



CITY COMMISSION MEETING
 AGENDA FOR JULY 23, 2013
5:30 P.M.

ROLL CALL

INVOCATION – Father Uwem Enoh, St. Francis DeSales Church

PLEDGE OF ALLEGIANCE – Morgan Guess

ADDITIONS/DELETIONS

I.	<u>MINUTES</u>
II.	<u>RESOLUTION</u>
	A. City-County Joint Resolution Regarding Closure of Paducah Gaseous Diffusion Plant
III.	<u>APPOINTMENTS</u>
	A. Municipal Housing Commission
IV.	<u>MUNICIPAL ORDERS</u>
	A. Personnel Changes
	B. Transfer Real Property to Urban Renewal – S. ERVIN
	C. (CDBG) Recovery Center: Adoption of Residential Anti-Displacement and Relocation Assistance Plan, and Procurement Code
	D. 2013/2014 Kentucky Governor’s Highway Safety Program
	<u>ORDINANCES – ADOPTION</u>
	A. Zone Change for Pecan Drive – S. ERVIN
	B. Noble Park Pool Engineering Change Order #1 – M. THOMPSON
	C. Noble Park Pool Concession Change Order #1 – M. THOMPSON
	D. 2013/2014 Household Hazardous Waste Grant Award – S. ERVIN
	<u>ORDINANCES – INTRODUCTION</u>
	A. Management Agreement between the City and Joint Sewer Agency for Information Technology Services – G. MUELLER

		B. Create Roof Stabilization Program – S. ERVIN
		C. Purchase of Police Interceptor Vehicles for use by the Police Department – R. MURPHY
		D. Purchase Rollout Containers – R. MURPHY
		E. Carson Center Contract for Services – CITY MGR PEDERSON
		F. Approval for Construction Agreement for TeleTech – CITY MGR PEDERSON
	IV.	<u>CITY MANAGER REPORT</u>
	V.	<u>COMMISSIONER COMMENTS</u>
	VI.	<u>PUBLIC COMMENTS</u>
	VII.	<u>EXECUTIVE SESSION</u>

Agenda Action Form Paducah City Commission

Meeting Date: July 16, 2013

Short Title: Joint Resolution – Closure of the Department of Energy Paducah Gaseous Diffusion Plant

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Charlie Martin, PED
Presentation By: Jeff Pederson, City Manager

Background Information:

The U.S. Government's Department of Energy owns and has operated the Paducah Gaseous Diffusion Plant in McCracken County for sixty-two years. On May 24, 2013, DOE made a decision resulting in the impending closure of the plant. The closure of this plant will not only adversely affect the lives of the 1,000± workers who will be displaced by the plant closure, but also the economy of Paducah/McCracken County. Both the Paducah City Commission and the McCracken Fiscal Court, through a Joint Resolution, demand that DOE take immediate action to implement cleanup strategies and allow the community to be included in determining the fate of the Paducah Gaseous Diffusion Plant.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Staff Recommendation: That the City Commission enter into the Joint Resolution regarding the closure of the Paducah Gaseous Diffusion Plant

Attachments: Joint Resolution

Department Head	City Clerk	 City Manager
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Joint Resolution

A RESOLUTION OF THE MCCRACKEN COUNTY FISCAL COURT AND THE BOARD OF COMMISSIONERS OF THE CITY OF PADUCAH

CLOSURE OF THE DEPARTMENT OF ENERGY PADUCAH GASEOUS DIFFUSION PLANT - A CALL TO ACTION

WHEREAS: The United States Government's Department of Energy owns and has operated for 62 years the Paducah Gaseous Diffusion Plant located in Northwest McCracken County, near Paducah, Kentucky.

WHEREAS: Our community has unequivocally supported the operation of this key component of our nation's energy and national security apparatus during that period, at significant social and human sacrifice.

WHEREAS: On May 24, 2013, suddenly and without explanation the Department of Energy made a decision resulting in the impending closure of the Paducah Gaseous Diffusion Plant, which action by itself has dire economic and social consequences for our community with the loss of at least 1,100 jobs.

WHEREAS: The Department of Energy has before it proposals by private companies that would utilize assets at the plant site to create economic opportunity immediately and over the long term, specifically the Global Laser Enrichment proposal.

WHEREAS: The community understands the Department of Energy plan (to the extent one exists) for the site is to transition from operation to a containment state, delaying Decontamination and Decommissioning of the site until at least 2034 – locking the gate and watching it rust – thus letting our children and grandchildren deal with the nuclear waste dump this action will create.

WHEREAS: The Department of Energy at our sister communities with decommissioned gaseous diffusion plants – Oak Ridge, Tennessee and Portsmouth, Ohio – has treated the local community and workforce far differently from the Department's plan for Paducah.

WHEREAS: Our Kentucky Congressional Delegation and the Governor have urged the Department of Energy Secretary Ernest Moniz to implement a long term economic development and immediate cleanup plan for Paducah that preserves jobs, addresses environmental issues, and treats our community equitably to our sister sites.

WHEREAS: The Secretary of Energy Ernest Moniz has publically testified before Congress on June 7, 2013, that he supports the objectives proposed by the Congressional Delegation, the Governor, and our community.

WHEREAS: Despite repeated promises from the Department of Energy, the community sees no action to implement these recommendations but instead sees significant effort by the Department of Energy to delay meaningful cleanup activities and further delay decision on the proposals before it; and

WHEREAS, The Community will not accept continued inaction from the Department of Energy or the Department's proposed abandonment of its obligations at the site.

NOW, THEREFORE: The City Commission of Paducah and the McCracken County Fiscal Court, together with the United Steel Workers Local 550, the Paducah Area Chamber of Commerce, and Paducah Economic Development demand the Department of Energy to immediately do the following:

- Act on proposals submitted in the Department's Expression of Interest process, specifically the Global Laser Enrichment proposal for Paducah.
- Implement cleanup strategies for Paducah allowing for USEC employees to transfer to Department of Energy contractors as they are laid off and fully fund cleanup activities at Paducah on a continuing and equitable basis.
- Allow the community to become a full and open partner in determining the fate of the Paducah Gaseous Diffusion Plant with the Department of Energy.

McCracken County Judge Executive

Date

Mayor, City of Paducah

Date

**BOARDS and COMMISSIONS
APPOINTMENTS and REAPPOINTMENTS
FOR CITY COMMISSION CONFIRMATION**

- Appointment
- Reappointment
- Joint Appointment
- Joint Reappointment

NAME: John Shadle

NAME OF BOARD OR COMMISSION: Municipal

Housing Commission

DATE TO BE PLACED ON AGENDA: July 23, 2013

EXPIRATION OF TERM DATE: July 22, 2017

APPOINTEE'S HOME ADDRESS:

Street: 4159 Rustic Avenue

City/Zip: Paducah 42001

Phone: 994-0853

Email Address: shadle@wnc.edu

Appointee's Business Name: _____

Address: _____

City/Zip: _____

Phone: _____

TO REPLACE ON BOARD: _____

Thank you

Resigned

ADDRESS: _____

Term Expired

Other (explain)

City/Zip: _____

Appointee Confirmation: Date: _____ By: _____

Board of Commission Approval: _____

Original to: Tammara S. Sanderson, City Clerk
Cc: file

BOARD CHAIRMAN:

CITY OF PADUCAH
July 23, 2013

Upon the recommendation of the City Manager, the Board of Commissioners of the City of Paducah order that the personnel changes on the attached list be approved.



