be adjusted according to the change in the United States Department of Labor's published Consumer Price Index – All Urban Consumers (Dallas – Fort Worth, TX), but such adjustment shall not exceed 3% annually. The Rates will be adjusted using the most recent March index value compared to the preceding year's March index value. Contractor shall provide City with notice of changes by the June 1st preceding the effective date of the increase.

Republic Industries provided notification of a pending 2020 rate adjustment to begin January 1, 2020, in a letter dated May 28, 202, which references the March publication of the U.S. Bureau of Labor Statistics cost for services, as required in their contract. Example - based on the allowable contractual 2.7% CPI rate increase will increase the base cost for residential service by \$0.38 cents per month, from \$14.40 to \$14.78 or \$4.56 a year; the rate increase will apply to all solid waste services.

As stated herein above, this annual CPI rate adjustment is allowed under Section 14 of the Solid Waste and Disposal contract. Under the contractual agreement with Republic Services, we charge a 10% franchise fee (for road use) on the cost specified in their contract.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 14, GARBAGE, TRASH, AND WEEDS OF THE CODE OF ORDINANCES OF THE CITY OF MARSHALL, TEXAS, REPEALING AND AMENDING CERTAIN SECTIONS REGARDING GARBAGE AND INCREASING THE SOLID WASTE COLLECTION AND DISPOSAL FEES BY 2.7%; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS CONDUCTED IN STRICT COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT; REPEALING ALL ORDINANCES IN CONFLICT HERewith; AND ESTABLISHING AN EFFECTIVE DATE OF JANUARY 1, 2020.

WHEREAS, Chapter 363 of the Texas Health and Safety Code and Section 80 (15) of the City Charter of the City of Marshall, Texas, authorizes the City Commission to regulate the collection, transportation and disposal of solid waste within the corporate City limits of Marshall, Texas; and,

WHEREAS, the City's solid waste contractor, Republic Services, has increased its fees and rates of service to the City by the March 2019 CPI Index, in accordance with the current Solid Waste Contract; and,

WHEREAS, the City Commission finds and determines that an increase of the current rates for solid waste collection is necessary in order to accurately compensate the City for its costs of providing this service; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS:

Section 1. That the findings set out in the preamble to this ordinance are hereby in all things approved.

Section 2 That Article I of Chapter 14, Section 14-9, of the Code of Ordinances of the City of Marshall is hereby repealed in its entirety and that there is hereby adopted in place of said ordinances a new Section 14-9, Chapter 14 of the Code of Ordinances of the City of Marshall, Texas, said section to read as follows:

“Sec. 14-9. Rates for city collection - all rates will be assessed sales tax:

(a) The following rates shall be charged for each monthly period to all customers of the garbage collection of the system of Marshall based on the attached rate sheet.

MARSHALL RATE SHEET

(Effective January 1, 2020)

I. RESIDENTIAL RATE SCHEDULE – Initial seven (7) year period (Residential Carts:

A. Automated Solid Waste & Recycling Collection - Residential

96 gallon rolling cart — City Resident \$ 14.78/Monthly Per Unit
 Once per week Residential Collection
 Once per week Brush/Bulky Collection
 Extra Carts — Limit of 4 per \$ 3.00 /Extra Monthly Fee Ea..
 Residential Unit Weekly Bulk/Brush
 Limited to 3 Cu. Yds.

***No Side Trash Allowed Cart Contents Only**

IIB. COMMERCIAL CART RATE SCHEDULE

Rolling cart service — Automated (For business with less than two (2) yards of trash per week):

A. One Cart \$23.74/Monthly Per Unit
 B. Two Carts \$30.88/Monthly Per Unit
 C. Cart Service Downtown - Four (4) times \$33.95/Monthly Per Unit
 per week (Four Days Trash Service & One
 Day Recycling) - South of Grand Avenue;
 East of Franklin Street North of Bowie
 Street; West of Lafayette Street)

III.FRONT LOAD CONTAINERS RATE SCHEDULE

Size/ Freq.	1X\WK	2X\WK	3X\WK	4X\WK	5X\WK	6X\WK	Extra pickup
2 yd	\$64.42	\$112.09	\$177.60	\$226.13	\$267.23	\$314.30	\$29.52
3 yd	\$92.53	\$160.82	\$229.27	\$306.50	\$375.59	\$431.37	\$41.33
4 yd	\$119.06	\$207.00	\$293.38	\$390.85	\$476.53	\$555.19	\$53.14
6 yd	\$165.06	\$284.90	\$401.69	\$521.41	\$654.11	\$743.41	\$64.95
8 yd	\$204.13	\$345.87	\$425.76	\$628.80	\$778.82	\$840.43	\$76.76

Monthly - 4yd Compactor 1X/Week = \$ 415.01

Monthly - 6yd Compactor 2X/Week = \$ 617.74; 4X/Week \$ 986.09; 6X/Week = \$ 1,731.13

IV. ROLL OFF CONTAINERS AND 42 YD COMPACTOR RATE SCHEDULE:

SIZE	RENTAUMONTH	PER HAUL
20 YD OPEN TOP	\$126.50	\$570.44
30 YD OPEN TOP	\$126.50	\$625.95
40 YD OPEN TOP	\$126.50	\$699.20
42 YD COMPACTOR	Negotiable	\$856.75

With respect to apartments and duplexes, where the owner provides reasonable space for and access to a bulk container, commercial-type service shall be provided by the city; otherwise, residential-type service shall be provided.”

Section 3. That the meeting at which this ordinance was passed was conducted in strict compliance with the Texas Open Meetings Act (Texas Government Code Chapter 551).

Section 4. That all other prior ordinances or portions of ordinances of the City of Marshall in conflict with the terms and provisions of this ordinance are hereby repealed to the extent of such conflict only.

Section 5. That the repeal of any ordinance or portion of an ordinance by this ordinance shall not affect the validity of any pending enforcement action or fines outstanding and due and payable on or before the effective date of this ordinance.

Section 6. That if any section, paragraph, subdivision, clause, phrase or provision of this ordinance is hereafter determined to be invalid or in violation of the laws of the State of Texas or the Constitution of the United States by a court of appropriate jurisdiction, such finding of invalidity shall affect the continued enforcement only of the provision so determined to be invalid, it being the intent of the City Commission of the City of Marshall that all other terms and provisions of this ordinance not affected thereby shall remain in full force and effect.