City Manager's Signature

7-19-13

Date

CITY OF PADUCAH
PERSONNEL ACTIONS
July 23, 2013

PAYROLL ADJUSTMENTS/TRANSFERS/PROMOTIONS/TEMPORARY ASSIGNMENTS

	<u>PREVIOUS POSITION AND BASE RATE OF PAY</u>	<u>CURRENT POSITION AND BASE RATE OF PAY</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
<u>EPW</u> Broady, Stu	ROW Maintenance Person \$16.07/Hr	Laborer \$15.98/Hr	NCS	Non-Ex	July 11, 2013
<u>PARKS SERVICES</u> Paschall, Sam L.	Head Lifeguard \$8.25/Hr	Lifeguard \$8.00/Hr	NCS	Non-Ex	July 8, 2013

TERMINATIONS - FULL-TIME (F/T)

	<u>POSITION</u>	<u>REASON</u>	<u>EFFECTIVE DATE</u>
<u>EPW</u> Banks, Jr. Horace G.	ROW Maintenance Person	Resignation	July 10, 2013
Coley, Larry D.	EPW Supervisor - Streets	Retirement	August 1, 2013
<u>PARKS SERVICES</u> Walker, Micah	Recreation Specialist	Resignation	July 16, 2013

TERMINATIONS - PART-TIME (P/T)/TEMPORARY/SEASONAL

	<u>POSITION</u>	<u>REASON</u>	<u>EFFECTIVE DATE</u>
<u>PARKS SERVICES</u> LeMaster, Madison L.	Pool Attendant	Seasonal / Temporary	July 10, 2013
Connell, Lawson W.	Recreation Leader	Seasonal / Temporary	July 11, 2013
Miller, Keegan R.	Pool Manager	Seasonal / Temporary	July 16, 2013
Wyatt, Seth L.	Lifeguard	Seasonal / Temporary	July 16, 2013

Agenda Action Form

Paducah City Commission

Meeting Date: July 23, 2013

Short Title: Transfer of 505 Fountain Avenue from the City of Paducah to Urban Renewal and Community Development Agency (URCDA)

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Steve Ervin

Presentation By: Steve Ervin

Background Information:

The property located at 505 Fountain Avenue was acquired by the City of Paducah by Commissioners Deed recorded on the 27th day of June, 2013. This property is located within the Fountain Avenue Revitalization Area. Approval of this order would authorize the Mayor to sign all documents necessary to transfer the property to Urban Renewal and Community Development Agency for the intended use of neighborhood revitalization.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name: N/A
Account Number: N/A

Finance

Attachments: None

 Department Head	City Clerk	City Manager
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MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER APPROVING THE TRANSFER OF REAL PROPERTY LOCATED AT 505 FOUNTAIN AVENUE TO THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY OF PADUCAH, KENTUCKY

WHEREAS, pursuant to 2-668 of the Code of Ordinances of the City of Paducah, Kentucky, a written determination has been made by the City Manager that the City does not have any use at this time or in the future for property located at 505 Fountain Avenue, which, therefore, constitutes surplus real estate.

BE IT ORDERED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The City of Paducah hereby approves the transfer of real property located at 505 Fountain Avenue to the Urban Renewal and Community Development Agency.

SECTION 2. The Mayor is hereby authorized to execute a deed for the transfer of real property authorized in Section 1 above to the Agency.

SECTION 3. This Order shall be in full force and effect from and after the date of its adoption.

Mayor

ATTEST:

Tammara S. Sanderson, City Clerk

Adopted by the Board of Commissioners, July 23, 2013
Recorded by Tammara S. Sanderson, City Clerk, July 23, 2013
\\mo\prop transfer to Urban Renewal-505 Fountain Ave

Agenda Action Form Paducah City Commission

Meeting Date: July 23, 2013

Short Title: (CDBG) Recovery Center : Adoption of Residential Anti-Displacement and Relocation Assistance Plan, and Procurement Code

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Cheryl Meadows

Presentation By: Steve Ervin

Background Information:

CDBG: Recovery Center Program, administered by the Kentucky Department for Local Government (DLG), is a program that funds residential recovery services to individual who suffer with substance abuse.

On June 11, 2013 the City of Paducah, as award recipient, Four Rivers Behavioral Health, as sub-awardee and Department of Local Government, as grantor, entered into an agreement in the amount of \$250,000 for public services on May 28, 2013 through Ordinance No. 2013-6-8039.

As the Awardee and Administrator of CDBG: Recovery Center Award, the City of Paducah must adopt a Residential Anti-Displacement and Relocation Assistance Plan, and Procurement Code. These procedures must be followed as it pertains to the project.

It is the Planning Department's request to adopt the City's existing Residential Anti-Displacement and Relocation Assistance Plan, and Procurement Code for the CDBG: Recovery Center Program. See attachment.

If the Commission desires to proceed with the adoption of the plans as a CDBG Recovery Program requirement, it must authorize and direct Mayor and/or Mayor's designee to sign the adoption.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name:
Account Number:
Project Number:
CFDA Number:

Finance

Staff Recommendation: Approval

Attachments:

 Department Head	City Clerk	City Manager
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City of Paducah

HOME/
Community
Development
Block Grant

Residential Antidisplacement &
Relocation Assistance Plan

April 15, 1993
Revised July 25, 1995
Revised January 23, 1996

FILE COPY

RESIDENTIAL ANTIDISPLACEMENT

The HOME Program, authorized by the HOME Investment Partnerships Act and enacted as Title II of the National Affordable Housing Act and the Kentucky Community Development Block Grant Program, requires the Commonwealth of Kentucky, Kentucky Housing Corporation (KHC) and recipients (The City of Paducah) to replace all occupied and vacant occupiable low-income dwelling units demolished or converted to a use other than as low-income housing where demolition or conversion is a direct result of activities and assisted with HOME and CDBG funds under section 104(d) of the Housing and Community Development Act of 1974, as amended.

ONE-FOR-ONE REPLACEMENT HOUSING UNDER SECTION 104(d)

The City of Paducah shall require one-for-one replacement units for all occupied and vacant occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than as low- and moderate-income dwelling units as a direct result of an activity assisted under HOME and CDBG by the recipient with low- and moderate-income dwelling units. Replacement low- and moderate-income dwelling units may include public housing or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low- and moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion and must meet the following requirements:

1. The units must be located within the City of Paducah's jurisdiction.
2. The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.
3. The units must be provided in standard condition. Replacement and low- and moderate-income dwelling units may include units that have been raised to standard from substandard condition.
4. The units must be designed to remain low- and moderate-income dwelling units for at least 10 years from the date of initial occupancy.

REQUIREMENTS TO MINIMIZE DISPLACEMENT

Before the City of Paducah obligates or expends funds that will directly result in such demolition of low- and moderate-income or conversion of low- and moderate-income housing to another use, the City will make public and submit to KHC and DLG the following information in writing:

1. A description of the proposed activity.
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low-income dwelling units as a direct result of the assisted activity.
3. A time schedule for the commencement and completion of the demolition or conversion.
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units.
5. The source of funding and a time schedule for the provision of replacement dwelling units.
6. The basis for concluding that each replacement dwelling unit will remain a low-income dwelling unit for at least 10 years from the date of initial occupancy.

Consistent with the other goals and objectives of the HOME and CDBG programs, the City shall ensure that it has taken all reasonable steps to minimize displacement (direct or indirect) that occurs as a result of a project assisted with these funds. Whenever possible, the City of Paducah will assure that residential occupants of buildings to be rehabilitated are offered an opportunity to return to the building. To the extent feasible, residential tenants of dwellings to be rehabilitated shall be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling in the building upon completion of the project. To the extent feasible, homeowners of dwellings to be rehabilitated shall be provided a reasonable opportunity to occupy the dwelling during rehabilitation as long as the nature of construction does not cause unnecessary burden and undue hardship on the homeowners. The family shall receive temporary relocation benefits if rehabilitation causes the family to vacate for the above-mentioned reason. The City of Paducah will attempt rehabilitation projects to include "staging" project activities to minimize displacement. Also, the City of Paducah shall follow notification and advisory services procedures carefully to assure that families do not leave because they are not informed about plans for the

project or their rights. The City of Paducah adopts this Antidisplacement and Relocation Assistance Plan available to the public that describes the relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

RELOCATION ASSISTANCE UNDER SECTION 104(d)

The City of Paducah will provide relocation assistance under section 104(d), as described in CFR 24 570.606(b), 2(i), to each low- and moderate-income household **permanently displaced by the demolition of housing or by the conversion of a low- and moderate-income dwelling to another use as a direct result of HOME assisted activities.** Section 104(d) levels of relocation benefits vary from the Uniform Relocation Act benefits in that only owner-income families are eligible for assistance.

DEFINITION OF A DISPLACED PERSON UNDER URA

Any person (family, individual, business, farm or nonprofit organization) who moves personal property **permanently** from the real property as a direct result of rehabilitation, demolition or acquisition for a project assisted with HOME and CDBG funds is a displaced person. The term "displaced person" includes but may not be limited to:

1. A person who moves permanently from the real property after receiving a notice from the property owner that requires such move, if the move occurs on or after:
 - (a) The date of the submission of an application to KHC and DLG, if the applicant has site control and the project is later approved; or
 - (b) The date that KHC and DLG approves the applicable site, if the applicant does not have site control at the time of the application.
2. Any person, including a person who moves before the date described in 1(a) or (b), if HUD, KHC or DLG determines that the displacement directly resulted from acquisition, rehabilitation or demolition for the HOME/CDBG-assisted project.
3. A tenant or occupant of a dwelling who moves permanently from the building or complex after execution of the agreement covering the rehabilitation or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or complex under reasonable terms and conditions upon completion of the rehabilitation. These conditions shall include a term of

at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

- (a) The tenant's monthly rent before the agreement and estimated average monthly utility costs; or
 - (b) The total tenant payment (TTP) if the tenant is low-income, or 30 percent of gross income if the tenant is not low-income.
4. A tenant or occupant of a dwelling who is required to relocate temporarily for the project but does not return to the building or complex, if either:
- (a) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation (including the cost of moving to and from the temporarily occupied unit and any increased housing costs); or
 - (b) Other conditions of the temporary relocation are not reasonable.
5. A tenant or occupant of a dwelling who moves from the building or complex permanently after he or she has been required to move to another unit in the building or complex, if either:
- (a) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or
 - (b) Other conditions of the move are not reasonable.

DEFINITION OF PROJECT UNDER URA

The acquisition of real property and the displacement of any person as a direct result of acquisition, rehabilitation or demolition for a HOME/CDBG-assisted project is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. As defined in 24 CFR 92.2, the term "project" means a site or an entire building (including a manufactured housing unit), two or more buildings together with the site or sites on which the building or buildings is located, that are under common ownership, management and financing and are to be assisted with these funds, under a commitment by the owner, as a single undertaking under these programs. Project includes all the activities associates with the site and building. If there is more than one site associated with a project, the sites must be within a four-block area. For example, a contract is executed covering the rehabilitation of a 12-unit multifamily building. HOME or CDBG funds are used to pay part of the cost of the rehabilitation of five units to be occupied by low-income families. Nonfederal funds are used to finance the rehabilitation of the other seven units. The assisted "project" is the rehabilitation of the

building (all 12 units). A person displaced from any one of the 12 units is protected by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

**DECENT, SAFE AND SANITARY DWELLING UNDER URA AND SECTION
104(d)**

1. Basic Definition (49 CFR 24.2(f)). The term "decent, safe and sanitary dwelling" means a dwelling that meets to the following standards and any other housing and occupancy codes that are applicable. It shall:
 - (a) Be structurally sound, weather-tight and in good repair.
 - (b) Contain a safe electrical wiring system adequate for lighting and other devices.
 - (c) Contain a safe heating system capable of sustaining a healthful temperature for the displaced person except in those areas where local climatic conditions do not require such a system.
 - (d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.
 - (e) Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above with access directly from or through a common corridor, the common corridor must have at least two means of egress.
 - (f) For a person who is mobility-impaired, be free of any barriers that would preclude reasonable ingress, egress or use of the dwelling by such person. This requirement will be met if the dwelling unit meets pertinent standards as prescribed by the American National Standards Institute, Inc. (ANSI A117.1) or the Uniform Federal Accessibility Standards (UFAS). This requirement will also be satisfied if the displaced person elects to relocate to a dwelling that he or she selects (a dwelling not offered by the HOME recipient)

and the displaced person determines that he or she has reasonable ingress, egress and use of the dwelling

- (g) Comply with the lead-based paint requirements of 24 CFR Part 35.
2. Assisted Housing Quality Standards (HQS). A dwelling occupied with assistance under Section 8 of the United States Housing Act of 1937, as amended, which has been determined to meet the Section 8 HQS at 24 CFR 882.109, shall be deemed to be in compliance with the standards in paragraph 1.

The City of Paducah will ensure each dwelling for which a relocation payment is paid (temporary and permanent) is "decent, safe and sanitary". The City does not have to ensure "decent, safe and sanitary" for relatives' or friends' units when utilizing the units for temporary relocation dwellings, unless the HOME/CDBG family receives a relocation payment (temporary). The City must also ensure hotels are "decent, safe and sanitary" when utilizing the rooms for temporary relocation dwellings even though the hotel industry has an inspection mechanism for providing decent shelter. If an individual relocates into a substandard unit, the City will not make any payment on the unit until the unit is in compliance with the minimum code.

TEMPORARY RELOCATION ASSISTANCE

The homeowner/tenant should be temporarily relocated if continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public, and/or if the nature of the construction creates an undue burden or unnecessary hardship on the family. If the homeowner/tenant must vacate the unit, the City of Paducah will reimburse the family for all reasonable out-of-pocket and increased housing costs. In the event of reconstruction, or substantial rehabilitation that will require the home to be without utilities for an extended period of time, the homeowner/tenant will be asked to find a suitable place to temporarily stay. The City of Paducah will provide storage for furnishings and other belongings during the relocation period.

The City of Paducah will encourage the homeowner/tenant to stay with relatives or friends. If the family is unable to stay with relatives or friends for **all or a portion** of the relocation time, the City shall refer the family to a local, moderately priced hotel. Hotel accommodations should not exceed a one-month period, unless the family certifies to the City that extended hotel accommodations (over one month) are sufficient to meet the family's housing needs. If the nature of the construction requires the family to vacate for a period exceeding one month and the homeowner/tenant cannot stay with

relatives and friends, the City will attempt to provide the temporary housing through the Paducah Housing Authority. If accommodations are not available through the PHA, the City will attempt to find the family one comparable replacement dwelling and provide applicable advisory services for the temporary move. The comparable replacement dwelling must be decent, safe, sanitary and functionally equivalent to the displacement dwelling. The City will reimburse the family for actual, reasonable out-of-pocket costs and increased housing costs associated with comparable replacement dwellings or hotel accommodations. Relatives and friends may charge the homeowner-tenant rent for providing shelter to the homeowner/tenant. However, the rent must be reasonable and should not exceed one-half the fair market rent for the unit and the unit must quality standards cited previously.

APPLICABLE ADVISORY SERVICES FOR TEMPORARY MOVES

Appropriate advisory services include reasonable advance written notice of the following information:

1. The date and approximate duration of the temporary relocation;
2. The suitable, decent, safe and sanitary housing to be made available for the temporary period;
3. The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe and sanitary dwelling in the building/complex following completion of the repairs (for tenants); and
4. Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent and utilities.

DISPLACED ADVISORY SERVICES

The City of Paducah will inform occupants of their rights by sending the required information and notices and assisting in finding replacement housing. The following information will be provided to displaced persons:

1. A complete description of the nature and types of activities which will be undertaken.
2. An indication of the availability of relocation payments including the types of payments, the general eligibility criteria for residential occupants and a precaution about premature moves;

3. A statement indicating that no person lawfully occupying property will be required to move without at least 90 days written notice from the HOME/CDBG recipient;
4. A clear explanation (in layman's language) of the projects;
5. A statement of the purpose of the relocation program and brief indication of the services and aids available;
6. Assurance that displaced persons will not be required to move before they have been given an opportunity to obtain decent, safe, sanitary and affordable housing;
7. A brief description of what constitutes comparable, decent, safe and sanitary housing.
8. A layman's description of the Federal Fair Housing Law (Title VIII of the Civil Rights Act of 1968) Executive Order 11063, Title VI of the Civil Rights Act of 1964 and applicable state and local fair housing and anti-discrimination laws. Minority persons must also be referred to comparable housing in non-minority concentrated areas when applicable.
9. A statement that the City of Paducah will provide assistance to persons in obtaining housing of their choice, including assistance in the referral of complaints of discrimination to the appropriate federal, state or local fair housing enforcement agency.
10. The address, telephone number and hours of the office of Community Development, Housing and Grants Administration.

MOVING COSTS FOR TEMPORARY AND PERMANENT MOVES

All displaced persons are eligible for moving costs if the move occurs after initiation of negotiations (submissions of HOME/CDBG applications). The **permanently** displaced person may choose to receive actual moving and related expenses supported by bills and other documentation for:

1. Transportation up to 50 miles;
2. Packing, crating, uncrating and unpacking personal property;
3. Storage of the personal property for a period not to exceed 12 months, unless the City of Paducah determines that a longer period is necessary.