Section 7. That this ordinance shall be effective on January 1, 2020 and after its passage and publication as required by law.

PASSED AND APPROVED this 21st day of November 2019.

AYES:

NOES:

ABSTAINED:

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2019.

AYES: _____

NOES: _____

ABSTAINED: _____

CHAIRMAN OF THE CITY COMMISSION
OF THE CITY OF MARSHALL, TEXAS

ATTEST:

Elaine Altman, City Secretary

ITEM 11A

RESOLUTION

APPROVAL OF A RESOLUTION ORDERING A SPECIAL ELECTION FOR CITY COMMISSIONER DISTRICT 2

MEMORANDUM

To: Mark Rohr, City Manager

From: Elaine Altman, City Secretary/Finance Director

Subject: Resolution – Order and Notice of City Election to Fill a Vacancy

Date: December 6, 2019

Attached is a resolution ordering a Special Election to fill a vacancy for City Commissioner District 2. The election will be held on May 2, 2020. An executed copy of the resolution will serve as proper notice of the election as required by the Election Code.

I recommend approval of the resolution.

RESOLUTION
ORDER AND NOTICE OF SPECIAL ELECTION TO FILL A VACANCY

STATE OF TEXAS
COUNTY OF HARRISON
CITY OF MARSHALL

To the Resident Qualified Voters of the City of Marshall, Texas:

Take notice that an election will be held on the 2nd day of May, 2020, in the City of Marshall, Harrison County, Texas, at the place and in the manner set forth in the election resolution adopted by the City Commission on the 12th day of December, which is as follows:

Resolution calling an election to fill a vacancy for City Commissioner, District two.

WHEREAS, the election of the city officers is to be held on the first Saturday in May, now, therefore,

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MARSHALL:

1

That an election be held in said City of Marshall, Texas, on the 2nd day of May, 2020, at which election candidates for the office of Commissioner District 2 shall be submitted to the resident qualified voters of said City for their action thereon,

2

That the deadline for candidates to file an application for place on the election ballot is _____,

3

That said election shall be held within the City of Marshall at Marshall Convention Center, 2501 E. End Blvd. South,

4

That the manner of holding said election shall be governed as near as may be possible to the General Election Laws of the State of Texas and none but resident qualified voters of said City shall be allowed to vote at said election,

5

That the ballots of said election shall conform to the requirements of the Election Code of the State of Texas, and

6

That the Harrison County Election Administrator is named the Early Voting Clerk and will conduct and supervise the election according to the agreement between the City of Marshall and said administrator. The Harrison County Election Administrator shall be appointed to or allowed to delegate the positions of Central Counting Station Manager, Tabulation Supervisor, and Assistant Tabulation Supervisor as provided for in the Texas Election Code, Chapter 31.094 and 31.095. The election services include conducting and supervising the City Election on May 2, 2020 and the early voting. Early voting shall be conducted at the office of the Harrison County Elections Administrator, 415 E. Burleson St. beginning April 20, 2020 through April 24, 2020 from 8:00 a.m. until 5:00 p.m., and April 27, 2020 and April 28, 2020 from 7:00 a.m. to 7:00 p.m. The final day for early voting shall be April 28, 2020. Early voting and voting on May 2, 2020 shall be by paper ballot and through a DAU (Disabled Access Unit). The last day to receive an application by mail for a ballot to be voted by mail is April 20, 2020. Applications for early voting ballots by mail shall be mailed to Harrison County Election Administrator, P.O. Box 8409, Marshall, Texas 75671.

7

A copy of this Resolution signed by the Chairman of the City Commission and attested by the City Secretary shall serve as proper notice of said election. The City Secretary is authorized and directed to post a properly executed copy of said Notice of Election at City Hall and at the place where the election is to be held not less than 20 days prior to the date fixed for holding said election. The Secretary shall also cause said Notice of Election to be published once in a newspaper of general circulation published within the said City, the date of publication to be not more than 30 days nor less than 10 days prior to the date set for said election.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2020.

AYES:

NOES:

ABSTAINED:

MAYOR OF THE CITY COMMISSION
OF THE CITY OF MARSHALL, TEXAS

ATTEST:

CITY SECRETARY

RESOLUCION
PEDIDO Y AVISO DE ELECCION ESPECIAL PARA LLENAR UNA VACANTE

ESTADO DE TEXAS
CONDADO DE HARRISON
CIUDAD DE MARSHALL

A los votantes registrados de la Ciudad de Marshall, Texas:

Tome en cuenta que la elección se llevara a cabo en el Día 2 de Mayo, 2020, en la Ciudad de Marshall, Condado de Harrison, Texas, en el lugar y de la manera establecida en la resolución electoral adoptada por la Comisión de la Ciudad el día 12 de Diciembre, que es el siguiente:

Resolución convocando una elección para llenar una vacante para el Comisionado de la Ciudad, Distrito dos.

MIENTRAS QUE, la elección de los oficiales de la ciudad es de ser aguantada el primero Sábado de Mayo, ahora, por lo tanto,

QUE SEA RESUELTO POR LA COMISION DE LA CIUDAD DE MARSHALL:

1

Que la elección se llevara a cabo por la Ciudad de Marshall, Texas, en el día 2 de Mayo, 2020, por cual la elección de candidatos para las oficina de Comisionado Distrito 2; deben ser sometidos a los residentes calificados a votar de dicha ciudad y también,

2

Que la fecha límite para que los candidatos sometan su aplicación del lugar de su elección es _____,

3

Que dicha elección se llevara a cabo en la Ciudad de Marshall en Marshall Convention Center, 2501 E. End Blvd. Sur,

4

Y la manera donde se llevará a cabo la elección debe ser gobernada lo más cerca posible de la Elección General de Leyes del Estado de Texas y solamente residentes calificados de dicha ciudad se les debe dejar votar en la elección.