4. Disconnecting, dismantling, reassembling and reinstalling relocated household appliances and other personal property;
5. Insurance for the replacement value of the property in connection with the move and necessary storage;
6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft or damage is not reasonably available; and
7. Other moving-related expenses as determined to be reasonable and necessary, except the following ineligible expenses:
 - (a) Interest on a loan to cover moving expenses;
 - (b) Personal injury;
 - (c) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant in appeals procedures;
 - (d) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership; or
 - (e) Cost for storage of personal property on real property owned or leased by the displaced person before the initiation of negotiations.

If the displaced person does not choose to receive actual moving and related expenses, he or she may receive a fixed payment based of the Schedule of Cost published by the Federal Highway Administration, Department of Transportation.

All homeowners and tenants required to make a **temporary** move shall receive reimbursement of **actual** moving expenses and shall have the contents of their home placed into storage during the relocation period at no cost to them. The contents will then be returned to the home at the conclusion of the construction.

REPLACEMENT HOUSING PAYMENTS

Replacement housing payments are available to displaced 180-day, owner-occupants, displaced 90-day occupants (tenant or owner-occupant), displaced tenants and temporary homeowner/tenant moves.

The displaced 180-day, owner-occupant must meet the following criteria:

1. Actually owned and occupied the displacement dwelling for 180 days immediately prior to initiation of negotiations;
2. Purchases and occupies a decent, safe and sanitary replacement dwelling within one year after the later of:
 - (a) The date the person received final payment for the displacement dwelling; or
 - (b) A comparable replacement dwelling has been made available to the person.
3. Filed a claim within 18 months of the time the move is completed.

The displaced 180-day, owner-occupant who relocates to an ownership unit is eligible for a replacement housing payment that represents the sum of:

1. The amount by which the cost of a replacement dwelling exceeds the "acquisition cost" of the displacement dwelling;
2. The additional mortgage financing costs; and
3. The reasonable expenses incidental to the purchase of the replacement dwelling.

The displaced, 90-day occupant (tenant or owner-occupant) must meet the following criteria:

1. Lawfully occupied the unit for at least 90 days immediately prior to initiation of negotiations;
2. Rents, or purchases, and occupies a decent, safe and sanitary replacement dwelling within one year after:
 - (a) For a tenant, the date he or she moves from the displacement dwelling; or
 - (b) For an owner-occupant, the date he or she receives final payment for the displacement dwelling or the date he or she moves from the displacement dwelling.

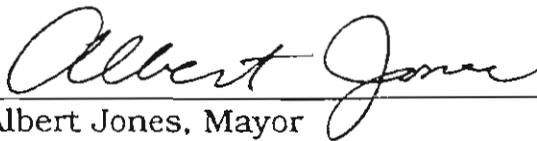
The displaced, 90-day occupant (tenant or owner-occupant) is eligible for rental assistance or down payment assistance as replacement housing. The amount of rental assistance payment for the displaced person who rents a replacement

dwelling is equal to 42 times the amount obtained by subtracting the base monthly rent for the displacement dwelling from the lessor of the monthly rent and estimated average monthly utility costs for a comparable replacement dwelling and the monthly rent and estimated average monthly utility costs for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person.

APPEALS & GRIEVANCES

Any family that disagrees with its relocation settlement may appeal to the City of Paducah Urban Renewal Board within 60 days of notification of the settlement amount. If the appeal cannot be resolved before the Urban Renewal Board, appeals may be made to the Executive Director of Kentucky Housing Corporation. KHC review may be granted by providing a written request after receipt of the City of Paducah's written determination. Any final decision may be appealed to the HUD Field Office.

Revised this 23rd day of January, 1996

A handwritten signature in cursive script that reads "Albert Jones". The signature is written in dark ink and is positioned above a horizontal line.

Albert Jones, Mayor
CITY OF PADUCAH

Secs. 2-585—2-590. Reserved.

ARTICLE VII. CITY CITATION OFFICERS*

Sec. 2-591. Designated officials.

(a) The city does hereby empower the individuals who serve in the hereinafter referenced positions to act in the position of Citation Officers and to have such authority and power as provided in KRS 83A.087.

(b) The positions which are hereby accorded with the authority of Citation Officer are as follows:

- (1) Fire Chief.
 - (2) Fire Marshal.
 - (3) Fire Safety Inspector.
 - (4) Director and Chief Building and Electrical Inspector.
 - (5) Deputy Building Inspector.
 - (6) Deputy Electrical Inspector.
 - (7) Any person who is certified for Building or Electrical Inspector.
 - (8) Code Enforcement Officer.
 - (9) Safety Officer.
 - (10) Parking Control Specialist.
 - (11) City Engineer.
- (Ord. No. 92-11-4867, 11-24-92; Code 1996, § 40.01; Ord. No. 2005-12-7063, 12-20-05)

Sec. 2-592. Qualifications.

Each Citation Officer shall be duly certified in the position which he or she holds.
(Ord. No. 92-11-4867, 11-24-92; Code 1996, § 40.02)

Sec. 2-593. Authority; issuance of citations.

Each individual who is hereby authorized to act as Citation Officer shall have the power and authority to issue citations to any person who

***Editor's note**—Former §§ 2-571—2-573 have been renumbered as §§ 2-591—2-593 in order to facilitate inclusion of Ord. No. 2008-5-7411, §§ 1—6, as Div. 15, §§ 2-571—2-576, and Ord. No. 2008-10-7467, §§ 1—3, as Div. 16, §§ 2-577—2-584, as requested by the city.

violates or fails to comply with any ordinance of the city for which such violation or failure is subject to a penalty, provided that such ordinance directly relates to the duties of such individual. No Citation Officer shall be authorized to issue any citation for any moving vehicle offense. No citation shall be issued by any Citation Officer unless probable cause exists that a person has violated or failed to comply with any city ordinance. Following the issuance of a citation, the issuing officer shall seek prosecution upon the citation with the appropriate state court tribunal. (Ord. No. 92-11-4867, 11-24-92; Code 1996, § 40.03)

Secs. 2-594—2-600. Reserved.

ARTICLE VIII. FINANCE AND PROCUREMENT†

DIVISION 1. GENERALLY

Sec. 2-601. Fiscal year.

The fiscal year of the city shall begin on July 1 and end on June 30 of the following year. An annual audit of all financial affairs of the city shall be made for the fiscal year as established by this section.

(Ord. of 11-14-50; Code 1968, § 2-2; Ord. No. 75-9-1172, 9-23-75; Code 1996, § 36.01)

Sec. 2-602. Financial reports from city bodies.

(a) The City Manager is hereby authorized and directed to secure periodic financial reports from all boards, agencies and organizations for which funds of the city are appropriated, such reports to be made to him annually, semiannually

†**Cross references**—Any ordinance promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or evidence of the city's indebtedness saved from repeal, § 1-11(c)(1); any ordinance authorizing the borrowing of funds on behalf of the city saved from repeal, § 1-11(c)(2); any ordinance authorizing the purchase or sale of property or the expenditure of city funds saved from repeal, § 1-11(c)(4); any appropriation or portion of an ordinance or ordinance providing for an annual budget saved from repeal, § 1-11(c)(5); any ordinance authorizing the transfer of city funds saved from repeal, § 1-11(c)(6); taxation, ch. 106

or otherwise as may be requested by him. The reports shall contain complete information as to income and expenditures of not only city funds but all funds coming into the hands of the boards, agencies and organizations. (Code 1968, § 2-4)

(b) In the event any board, agency or organization to which funds are appropriated by the city shall fail or refuse to furnish the City Manager with reports as may be requested by him, then, at his option, he may direct the Finance Director to forego future payments of appropriations until further action by him or the Board of Commissioners.

(Ord. of 4-12-58; Code 1968, § 2-5; Code 1996, § 36.02)

Sec. 2-603. Extension of time for payments due on weekends and holidays.

On any occasion when the final date for payment of licenses, taxes or other fees to the city falls on a Saturday or a Sunday or on a holiday that has been declared as a legal holiday by the city, then in such event the time for payment without penalty or interest shall be extended to the first day thereafter which is neither a Saturday, a Sunday nor a day declared by the city as a legal holiday.