5

Que las votaciones de la elección mencionada deben estar de acuerdo a los requerimientos del Código del Estado de Texas, y

Que el Administrador de la Elección del Condado de Harrison sea nombrado Encargado de la votación temprana y llevara a cabo y supervisara la elección de acuerdo al acuerdo entre la Ciudad de Marshall y dicho administrador. El Administrador de Elecciones del Condado de Harrison será designado o autorizado a delegar los cargos de Gerente de la estación central de conteo, Supervisor de Tabulación, y Asistente de Supervisor de Tabulación según lo dispuesto en el Código Electoral de Texas, Capítulo 31,094 y 31,095. Los servicios electorales incluyen la realización y supervisión de las elecciones municipales del 2 de mayo de 2020 y la votación anticipada. La votación temprana se llevará a cabo en la oficina del Administrador de Elecciones del condado de Harrison, 415 E. Burleson St. empezando Abril 20, 2020 hasta Abril 24, 2020 de 8:00am a 5:00pm, y Abril 27, 2020 y Abril 28, 2020 de 7:00am a 7:00pm. El último día para la votación anticipada será el 28 de Abril de 2020. La votación y votación temprana Mayo 2, 2020 deben de ser por boleta de papel y por DAU (Acceso de Unidad Deshabilitada). El último día para recibir una solicitud por correo de una boleta que será votado es el 20 de Abril del 2020. Deben ser enviadas a Administrador de Elecciones del Condado de Harrison, P.O Box 8409, Marshall, Texas 75671.

Una copia de esta Resolución firmada por el Presidente de la Comisión de la Ciudad y certificada por el Secretario de la Ciudad servirá como aviso apropiado de dicha elección. El Secretario de la Ciudad está autorizado y dirigido a publicar una copia debidamente ejecutada de dicho Aviso de Elección en el Ayuntamiento y en el lugar donde la elección se llevará a cabo no menos de 20 días antes de la fecha fijada para celebrar dicha elección. El Secretario también hará que dicho Aviso de Elección se publique una vez en un periódico de circulación general publicado dentro de dicha Ciudad, la fecha de publicación no será más de 30 días ni menos de 10 días antes de la fecha establecida para dicha elección.

PASADO, APROBADO, Y ADOPTADO este _____de, _____2020.

SIS: _
No: _
ABSTENIDO: _

El PRESIDENTE DE LA COMISION de la CIUDAD
DE MARSHALL, TEXAS

ATESTIGUA:

SECRETARIO DE LA CIUDAD

ITEM 11B

**APPROVAL OF A RESOLUTION TO
SUSPEND CENTERPOINT ENERGY'S
PROPOSED EFFECTIVE DATE FOR ITS
PROPOSED INCREASE IN RATES IN THE
BEAUMONT/EAST TEXAS DIVISION**



TO: Members of the City Commission

FROM: Eric Powell, PE 
Director of Public Works

DATE: December 6, 2019

SUBJECT: Consider approval of a Resolution to suspend CenterPoint Energy's proposed effective date for its proposed increase in rates in the Beaumont/East Texas Division

BACKGROUND

On or about November 14, 2019, CenterPoint Energy Resources Corporation, D/B/A, CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint" or "Company") filed a Statement of Intent to increase rates by a total of approximately \$6.82 million.

CenterPoint proposes to *increase base rates for residential customers* and to *decrease base rates for commercial customers* as follows:

Residential:	\$7.181 million
General Service – Small Commercial:	-\$0.175 million
General Service – Large Volume:	-\$0.190 million

This equates to *net* increase in CenterPoint's *base-rate revenue* of about \$6.82 million.

CenterPoint's is also proposing a 12-month surcharge to recover certain expenses it contends it incurred as a result of Hurricane Harvey. That surcharge would be 10¢ per month per customer applied equally to residential customers and commercial customers. CenterPoint's proposed surcharge equates to an additional increase in revenue of about \$235,000. Combined, CenterPoint's proposed increase in base rates plus its proposed surcharge would produce an increase of about \$6.8 million, which represents a total increase of about 5.5% including gas costs or 9.4% excluding gas cost. CenterPoint's

proposed change in rates constitutes a “major change” as that term is defined by Section 104.101 of the Texas Utilities Code. This revenue increase does not include the effect of revenue-related taxes.

CenterPoint proposes a rate schedule to refund, over a three-year period, unprotected Excess Deferred Income Taxes (“EDIT”) resulting from the Tax Cut and Jobs Act (“TCJA”) of 2017, which lowered the federal tax rate of 35%, to 21%. The refund will appear on the customer’s bill as a separate line item called “Tax Refund.”

CURRENT BASE RATES VERSUS PROPOSED BASE RATES:

CenterPoint proposes to increase the fixed customer charge for the Residential class, while charges based on consumption would be reduced. For commercial customers, CenterPoint proposes a decrease in the customer charge but to increase the commodity charge. CenterPoint’s proposed base rates are shown in the table below:

CURRENT RATES COMPARED TO PROPOSED RATES**			
	Current Rates	Proposed Rates	Proposed Change
Residential			
Customer Charge/Month	\$24.01	\$28.75	\$4.74
Commodity Charge/ccf	\$0.12020	\$0.08690	-\$0.03330
General Service-Small Commercial			
Customer Charge/Month	\$36.56	\$31.50	-\$5.06
Commodity Charge/ccf	\$0.06250	\$0.09100	\$0.02850
General Service-Large Volume Commercial			
Customer Charge/Month	\$132.90	\$67.00	-\$65.90
Commodity Charge/ccf	\$0.02910	\$0.03970	\$0.01060

****Note:** The rates shown are representative of current and proposed rates and are specific to rates for the Tyler area, but are a close approximation of rates for all areas in CenterPoint’s Beaumont/East Texas Division.

CenterPoint also seeks approval to consolidate its Beaumont, East Texas, Tyler, and North East Purchased Gas Adjustment (“PGA”) areas, into a single PGA area and to amend its existing PGA rate schedule to add language that provides for the inclusion of costs associated with the Company’s participation in FERC matters, the gas portion of bad debt expense, and costs to be refunded to customers pursuant to orders previously issued by the Commission.

BILL IMPACT AT CURRENT BASE AND GAS-COST RATES VERSUS PROPOSED BASE AND GAS-COST RATES:

At CenterPoint's proposed change in base rates, plus the cost of gas recovered via the "purchased-gas adjustment" (PGA) clause, the average customer's monthly bill, amongst the four PGA areas, would be affected as follows:

(1) For Customers in the Beaumont PGA Area:

	Non-Gas Revenue Change	Percentage Change With/Without Gas Costs**	Average Current Monthly Bill, including Gas Cost**	Average Proposed Monthly Bill, including Gas Cost*	Proposed Monthly Bill Change w/Gas Cost
Residential	\$2.2 million	6.8% / 13.5%	\$42.17	\$45.17	\$2.84
General Service-Small	-\$0.02 million	-4.2% / -1.0%	\$122.93	\$117.78	-\$5.15
General Service-Large Volume	-\$0.06 million	8.4%/-20.6%	\$1,298.57	\$1,189.83	\$108.74

* In the Beaumont PGA Area the adjusted test-year average monthly usage is 30 Ccf for Residential Service, 158 Ccf for General Service-Small, and 2,321 Ccf for General Service-Large Volume. The current average cost of gas is \$0.48282 per Ccf @ 14.95 PSI and \$0.47313 per Ccf @ 14.65 PSI.

** The percent change with gas costs includes an estimate of the effect of the proposed PGA rate schedules consolidation.

(2) For Customers in the East Texas PGA Area:

	Non-Gas Revenue Change	Percentage Change With/Without Gas Costs**	Average Current Monthly Bill, Including Gas Cost*	Average Proposed Monthly Bill, including Gas Cost	Proposed Monthly Change
Residential	\$2.8 million	3.1%/12.5%	\$49.92	\$52.11	\$8.19
General Service-Small	-\$0.09 million	-8.0%/-1.8%	\$94.98	\$110.69	\$15.71
General Service-Large Volume	-\$0.09 million	-12.7%/-18.4%	\$1,500.64	\$1,898.06	\$397.42

* In the East Texas PGA Area the adjusted test-year average monthly usage is 36 Ccf for Residential Service, 149 Ccf for General Service-Small, and 2,592 for General Service-Large Volume. The current average cost of gas is \$0.50331 per Ccf @ 14.65 PSI.

** The percent change with gas cost includes an estimate of the effect of the proposed PGA rate schedules consolidation.

(3) For Customers in the Tyler PGA Area:

	Non-Gas Revenue Change	Percentage Change With/Without Gas Costs**	Average Current Monthly Bill, including Gas Cost*	Average Proposed Monthly Bill, including Gas Cost*	Proposed Monthly Change
Residential	\$1.3 million	18.7%/11.2%	\$43.92	\$52.11	\$8.19
General Service-Small	-\$0.04 million	16.5%/-1.8%	\$94.98	\$110.69	\$15.71
General Service-Large Volume	-\$0.04 million	26.5%/-10.6%	\$1,500.64	\$1,898.06	\$397.42

* In the Tyler PGA Area the adjusted test-year average monthly usage is 44 Ccf for Residential Service, 148 Ccf for General Service-Small, and 3,785 Ccf for General Service-Large Volume. The current average cost of gas is \$0.33226 per Ccf @ 14.65 PSI.

** The percent change with gas cost includes an estimate of the effect of the proposed PGA rate schedules consolidation.

(4) For Customers in the North East PGA Area:

	Non-Gas Revenue Change	Percentage Change With/Without Gas Costs**	Average Current Monthly Bill, including Gas Cost*	Average Proposed Monthly Bill, including Gas Cost*	Proposed Monthly Change
Residential	\$0.8 million	11.8%/12.1%	\$43.92	\$49.13	\$5.21
General Service-Small	-\$0.03 million	5.6%/-1.8%	\$105.05	\$110.95	\$5.90
General Service-Large Volume	-\$0.01 million	8.8%/-8.3%	\$1,934.49	\$2,104.16	\$169.67

* In the North East PGA the adjusted test-year average monthly usage is 38 Ccf for Residential Service, 147 Ccf for General Service-Small, and 4,211 Ccf for General Service-Large Volume. The Current average cost of gas is \$0.40306 per Ccf @ 14.73 PSI and \$0.39873 per Ccf @ 14.65 PSI.

** The percent change with gas cost includes an estimate of the effect of the proposed PGA rate schedules consolidation.

BILL IMPACT AT CURRENT BASE RATES VERSUS PROPOSED BASE RATES (EXCLUDING THE COST OF GAS):

At CenterPoint's proposed change in base rates (excluding the cost of gas), the average customer's monthly bill would be affected as follows:

	Avg Bill at Current Base Rates	Avg Bill at Proposed Base Rates	Proposed Change in Bill for Base Rates	Avg Monthly Consumption (ccf)

Residential				
Customer Charge/Month	\$24.01	\$28.75		
Commodity Charge	\$4.33	\$3.13		36
	\$28.34	\$31.88	\$3.54	INCREASE OF 12.5%
General Service-Small Commercial				
Customer Charge/Month	\$36.56	\$31.50		
Commodity Charge	\$9.24	\$13.45		147
	\$45.80	\$44.95	-\$0.85	DECREASE OF 2%
General Service-Large Volume Commercial				
Customer Charge/Month	\$132.90	\$67.00		
Commodity Charge	\$110.14	\$150.26		3,785
	\$243.04	\$217.26	-\$12.39	DECREASE OF 11%

****Note:** The rates shown are representative of current and proposed rates and are specific to rates for the Tyler area, but are a close approximation of rates for all areas in CenterPoint's Beaumont/East Texas Division.

CenterPoint proposes material increases in Residential customers' monthly customer charge; the effect of such an increase is that customers that use less gas than the average customer, will see a steeper percentage increase in their monthly bill. Also, CenterPoint proposes an increase in revenue for the Residential class and decreases for the commercial classes. Each of these factors means that the City should evaluate CenterPoint's proposed allocation of costs to the customer classes.

Lastly, given that CenterPoint's application represents its first general rate case since about December, 2012, and that since then, CenterPoint has sought and the Railroad Commission has granted CenterPoint, interim increases in rates pursuant to the Gas Utility Regulatory Act § 104.301 (the so-called "GRIP Statute"), it will be necessary to evaluate the prudence of CenterPoint's investments upon which it is earning a return through those interim rates.