(Ord. of 8-16-55; Code 1968, § 2-6; Ord. No. 74-11-1048, 11-12-74; Code 1996, § 36.03)

Sec. 2-604. Ordinances approving contracts.

Where applicable, gross amounts of contracts and explanations of contracts shall be included in the ordinance approving said contract. (Code 1996, § 36.04)

Secs. 2-605—2-620. Reserved.

DIVISION 2. FUNDS AND ACCOUNTS

Sec. 2-621. Locomotive Memorial Trust Fund.

(a) The Finance Director be and he is hereby authorized and directed to establish a Locomotive Memorial Trust Fund account for receiving all interest income from the principal of the Locomotive Memorial Trust Fund and for making disbursements for all maintenance expenses required for the preservation of the steam locomotive memorial heretofore given to the city by the Illinois Central Railroad Company, the account to be at the appropriate bank designated by the city.

(b) Funds in the account shall be disbursed on the signature of the Finance Director. (Code 1968, § 2-10; Ord. No. 70-7-360, 7-14-70; Code 1996, § 36.15)

Secs. 2-622—2-640. Reserved.

DIVISION 3. PROCUREMENT

Sec. 2-641. Definitions.

For the purpose of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Aggregate amount. The total dollar amount during a fiscal year of items of a like nature, function and use, the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.

Chief executive officer. The City Manager.

Construction. The process of building, altering, repairing or improving a public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

Contract. All types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. "Contract" also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees.

Cooperative purchasing. Purchasing conducted by, or on behalf of, more than one public purchasing unit, or by a public purchasing unit with a foreign purchasing activity.

Debarment. The disqualification of a person to receive invitations for bids or requests for proposals or the award of a contract by the local public agency, for a specified period of time.

Established catalog price. The price included in the most current catalog, price list, schedule or other form that:

- (1) Is regularly maintained by the manufacturer or vendor of an item; and

- (2) Is either published or otherwise available for inspection by customers; and
- (3) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.

Evaluated bid price. The dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value and time of delivery, performance or completion.

Immediate family. A spouse, children, grandchildren, parents, grandparents, brothers and sisters, and such other relatives as designated by the local public agency.

Invitation for bids. All documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in section 2-645(a) through (g) of this article.

Legislative body or governing board. The Board of Commissioners of the city.

Local public purchasing unit. This term refers to the City of Paducah, Kentucky.

May. This term means permissive. However, the words "no person may" mean no person is required, authorized or permitted to do the act prescribed.

Negotiation. Contracting by either of the methods set forth in section 2-654 or 2-659 of this article.

Noncompetitive negotiations. Informal negotiation with one or more vendors, contractors or individuals without advertisement or notice.

Objective measurable criteria. Sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective, such as taste and appearance, may be established when appropriate.

Person. Any business, individual, union, committee, club, or other organization or group of individuals.

Procurement. The purchasing, buying, renting, leasing or otherwise obtaining of any supplies, services or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Request for proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in section 2-654 of this article.

Responsible bidder or offeror. A person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

Responsive bidder. A person who has submitted a bid under section 2-645(a) through (g) of this article which conforms in all material respects to the invitation for bids, so that all bidders may stand on an equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

Service. The rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees.

Specifications. Any description of a physical or functional characteristic of a supply, service or demonstration item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

Supplemental agreement. Any contract modification which is accomplished by the mutual action of the parties.

Supplies. All property, including but not limited to leases, real property, printing and insurance, except land or a permanent interest in land.

Suspension. The disqualification of any person to receive invitations for bids or request for proposals, or to be awarded a contract by a local public agency for a temporary period, pending the completion of an investigation and any legal proceedings that may ensue.

(Code 1968, § 26-1; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.30)

Cross reference—Definitions generally, § 1-2.

Sec. 2-642. Adoption of state law.

The city hereby adopts the provisions of KRS 45A.345—45A.460 as the purchasing procedures to be followed by the city.

(Code 1968, § 26-1.1; Ord. No. 80-8-1967, 8-26-80; Code 1996, § 36.31)

Sec. 2-643. Responsibility for procurement; authority of City Manager.

(a) The City Manager is responsible to the Board of Commissioners for the administration of all procurement functions of the city.

(b) The City Manager is hereby authorized and empowered to make in behalf of the city any contract for materials, supplies or equipment, or for services, professional or otherwise, provided that the aggregate amount of the contract does not exceed \$20,000.00. However, in exercising this authority, the City Manager shall not make any contract for any expenditure for any department of the city where the expenditure, together with the sum total of other expenditures for the department, exceeds the appropriation made for the department for any fiscal year by the budget approved by the Board of Commissioners, unless prior consent is given by the Board of Commissioners. In exercising this authority, the City Manager shall comply with the following provisions:

- (1) All contracts made by the City Manager shall be evidenced by a writing which provides a description of the item or items purchased and the terms of sale, which writing shall be maintained as part of the records of the city.

- (2) A written summary of the procurement activities of the City Manager shall be provided to the Board of Commissioners on a monthly basis.

- (3) All contracts made by the City Manager shall be made in the best interests of the city, and shall be made for a price which is substantially similar to the market price of a like item or items purchased. Where possible, prior to the making of a contract, the City Manager shall contact at least three suppliers of the item or items to be purchased to obtain the best price for and quality of the item or items to be purchased.

(c) The City Manager is hereby authorized to execute all contracts for procurement in accordance with this section for and in behalf of the city.

(d) All other provisions of this article regarding procurement, such as provisions relating to competitive bidding, competitive negotiations, advertisement, and noncompetitive purchasing, shall not apply to any procurement made by the City Manager hereunder unless deemed advisable by the City Manager.

(e) The city procurement officer, and any other employee designated by the City Manager, shall assist the City Manager in any procurement hereunder, and shall perform the duties assigned by the City Manager.

(Ord. No. 80-9-1977, 9-9-80; Ord. No. 90-10-4521, 10-23-90; Code 1996, § 36.32; Ord. No. 2005-2-6927, § 1, 2-22-05)

Sec. 2-644. Written procurement determinations.

Every determination by an employee or official of the city engaged in or responsible for the performance of any procurement activity or function, and constituting a final procurement action, or which is required by this Code of Ordinances, shall be made in writing, when the contract exceeds \$2,500.00. Each determination shall be based on written findings that support the determination and shall be signed by the employee making the determination and shall be submitted

to the City Manager for his approval. Any such determination shall remain in the official contract file.

(Code 1968, § 26-3; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.33)

Sec. 2-645. Competitive sealed bidding generally; invitation for bids.

(a) All contracts or purchases shall be awarded by competitive sealed bidding, except as otherwise provided in this Code of Ordinances.

(b) All sealed bids shall be advertised not less than seven nor more than 21 days prior to the date set for opening.

(c) Advertisements shall be entered in the newspaper with the largest circulation within the jurisdiction of the city.

(d) The advertisement for bids may also be placed in other publications when, in the judgment of the City Manager, the advertisements would best serve the interest of the city.

(e) If it is determined during the advertising period that additional time shall be allowed for the preparation of bids, the bid opening date may be extended by:

- (1) Placing a notice specifying the revised bid opening date in the local newspaper with the largest circulation. The revised bid opening date shall be not less than seven nor more than 21 days after the appearance of the legal notice; or
- (2) Issue an addendum to the invitation for bids. The addendum must be in writing, must be mailed or delivered to all holders of the invitation for bids, and must be acknowledged on the form of proposal by each bidder submitting a bid.

(f) Extensions of the bid opening date may be permitted when:

- (1) Changes are made in specifications after advertisement; or
- (2) One or more bidders notify the City Manager's office of discrepancies, errors or areas requiring clarification in the specifications; or

(3) Specifications require design work on the part of bidders, and when unforeseen conditions make completion of bid preparations prior to the bid deadline impossible; or

(4) Strikes, disaster or other uncontrollable factors prevent bidders from acquiring information necessary for bid preparation; or

(5) Other reasons as may be determined by the City Manager.

(g) An invitation for bids may be rescinded when:

(1) Conditions leading to the issuance of an invitation for bids change sufficiently to make the proposed purchase unnecessary.

(2) Funds for the proposed purchase become unavailable.

(3) It is apparent no bids will be received because the item or service is unavailable, bid prices will exceed the funds available for the item, and when major revisions in specifications are necessary to insure bids received will be responsive and responsible.