FRANCHISE FEE ADJUSTMENT

CenterPoint proposes a new Franchise Fee Adjustment rate schedule that will allow the Company to adjust each customer's bill each month in an amount equal to the municipal franchise fees payable for the service provided to the customer by the Company. CenterPoint purports that the schedule also requires the Company to maintain on file with the Commission a current listing of cities within the Beaumont/East Texas Division and their applicable franchise fees.

ACTION REQUIRED BY DECEMBER 19, 2019

The City must take action on CenterPoint's Statement of Intent before December 19, 2019. Absent such action, CenterPoint's rates are deemed approved by operation of law.

CENTERPOINT TEXAS MUNICIPALITIES

The Alliance of CenterPoint Municipalities-South Texas Division ("ACM") was organized by a number of municipalities, served by CenterPoint. Alfred R. Herrera with the law firm of Herrera Law & Associates, PLLC, has previously represented the City as part of ACM in rate cases involving CenterPoint.

CITY JURISDICTION TO SET CENTERPOINT'S RATES

Unless a city ceded its original jurisdiction to the Railroad Commission of Texas, the Gas Utility Regulatory Act § 103.001 grants a city exclusive original jurisdiction over a gas utility's rates, services, and operations within the city limits. But even if a city has ceded its jurisdiction, to the Railroad Commission, the Gas Utility Regulatory Act § 103.023, grants a city the statutory right to participate in rate proceedings before the Railroad Commission.

INTERVENTION AT THE RAILROAD COMMISSION OF TEXAS

CenterPoint filed its Statement of Intent to raise rates with the City and the Railroad Commission of Texas ("RCT") on the same date. All reasonable efforts will be undertaken to resolve CenterPoint's rate application without the need for proceedings at the Railroad Commission for rates within the cities. But because CenterPoint submitted its application to the Railroad Commission to change rates in the environs (that is, areas outside the city limits) on the same date as it did with the City, it is important to participate in those proceedings because the Commission's decisions could impact rates within the City.

RATE CASE EXPENSES

CenterPoint proposes new Rate Case Expense Recovery Rate Schedules for (1) the incorporated areas and (2) the unincorporated areas and the cities that have ceded jurisdiction to the Commission. CenterPoint proposes that these rate schedules be used to recover the Company's expenses associated with preparing, filing, and litigating the Statement of Intent proceeding. The riders will also include the costs of any notice CenterPoint plans to provide.

Cities by statute are entitled to recover their reasonable rate case expenses from the utility. See Gas Utility Regulatory Act § 103.022. Legal counsel and consultants approved by ACM will submit monthly invoices to the coalition-designated city that will be forwarded to CenterPoint for reimbursement. No individual city's budget is negatively affected.

SUSPENSION

CenterPoint's rate-filing package is voluminous containing thousands of pages of data. In order to have time to review the rate-filing package, the Council is requested to suspend CenterPoint's proposed effective date for ninety (90) days as provided by GURA. It is a virtual impossibility for the City to set just and reasonable rates without suspending the rate request for ninety days; suspension of CenterPoint's proposed effective date will permit its special regulatory counsel and experts an opportunity to perform a better review of CenterPoint's application.

RECOMMENDATION

It is recommended that the City continue its participation in the Alliance of CenterPoint Municipalities and retain the law firm of Herrera Law & Associates, PLLC to represent the City's interest in matters related to CenterPoint's rate case and to advise the City with regard to CenterPoint's application; that the City intervene in the proceeding before the Railroad Commission of Texas, should such proceedings develop, and court appeals, if any; and that the City direct CenterPoint to reimburse the City's rate-case expenses on a monthly basis upon presentation of the ACM's invoices to CenterPoint.

The recommendation is also to suspend CenterPoint's proposed effective date of December 19, 2019, for its proposed increase in rates as set forth in CenterPoint's Statement of Intent for 90 days. Assuming CenterPoint's notice meets the statutory criteria for sound notice, the suspension period runs until March 18, 2020.

The City must take action no later than December 19, 2019. If the City does not take action by December 19, 2019, CenterPoint's proposed rates will be deemed approved by operation of law, subject to the City's right to hold a hearing to address CenterPoint's rate application.

RESOLUTION NO. _____

RESOLUTION BY THE CITY OF _____, TEXAS (“CITY”) SUSPENDING THE EFFECTIVE DATE FOR NINETY DAYS IN CONNECTION WITH THE STATEMENT OF INTENT TO INCREASE RATES FILED BY CENTERPOINT ENERGY RESOURCES CORPORATION, D/B/A, CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS, FOR ITS BEAUMONT/EAST TEXAS DIVISION, ON OR ABOUT NOVEMBER 14, 2019; DIRECTING CENTERPOINT TO REIMBURSE THE CITY’S RATE-CASE EXPENSES; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE

WHEREAS, CenterPoint Energy Resources Corporation, D/B/A, CenterPoint Energy Entex and CenterPoint Energy Texas Gas (“CenterPoint” or “Company”) filed a Statement of Intent with the City on or about November 14, 2019, to change its rate schedules within the corporate limits of this municipality, specifically to increase its system-wide, annual revenue requirement by approximately \$6.8 million; and

WHEREAS, the City is a regulatory authority under the Gas Utility Regulatory Act (“GURA”) and under Chapter 104, §103.001 et seq. of GURA has exclusive original jurisdiction over CenterPoint’s rates, operations, and services within the municipality; and

WHEREAS, in order to maximize the efficient use of resources and expertise in reviewing, analyzing and investigating CenterPoint’s rate request and its changes in tariffs it is prudent to coordinate the City’s efforts with a coalition of similarly situated municipalities; and

WHEREAS, the City, in matters regarding applications by CenterPoint to change rates, has in the past joined with other local regulatory authorities to form the Alliance of CenterPoint Texas Municipalities-Beaumont/East Texas Division (“ACM”), and hereby continues its participation in ACM; and

WHEREAS, CenterPoint's rate request consists of a voluminous amount of information including CenterPoint's rate-filing package, pre-filed direct testimony, exhibits, schedules, and workpapers; and

WHEREAS, CenterPoint's statement of intent is the Company's first general rate case since about December, 2012, and following six interim rate adjustments (more commonly known as GRIP ("Gas Reliability Infrastructure Program") increases in rates filed under GURA § 104.301) that CenterPoint filed since its last general rate case;; and

WHEREAS, because this is CenterPoint's first general rate case following its six GRIP increases in rates, the City will need to evaluate the prudence of investments CenterPoint made under GURA § 104.301; and

WHEREAS, CenterPoint proposed December 19, 2019, as the effective date for its requested increase in rates; and

WHEREAS, it is not possible for the City to complete its review of CenterPoint's filing by December 19, 2019; and

WHEREAS, the City will need an adequate amount of time to review and evaluate CenterPoint's rate application to enable the City to adopt a final decision as a local regulatory authority with regard to CenterPoint's requested rate increase.