(4) It is determined by the City Manager that rescinding of invitations to bid would be in the best interest of the city. (Code 1968, § 26-4)

(h) Bidders may be required to submit bids on forms provided by the city. Bids submitted on other forms may be rejected as nonresponsive. (Code 1968, § 26-6; Ord. No. 80-9-1977, 9-9-80) (Code 1996, § 36.34)

Sec. 2-646. Specifications.

(a) All specifications used in the procurement process shall be designed to provide the maximum practicable competition consistent with the level of quality required.

(b) Specifications shall be open and accurate.

(c) Design specifications describe how an item is to be built or manufactured. Performance specifications describe the capabilities of an item. Criteria to measure the ability of the item to be

purchased to perform or last may be developed. Either design or performance or a combination of both can be used when the need for such specifications arises. However, performance specifications are generally preferable when their use is applicable.

(d) "Brand name or equivalent" specifications can be used when other types of specifications are inappropriate or unavailable, or when stating brand names will significantly enhance the understandability of the specifications for prospective bidders. If the above-mentioned is used, specifications must:

- (1) Specify more than one brand name if possible;
- (2) Specifically state that an equivalent product may be supplied. The burden of proof for equivalency shall rest with the proposing distributor; and
- (3) Set forth criteria to be met by the product proposed.

(e) The City Manager may, when appropriate for an expected procurement, establish a qualified product list and may use the lists in place of detailed specifications. A bidder may propose to furnish a product not on the qualified products lists if he can demonstrate to the City Manager that the product proposed meets all criteria established for inclusion on the list.

(Code 1968, § 26-5; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.35)

Sec. 2-647. Bid price and evaluated bid price.

Bids shall be awarded to the responsible bidder who submits the responsive bid of the lowest bid price or lowest evaluated bid price. It shall be clearly stated in the invitation for bids whether the contract award shall be made on the basis of lowest bid price or lowest evaluated bid price. If the award is based on lowest evaluated bid price, the invitation shall include the evaluation criteria to be used along with any formulas pertaining to how the contract shall be awarded.

(Code 1968, § 26-7; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.36)

Sec. 2-648. Withdrawal of bids.

(a) No bid, once submitted, may be withdrawn before the time allowed for acceptance in the invitation for bids unless:

- (1) Bids have not been opened and a written request is received from the bidder more than 24 hours before the date and time set for opening.
- (2) An error has been made that is obvious on the face of the bid.
- (3) The bidder can demonstrate from worksheets or other documents that an error was made in preparing the bid document.

(b) Any bid withdrawn except under the above circumstances shall require forfeiture of any bond security. The City Manager may establish criteria or waive established informalities under which an incomplete bid may be considered if it is in the best interest of the city.

(Code 1968, § 26-8; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.37)

Sec. 2-649. Opening of bids.

An opening time for each bid shall be stated in any advertisement and invitation for bids. The time set for opening of bids shall be established by a clock in the office of the City Manager. It is the bidder's responsibility to insure his bid is in the office before the time set for bid openings. At the set time, the City Manager shall declare bids to be closed. All bids shall be opened publicly and read aloud when the structure of the invitation for bids permits. The City Manager shall with reasonable promptness prepare a tabulation of all bids received and make the documents available to the public upon reasonable request.

(Code 1968, § 26-9; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.38)

Sec. 2-650. Evaluation of bids; award of contract.

(a) Immediately after bids are opened, the City Manager or his designee shall review all bids for compliance with specifications, terms and conditions. Upon completion, copies of all bids received will be sent to the appropriate department head.

He in turn will review each and make a recommendation as to which bid shall be selected and forward this information in writing to the City Manager.

(b) If, in the judgment of the City Manager or his designee, a portion of a bid is uncertain or unclear, the bidder shall be required to clarify all such portions which are in question. Any clarification of this nature shall be sent to the City Manager's office in written form.

(c) Alternative bids are welcomed and may be submitted unless specifically excluded in the invitation to bid. Optional or alternative bids must conform to specifically enumerated evaluation criteria.

(d) After reasonable consideration of all bids received, a contract shall be awarded to the responsive and responsible bidder who submits a bid, or alternate bid, which is either the lowest bid price or the lowest evaluated bid price as described in the invitation for bids. Reasonable consideration is contingent on the item being evaluated and the time frame shall be adjusted accordingly by the City Manager or the City Commission.

(e) If the City Manager determines in writing that all bids are unsatisfactory, all bids may be rejected and new bids may be requested using the same or different specifications, or competitive negotiations, if the requirements of section 2-654(4) of this article are satisfied, for the purchase of the item in question. The basis for rejection of all bids and further action shall be in writing and placed in the particular bid file in question.

(Code 1968, § 26-10; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.39)

Sec. 2-651. Rejection of bids.

The City Manager reserves the right to reject any and all bids, and to waive technicalities and minor irregularities in bids. Grounds for the rejection include, but are not limited to:

- (1) Failure of a bid to conform to established requirements of an invitation for bids; or
- (2) Failure to conform to specifications contained in or referred to in any invitation for bids, unless the invitation authorized

submission of alternative bids, and the alternative proposal meets the requirements specified in the invitation for bids; or

- (3) Failure to conform to a delivery schedule established in an invitation for bids; or
- (4) Failure of a bid as determined by the City Manager to be reasonable in price; or
- (5) Determination that a bid was submitted by a bidder determined to be not responsible; or
- (6) Failure to furnish a bid guarantee when a guarantee is required by an invitation for bids; or
- (7) Imposition of conditions which would modify the terms and conditions of the invitation for bids, or which would limit the bidder's liability to the city under terms of the contract awarded, on the basis of such invitation for bids; or
- (8) Receipt of any one bid when the occurrence results in a difficulty in determining the fair market value of the goods or services to be purchased, in the opinion of the City Manager.

(Code 1968, § 26-11; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.40)

Sec. 2-652. Bid conditions; contract pricing.

(a) The City Manager shall adopt and revise, as necessary, general conditions for bidding. These general conditions shall be applicable to be included in or incorporated by reference in all invitations for bids issued by the city.

(b) The City Manager may, as required by a particular procurement, develop and adopt special bid conditions supplemental to the general bid conditions.

(c) Any bidder who submits a bid in response to an invitation for bids shall be deemed to have agreed to comply with all terms, conditions, and specifications of such invitation for bids. (Code 1968, § 26-12)

(d) In all invitations for bids, bids submitted, and contracts awarded:

- (1) Discounts shall not be considered unless stated in the invitation for bids;
- (2) In case of a discrepancy in the extension of a price, the unit price shall govern over the total price for all items; and
- (3) Any award may be made to the lowest aggregate bidder for all items, groups of items, or on an individual item basis, whichever is deemed to be in the best interest of the city. (Code 1968, § 26-13; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.41)

Sec. 2-653. Interested bidders list.

(a) The establishment of an interested bidders list for certain goods and services is encouraged and recommended where applicable. Any person, firm or corporation desiring to receive written notice of procurement requirements of the city may make application to have his name placed on a bidders list for the type or kinds of goods or services he wishes to supply or provide. The City Manager may specify the form to be used and the procedure to be followed by the prospective vendor to make application for inclusion on the bidders list. Failure of the city to notify any bidder on the interested bidders list caused by a clerical error shall not invalidate any bidding procedure or awarding of any contract, provided proper advertising procedures were followed as specified in section 2-645(a) through (g) of this article.

(b) The City Manager may establish a program for vendor prequalification. To establish a vendor prequalification system, the City Manager shall solicit from each prospective vendor sufficient information to permit evaluation of vendors' qualifications in terms of:

- (1) The ability and capacity to perform on a timely basis under contract for goods or services he wishes to bid on and supply.
- (2) Good character, integrity, reputation and experience.

(3) Satisfactory performance in prior dealings with the city.

(4) Satisfactory performance in dealings with other local government units, the Commonwealth of Kentucky, and other purchasers.

(c) The City Manager may refuse to list any prospective vendor if that vendor does not meet the minimum qualifications established for entry on a bidders list. It is the responsibility of the vendor to show that he meets established qualifications for entry on the bidders list to which he seeks to gain entry. The prospective vendor will be promptly notified if his application is disapproved and the reason(s) for disapproval will be stated.

(d) A prospective bidder may appeal the disapproval of his application by written appeal to the Board of Commissioners. The appeal must be filed within 14 days after the date of the notice of disapproval and must state the grounds for the appeal with reasonable particularity and must relate directly to the reason(s) for disapproval of the application. The City Manager may establish the time at which and the conditions under which a vendor whose application has been disapproved may reapply for placement on a bidders list.

(e) A bid may be accepted from a bidder whose name is not on the interested bidders list, provided that the bidder submits all information required by the City Manager to make a determination of the bidder's qualifications prior to the award of a contract.

(Code 1968, § 26-14; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.42)

Sec. 2-654. Competitive negotiations—Generally.

The city may contract or purchase through competitive negotiations, upon a written finding that:

- (1) Specifications cannot be made sufficiently specific to permit award on the basis of the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or development research work, or highly complex

equipment which requires technical discussions, and other nonstandard supplies, services or construction; or

- (2) Sealed bidding is inappropriate because the applicable sources and supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or
- (3) The bid prices received through sealed bidding are unresponsive or unreasonable to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsive bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsive bidder; or
- (4) All bids submitted pursuant to competitive sealed bidding under section 2-645(a) through (g) of this article result in bid prices in excess of the funds available for the purchase, and the City Manager determines in writing:
 - a. That there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidders; and
 - b. The best interest of the city will not permit the delay attendant to a resolicitation under revised specifications or revised quantities under competitive sealed bidding; or
 - c. After an invitation for bids has been made in accordance with section 2-645(a) through (g) of this article and no bids have been received from responsive and responsible bidders.

(Code 1968, § 26-15; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.43)

Sec. 2-655. Same—Request for proposals.

(a) When the City Manager determines in writing that competitive negotiation is needed to carry out a particular procurement, he shall com-

mence by advertisement of a request for written proposals as provided in section 2-645(a) through (g) of this article. (Code 1968, § 26-16)

(b) A request for proposals shall include:

- (1) A request by the city for proposals;
- (2) A statement of work required;
- (3) Desired performance schedule;
- (4) Available government furnished property, if any;
- (5) Applicable provisions to be included in the contract if awarded;
- (6) Criteria that will be used to evaluate proposals received;
- (7) Where and how detailed specifications may be obtained; and
- (8) Required time and place for submission of offers.

(Code 1968, § 26-17; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.44)

Sec. 2-656. Same—Custody of proposals; availability for public inspection.

All written proposals received by the City Manager in response to requests for proposals shall be kept secure and unopened until the date and time set for opening.

- (1) Proposals not clearly marked as such may be opened for identification purposes, appropriately identified and resealed until the time for opening proposals; and
- (2) Proposals for competitive negotiations shall not be subject to public inspection until negotiations between the city and all offerors have been concluded and a contract awarded.

(Code 1968, § 26-18; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.45)

Sec. 2-657. Same—Examination of proposals.

The City Manager or his designated representative shall examine each written proposal received for general conformity with the advertised terms of the procurement and shall:

- (1) Determine in writing those proposals received for responsible offerors that constitute a reasonable basis for negotiation. Each such offeror will be contacted informally and a meeting will be set up for discussion of the offeror's proposal; and
- (2) After informal discussions with all offerors, the City Manager will select the best proposal advantageous to the city; and
- (3) If no acceptable proposals have been accepted after discussions are complete, any or all proposals may be rejected, and, in the discretion of the City Manager, new proposals may be requested on the basis of the same or revised terms, or the procurement may be abandoned.

(Code 1968, § 26-19; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.46)

Sec. 2-658. Same—Discussions pertaining to revision of specifications or quantities.

If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be offered an opportunity to take part in the discussions.

(Code 1968, § 26-20; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.47)

Sec. 2-659. Noncompetitive negotiations.

The city may contract or purchase through noncompetitive negotiations only when a written determination is made that competition is not feasible, and it is further determined in writing by the city through the office of the City Manager:

- (1) An emergency exists which will cause public harm as a result of the delay in competitive procedures; or

- (2) There is a single source within a reasonable geographical area of the goods or services to be procured; or
- (3) The contract is for a service of a licensed professional, provided, however, that this provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services; or
- (4) The contract is for the purchase of perishable items purchased on a weekly or more frequent basis, such as fruits, vegetables, fish or meat; or
- (5) Services pursuant to a franchise awarded according to law; or
- (6) Services from nonprofit agencies, who provide such services for the benefit of the citizens of the city; or
- (7) Real property or an interest in real property; or
- (8) Goods or services from the Commonwealth of Kentucky, its political subdivisions, or the government of the United States; or
- (9) Goods or services available under terms of a Commonwealth of Kentucky price contract established for all state agencies; or
- (10) The contract is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible; or
- (11) The contract or purchase is for expenditures made on authorized trips outside the boundaries of the city; or
- (12) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, and unemployment insurance; or
- (13) The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the city.

(Code 1968, § 26-21; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.48)

Sec. 2-660. Small purchase plan.

(a) The city may use small purchase procedures for any contract for which a determination is made that the aggregate amount of the contract does not exceed \$20,000.00.

(b) The procurement of all items \$5,000.00 or less may be delegated by the City Manager to each individual department head. All department heads shall keep such purchases within the constraints of the aggregated amount budgeted each fiscal year, for each particular procurement item. It will be the responsibility of every department head to compare quality and price on all items and purchase items according to which goods or services will be most advantageous to the city. Any procurement which is delegated by the City Manager shall be subject to any policies and procedures as directed by the City Manager.

(c) The City Manager may delegate the responsibility for initiating purchases of items which exceed \$5,000.00, but do not exceed \$20,000.00 to each individual department head. The department head or a designated person under his authority will obtain three price estimates for each item, using the same criteria and quality measurements for all three estimates. The estimates for items costing more than \$10,000.00 shall be obtained in written form. The department head will then select the lowest estimate, or a higher estimate if the quality of the purchase in question would be greatly enhanced by accepting the higher estimate. All such purchases shall be made with the intention of serving the best interest of the city, and insuring the quality of the delivery of all public services. All procurement which is delegated by the City Manager shall be subject to any policies and procedures as directed by the City Manager.

(d) A requisition will be prepared and sent to the City Manager for his final approval before a purchase is made. The requisition will include the following information.

- (1) Description of the item to be purchased; and
- (2) Name and estimate from each vendor obtained; and

(3) Name of the vendor which is recommended by the department head for the award of the contract; and

(4) A short statement of the reason for the selection of that particular vendor.

(e) Procurement requirements shall not be parcelled, split, divided or purchased over a period of time in order to circumvent the dollar limitations for small purchases.

(Code 1968, § 26-22; Ord. No. 80-8-1967, 8-26-80; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.49; Ord. No. 98-3-5836, § 1, 3-10-98; Ord. No. 2005-2-6927, § 1, 2-22-05)

Sec. 2-661. Cooperative purchasing.

(a) The city is encouraged when circumstances permit to enter into an agreement for cooperative purchasing with any other local public agency or the Commonwealth of Kentucky, when common goods or services are required by both units of government. The cooperative purchasing may include, but is not limited to, joint contracts between public purchasing units and access by local public purchasing units to open-end state public purchasing unit contracts.

(1) Nothing in this article shall limit the city from selling to, acquiring from, or using any property belonging to another public purchasing unit.

(2) The city may enter into an agreement for the joint or common use of warehousing facilities or the lease or common use of capital equipment or facilities with any other public purchasing unit subject to such terms as may be agreed upon between the parties.

(b) The purchase of goods and services from the state's price agreement contract is encouraged, whenever the purchase of such items from distributors would be advantageous and in the best interest of the city.

(Code 1968, § 26-23; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.50)

Sec. 2-662. Contract modification and termination; right of city to inspect place of business and audit records of contractors.

(a) The City Manager shall be authorized to provide, by appropriate clauses, to contracts for goods or services of all types, for changes and

modifications to such contracts and providing for the method or methods of calculating the costs of any decrease, increase, or other change in the contract price resulting from the change or modification.