WHEREAS, the City will require the assistance of specialized legal counsel and rate experts to review the merits of CenterPoint's application to increase rates; and

WHEREAS, the decision of the Railroad Commission of Texas will have a direct impact on the City and its citizens who are customers of CenterPoint and in order for the City's participation to be meaningful it is important that the City promptly request to intervene in proceedings pending at the Railroad Commission of Texas related to CenterPoint's application to increase rates.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF _____, TEXAS THAT:

Section 1. The findings set out in the preamble are in all things approved and incorporated herein as if fully set forth.

Section 2. CenterPoint's proposed effective date for its proposed increase in rates is hereby **SUSPENDED** for ninety days beyond December 19, 2019.

Section 3. The statutory suspension period may be further extended if CenterPoint does not provide timely and meaningful, and proper public notice of its request to increase rates, or if its rate-filing package is materially deficient.

Section 4. The City shall participate in a coalition of cities known as the Alliance of CenterPoint Municipalities-South Texas Division ("ACM"), and authorizes intervention in proceedings related to CenterPoint's Statement of Intent before the Railroad Commission of Texas and related proceedings in courts of law; and

Section 5. The City hereby orders CenterPoint to reimburse the City's rate case expenses as provided in the Gas Utility Regulatory Act and that CenterPoint shall do so on a monthly basis and within 30 days after submission of the City's invoices for the City's reasonable costs associated with the City's activities related to this rate review or related to proceedings involving CenterPoint before the City, the Railroad Commission of Texas, or any court of law.

Section 6. Subject to the right to terminate employment at any time, the City retains and authorizes the law firm of Herrera Law & Associates, PLLC to act as Special Counsel with regard to rate proceedings involving CenterPoint before the City, the Railroad Commission of Texas, or any court of law, and to retain such experts as may be reasonably necessary for review of CenterPoint's rate application subject to approval by the steering committee of the ACM.

Section 7. The City, in coordination with ACM's Steering Committee, shall review the invoices of the lawyers and rate experts for reasonableness before submitting the invoices to CenterPoint for reimbursement.

Section 8. A copy of this resolution shall be sent to Mr. Alfred R. Herrera, Herrera Law & Associates, PLLC, 4400 Medical Parkway, Austin, Texas 78756, and a courtesy copy to CenterPoint's local representative.

Section 9. The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 10. This resolution shall become effective from and after its passage.

PASSED AND APPROVED this _____ day of _____, 2019.

Mayor

ATTEST:

City Secretary

ITEM 12A

PRESENTATION OF THE CITY OF MARSHALL AUDIT REPORT FOR THE 2018 FISCAL YEAR

MEMORANDUM

To: Members of the City Commission

From: Elaine Altman, Finance Director

Date: December 6, 2018

Subject: Presentation of Audit for 2018 Fiscal Year

Knuckols, Duvall, Hallum & Company has completed the audit of the City's 2018 fiscal year. Representatives of the company will be at the meeting to present their report.

ITEM 12B

APPROVAL OF A CONTRACT WITH CASEY SLONE CONSTRUCTION COMPANY FOR THE PERKINS BUILDING PROJECT



Agenda Information Sheet

December 12, 2019

Agenda Item

Consider approval of a contract with Casey Slone Construction Company for the Perkins Building project. (Director of Community & Economic Development)

Background & Summary of Request:

In 2009 the City acquired the Perkins Building (206 N. Washington Avenue) as a means to accomplish a city goal of providing downtown public restrooms to meet the need and encourage growth of downtown festivals and events. Shortly after the city took ownership of the property, a local philanthropist donated the funds and plans for restrooms on another location within downtown. The City has since used the building on various occasions until the building began to need repair in early 2014. The building has sat vacant ever since that time. Since sitting vacant, the roof of the building has completely caved in causing an eyesore in downtown and a potential safety hazard.

Earlier this year the City engaged an architect and structural engineer to develop plans for demolition, cleanout and reconstruction of a slab foundation with proper drainage. Based on those plans and specifications we advertised for bids and the lowest bid was Casey Slone Construction, after value engineering the revised bid price was \$269,200.00. This bid price includes demolition, disposal, and reconstruction of slab foundation as well as asbestos removal. This bid also includes a high contingency due to a lot of unknowns on the project because of the state of the building.

Earlier this year the City allocated \$240,772 to demolition and blight removal through our Community Development Block Grant program, approximately \$18,000 of that has already been spent on professional fees associated with this project which leaves \$222,315 to be dedicated to demolition and construction from our CDBG funds, the remainder of the construction contract would have to be taken from General Fund.

If this contract is approved, construction would begin in early January 2020 and is expected to be completed within 30 to 60 days.

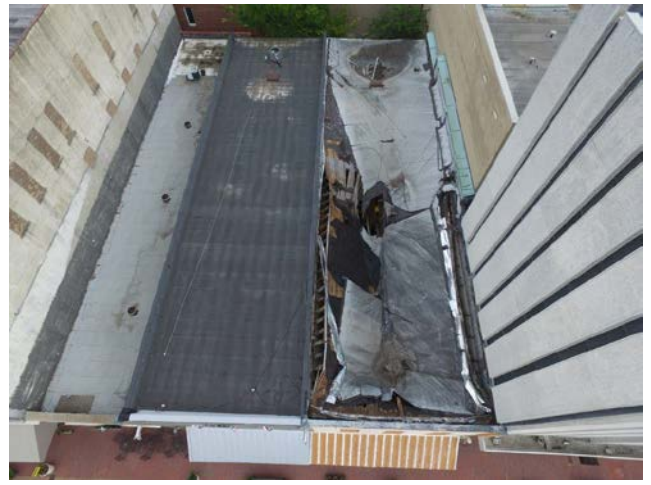
Attachments:

Photographs of the Site
Construction Contract

Perkins Building Site Pictures



Subject Property



Aerial Picture taken 2017



Aerial View of 200 Block of North Washington



Front Door View of the Site
(Taken December 2019)



AIA® Document A104™ – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the fifth day of December
in the year Two thousand nineteen
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address, and other information)

City of Marshall Texas

401 S. Alamo Street

Marshall, Texas 75670

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

and the Contractor:

(Name, legal status, address, and other information)

Casey Slone Construction, LLC

P.O. Box 1614

Marshall, Texas 75671

for the following Project:

(Name, location and detailed description)

City of Marshall Perkins Building Demolition

206 North Washington, Marshall, Texas

The Architect:

(Name, legal status, address, and other information)

Mark A. Thacker, AIA

PO Box 2612

Lindale, Texas 75771

The Owner and Contractor agree as follows.

Init.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was created on 12/04/2019 20:44:28 under the terms of AIA Documents on Demand® Order No. 2010418892, and is not for resale. This document is licensed by The American Institute of Architects for one-time use only, and may not be reproduced prior to its completion.

TABLE OF ARTICLES

1	THE WORK OF THIS CONTRACT
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3	CONTRACT SUM
4	PAYMENT
5	DISPUTE RESOLUTION
6	ENUMERATION OF CONTRACT DOCUMENTS
7	GENERAL PROVISIONS
8	OWNER
9	CONTRACTOR
10	ARCHITECT
11	SUBCONTRACTORS
12	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
13	CHANGES IN THE WORK
14	TIME
15	PAYMENTS AND COMPLETION
16	PROTECTION OF PERSONS AND PROPERTY
17	INSURANCE & BONDS
18	CORRECTION OF WORK
19	MISCELLANEOUS PROVISIONS
20	TERMINATION OF THE CONTRACT
21	CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐

The date of this Agreement.

☒

A date set forth in a notice to proceed issued by the Owner.

Init.

☐

Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

☒

Not later than
the date of commencement of the Work.

(90) calendar days from

☐

By the following date:

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

☒

Stipulated Sum, in accordance with Section 3.2 below

☐

Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

☐

Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be Two hundred sixty nine thousand, two hundred dollars (\$ 269,200.00), subject to additions and deductions as provided in the Contract Documents.

Init.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

N/A

§ 3.2.2 Unit prices, if any:

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

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

§ 3.2.3 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price
Allowance No. 1	\$35,000.00
Allowance No. 2	4,000.00

§ 3.3 Cost of the Work Plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

Init.

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed

(\$), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

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

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.4.3.3 Unit Prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
------	-------

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

Init.

§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

N/A

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

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

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

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the 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.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;

Init.

- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

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

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ Arbitration pursuant to Section 21.6 of this Agreement
- ☐ Litigation in a court of competent jurisdiction
- ☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203–2013 incorporated into this Agreement.)

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

Init.

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See attached Table of Contents

Section	Title	Date	Pages
---------	-------	------	-------

§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See attached Index of Drawings

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

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
1	November 04, 2019	1 (plus attachments)
2	November 13, 2019	2 (plus attachments)
3	December 05, 2019	1 (post bid addenda)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

(Check all boxes that apply.)

☐

Exhibit A, Determination of the Cost of the Work.

☐

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐

The Sustainability Plan:

Init.

Title	Date	Pages
-------	------	-------



Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. 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. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 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 between any persons or entities other than the Owner and the Contractor.

§ 7.3 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.

§ 7.4 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

Init.

professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration 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 and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 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.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is 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.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 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.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's

capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 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.

§ 9.3 Labor and Materials

§ 9.3.1 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.

§ 9.3.2 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 skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 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. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall 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.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and 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 material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 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 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT

§ 10.1 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.

§ 10.2 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.

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction 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 safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) 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.

§ 10.5 Based on the Architect's evaluations of the Work and 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.

Init.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was created on 12/04/2019 20:44:28 under the terms of AIA Documents on Demand® Order No. 2010418892, and is not for resale. This document is licensed by The American Institute of Architects for one-time use only, and may not be reproduced prior to its completion.

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 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 will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 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.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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 the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 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 activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;

- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 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 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 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 other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 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 of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. 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. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 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 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 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.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 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.

Init.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the 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.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's 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 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 stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. 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, a Subcontractor, or a Sub-subcontractor; 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.

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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect 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 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition. 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 shutdown, delay, and start-up.

§ 16.2.2 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 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$) each occurrence, (\$) general aggregate, and (\$) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and

Init.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was created on 12/04/2019 20:44:28 under the terms of AIA Documents on Demand® Order No. 2010418892, and is not for resale. This document is licensed by The American Institute of Architects for one-time use only, and may not be reproduced prior to its completion.

.5 the Contractor's indemnity obligations under Section 9.15.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than (\$) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

Init.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

§ 17.3.2 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 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, 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 15.6.3, 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

Init.

promptly after receipt of 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.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

Wes Morrison

City of Marshall

401 South Alamo Street

Marshall, Texas 75670

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

Casey Sloan

P.O. Box 1614

Marshall, Texas 75671

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the

Init.

AIA Document A104™ – 2017 (formerly A107™ – 2007). Copyright © 1936, 1951, 1958, 1961, 1963, 1966, 1970, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was created on 12/04/2019 20:44:28 under the terms of AIA Documents on Demand® Order No. 2010418892, and is not for resale. This document is licensed by The American Institute of Architects for one-time use only, and may not be reproduced prior to its completion.

Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement, whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this 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 the Construction Industry Arbitration Rules in effect on the date of this Agreement. 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 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.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

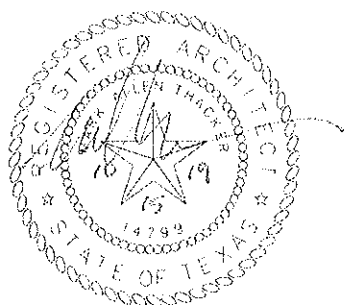
CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

Mark A. Thacker, AIA
Commercial & Preservation Architecture

P.O. Box 2612, Lindale, Texas 75771
p 903.595.2656
mark@markathacker.com



Achitect: Mark A. Thacker, AIA
Date: October 15, 2019
Registration No.: 14799

Issue Date: 10-28-19

A/E PROJECT NO. 19007

PROJECT MANUAL

**City of Marshall
Perkins Building
Demolition
Marshall, Texas**

Contact Information:

Owner

**City of Marshall
401 S. Alamo Street
Marshall, Texas 75670**

SET NO. _____

**City of Marshall
Perkins Building Demolition**

TABLE OF CONTENTS



Architect: Mark A. Thacker, AIA

Date: October 15, 2019

Registration No.: 14799

DIVISION 0 -- GENERAL CONDITIONS

	<u>Page(s)</u>
000200 Invitation to Bid	1 - 3
AIA Document A305 Contractors Qualification Statement	1 - 4
003000 Form of Proposal	1 - 6
003010 Bid Bond	1 Only
AIA Document A310	1 Only
005000 Contract Forms	1 & 2
AIA Document A104 Standard Abbreviated Form of Agreement Between Owner and Contractor	1 - 26
007000 General Conditions	1 - 4
AIA Document A201 General Conditions of the Contract for Construction	1 - 38
008430 Perkins Building Information Report	1 Only 1 - 13
008500 Index of Drawings	1 Only

DIVISION 1 -- GENERAL REQUIREMENTS

010000 General Requirements	1 - 3
011000 Summary	1 - 3
012100 Allowances	1 - 3
012900 Payment Procedures	1 - 5
013000 Submittals	1 - 4
013100 Project Management and Coordination	1 - 4
013233 Photographic Documentation	1 - 2
014000 Quality Requirements	1 - 6
015000 Temporary Facilities & Controls	1 - 3

017300	Execution	1 - 7
017419	Construction Waste Management & Disposal	1 & 2
017700	Closeout Procedures	1 - 4
017839	Project Record Documents	1 - 3

DIVISION 1 - GENERAL REQUIREMENTS

010000	General Requirements	1 - 3
011000	Summary	1 - 3
012100	Allowances	1 - 3
012300	Alternates	1 - 4
012900	Payment Procedures	1 - 5
013000	Submittals	1 - 4
013100	Project Management and Coordination	1 - 4
013233	Photographic Documentation	1 - 2
013300	Submittal Procedures	1 - 6
014000	Quality Requirements	1 - 6
015000	Temporary Facilities & Controls	1 - 3
017300	Execution	1 - 7
017419	Construction Waste Management & Disposal	1 & 2
017700	Closeout Procedures	1 - 4
017839	Project Record Documents	1 - 3

DIVISION 2 - EXISTING CONDITIONS NOT USED

DIVISION 3 - CONCRETE

033053	Miscellaneous Cast-In-Place Concrete	1 - 6
--------	--------------------------------------	-------

DIVISION 4 - MASONRY

042100	Brick Unit Masonry	1 - 6
042110	Repointing Historic Masonry	1 - 4
042130	Patching Cracks in Brick Masonry	1 & 2

DIVISION 5 - METALS NOT USED

DIVISION 6 - WOOD

061000	Rough Carpentry	1 - 6
061600	Sheathing	1 - 4

DIVISION 7 -- MOISTURE PROTECTION

076200	Sheet Metal Flashing and Trim	1 - 7
079200	Joint Sealants	1 - 3

DIVISION 8 -- DOORS & WINDOWS
NOT USEDDIVISION 9 -- FINISHES
NOT USEDDIVISION 10 -- SPECIALTIES
NOT USEDDIVISION 11 -- EQUIPMENT
NOT USEDDIVISION 12 -- FURNISHINGS
NOT USEDDIVISION 13 -- SPECIAL CONSTRUCTION
NOT USED

DIVISION 14 -- CONVEYING SYSTEMS

148000	Scaffolding	1 - 4
--------	-------------	-------

DIVISION 15 & 16 -- MECHANICAL AND ELECTRICAL
NOT USEDDIVISION 21 -- FIRE SUPPRESSION
NOT USEDDIVISION 22 -- PLUMBING
NOT USEDDIVISION 23 -- HEATING, VENTILATING AND AIR CONDITIONING
NOT USEDDIVISION 26 -- ELECTRICAL
NOT USEDDIVISION 27 - COMMUNICATIONS
NOT USED

DIVISION 28 – ELECTRONIC SAFETY AND SECURITY
NOT USED

DIVISION 31 – EARTHWORK
NOT USED

DIVISION 32 – EXTERIOR IMPROVEMENTS
NOT USED

DIVISION 33 – UTILITIES
NOT USED

SECTION 008500 – INDEX OF DRAWINGS

**City of Marshall – Perkins Building Demolition
Marshall, Texas**

The General Contract Drawings are entitled “City of Marshall – Perkins Building Demolition” and are numbered:

COVER SHEET

ARCHITECTURAL

- D2.0 Demolition Floor Plans
- D2.1 Demolition Drawings
- A2.0 Renovation Floor Plan
- A2.1 Renovation Drawings

END OF SECTION 008500



Thursday, December 5, 2019
Arch. Proj. No. 19007

Project: City of Marshall
Perkins Building Demolition

ADDENDUM NO. 3 (POST BID ADDENDUM)

The following changes in the drawings and specifications are hereby incorporated into and shall be equally as binding as the original drawings and specifications.

Item No. 1: The original proposed sum for the project was in the amount of \$278,000.00.

The following items are hereby deleted from the project:

1. Delete storefront.
2. Delete security fencing/ screen.
3. Delete cover up materials/ labor for sidewalk and street.
4. Delete drain pipe and catch basin.
5. Delete dumpster service.

The above stated deletions reduce the original proposed sum by \$8,800.00.
 $\$278,000.00 - \$8,800.00 = \$269,200.00$

Therefore the Contract Amount is \$269,200.00.

END OF ADDENDUM NO. 3
POST BID ADDENDUM
1 page

ITEM 13

ITEMS WITHDRAWN FROM THE CONSENT AGENDA

ITEM 14

ADJOURNMENT