(b) Any contractor who is determined in writing by the City Manager to be in breach of any of the terms and conditions of a contract may at the direction of the City Manager be declared in

default and such contract may be terminated for any of the following, but not specifically limited to these provisions:

- (1) Failure to perform the contract according to its terms, conditions and specifications; or
- (2) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract; or
- (3) Late payment or nonpayment of bills for labor, materials, supplies or equipment furnished in connection with a contract for construction services, or failure to pursue the work under a contract for construction services.

(c) The city shall be authorized to negotiate termination of all contracts for the procurement of goods or services when the City Manager determines in writing that the termination will be in the best interest of the city.

(d) The city reserves the right to inspect the plant or place of business of any manufacturer of goods or services in which a negotiated contract has been awarded or will be awarded. This section will pertain to all contractors and subcontractors alike. The city also reserves the right to audit the records of any contractor or subcontractor for a period of five years from the date of the last payment, to the contractor or subcontractor, from the city or any of its political subdivisions or franchises.

(Code 1968, § 26-24; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.51)

Sec. 2-663. Bidder security and bonds.

(a) Bidders' security shall be required for all competitive sealed bidding for construction contracts when the price is estimated to exceed \$25,000.00. Bidders' security shall be in the form of a bond provided by a surety company authorized to do business in the commonwealth or equivalent, or the equivalent in cash in a form satisfactory to the city.

(b) Bidders' security shall be in an amount equal to at least five percent of the amount of the bid. When the invitation for bids requires that bidder security be provided, noncompliance re-

quires that the bid be rejected; provided, however, that the City Manager does not grant an exception which he considers justifiable.

(c) When a construction contract is awarded in an amount in excess of \$25,000.00, the following bonds shall be furnished and shall become binding on the parties upon the award of the contract:

- (1) A performance bond executed by a surety company authorized to do business in this commonwealth, or otherwise equivalent, in an amount equal to 100 percent of the contract price as it may be increased; and
- (2) A payment bond for the protection of all persons supplying labor and materials to the contractor or his subcontractors for the performance of the work provided for in the contract. This bond shall be in an amount equal to 100 percent of the original contract price.

(d) The city reserves the right to require additional bonds and securities when it is determined by the City Manager to serve the best interest of the city.

(Code 1968, § 26-25; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.52)

Sec. 2-664. Appropriations.

(a) The city shall not award a contract for any procurement when the contract price would exceed the funds appropriated for the procurement by the Board of Commissioners, unless additional funds are authorized by the Board of Commissioners.

(b) If all bids received in response to an invitation exceed the amount appropriated for the procurement, and sufficient additional funds are not authorized to permit an award to the lowest responsive and responsible bidder, the City Manager may proceed with competitive negotiations in accordance with section 2-654(4) of this article.

(c) An invitation for bids or a request for proposals may be advertised in anticipation of an appropriation, provided such invitation or request clearly states the funds for the procurement, while anticipated, have not been appropriated.

(d) The City Manager may award a contract for the procurement of goods or services for a period that exceeds a fiscal year, provided the contract permits cancellation without penalty in the event the funds for the contract are not appropriated for any succeeding year. (Code 1968, § 26-26; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.53)

Sec. 2-665. Public availability of information.

(a) Copies of records, specifications, procedures and regulations relating to purchasing shall be available to the public during normal business hours upon request and at a cost not to exceed the cost of copying.

(b) The City Manager or any other employee of the city shall not disclose to the public or to a prospective vendor's competitors:

- (1) Information furnished in response to a request from the City Manager for information necessary to determine a bidder's responsibility; or
- (2) Information obtained from a prospective vendor during negotiations which qualifies as confidential technical information or trade secrets, and/or the disclosure of which would constitute a violation of patent rights or copyrights.

(Code 1968, § 26-27; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.54)

Sec. 2-666. Compliance with grant requirements.

Nothing in these regulations shall be construed in such a manner as to relieve the city of the responsibility to comply with any procurement requirements imposed by an agency from which the city may receive funds, including but not limited to state and federal agencies.

(Code 1968, § 26-28; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.55)

Sec. 2-667. Conflict of interest.

(a) It shall be considered a breach of ethical standards for any employee of the city to engage in any procurement activity, directly or indirectly,

such as to the preparing of bids to be submitted, request for proposals, and matters pertaining to any contract, in which, to his knowledge:

- (1) He or any member of his immediate family has a financial interest therein; or
- (2) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner or employee is a party; or
- (3) Any other person, business or organization with whom he or any member of his immediate family is negotiating or has arrangements concerning prospective employment is a party.

(b) This shall include but not be limited to decisions, approval, disapproval, recommendation, preparation of any part of a purchasing request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or any other advisory capacity.

(Code 1968, § 26-29; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.56)

Sec. 2-668. Disposition of surplus or excess property.

(a) Any property which is to be sold by the city as surplus or excess property will require a written determination which will include the following:

- (1) Description of the property; and
- (2) Its intended use at the time of acquisition; and
- (3) The reason why it is in the best interest of the city to dispose of the item; and
- (4) The method of disposition to be used.

(b) Surplus or excess property may be transferred with or without compensation to another governmental agency, or it may be sold at public auction, or by sealed bids, in accordance with which method is deemed most advantageous to the city.

(c) The office of the City Manager must approve any and all dispositions of surplus or excess property and the appropriate department head

must comply with all requirements for sealed bid procedures as set forth in section 2-645(a) through (g) of this article which are applicable. (Code 1968, § 26-30; Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.57)

Sec. 2-669. Equal employment opportunity; determination of prevailing wage.

(a) The city shall include as part of any invitation for bids or request for proposals for goods or services, equal employment opportunity language as may be required by local ordinance, KRS 45.570—45.640 and the procurement requirements of any agency from which the city may receive funds. (Code 1968, § 26-31)

(b) Pursuant to KRS 337.510, the city shall apply to the Commonwealth of Kentucky, Department of Labor, for a determination of prevailing wage for any contract for construction services. The determination shall be included as part of any contract for construction services and shall be included in any invitation for bids or request for proposals for any procurement of construction services. (Code 1968, § 26-32) (Ord. No. 80-9-1977, 9-9-80; Code 1996, § 36.58)

Secs. 2-670—2-690. Reserved.

ARTICLE IX. PUBLIC RECORDS

DIVISION 1. GENERALLY

Sec. 2-691. Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

City. The city government of this city.

Commercial purpose. The direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent or lease of a service, or any use by which the user expects a profit either through commission, salary or fee. "Commercial purpose" shall not include:

- (1) Publication or related use of a public record by a newspaper or periodical;

- (2) Use of a public record by a radio or television station in its news or other informational programs; or
- (3) Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties.

Custodian. The official custodian or any authorized person having personal custody and control of public records.

Mechanical processing. Any operation or other procedure which is transacted on a machine, which may include but is not limited to a copier, computer, recorder or tape processor, or other automated device.

Media. The physical material in or on which records may be stored or represented, which may include but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes and cards.

Official custodian. The chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control. The "official custodian" of this city shall be the City Manager, whose mailing address is City Hall, Paducah, Kentucky 42001.

Person. A human being who makes a request for inspection of public records.

Prescribed fee or fee. The fair payment required by the city for making copies of public records and for mailing public records, which shall not exceed the actual cost thereof and shall not include the cost of required staff time.

Public agency. The City of Paducah, including its legislative body and every officer, department and division of the city; every entity created by authority of the city; any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council or agency created and controlled by the city; and any interagency body in which the city participates.

Public records. All books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings,

Agenda Action Form

Paducah City Commission

Meeting Date: July 23, 2013

Short Title: **2013/2014 Kentucky Governor's Highway Safety Program**

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Capt. Don Hodgson
Presentation By: Chief James Berry

Background Information: The Kentucky Office of Highway Safety, a division of the Kentucky Transportation Cabinet has competitive, discretionary grant programs that offer reimbursements to police agencies. Kentucky Office of Highway Safety has contacted the police department in regard to discretionary funds that are available and can be requested.

In an effort to reduce unsafe driving behaviors and reduce collisions, the Paducah Police Department desires to submit letter to request funds in the amount of \$5,000. These funds will be used to pay for officer enforcement overtime.

If the Commission desires the Police Department to submit a request of funds, it must authorize and direct the Mayor to sign all application documents. If an award is offered it will be brought before the Commission for consideration.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name:
Account Number:

Finance

Staff Recommendation: Approval

 Department Head	City Clerk	City Manager
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MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER AUTHORIZING THE MAYOR TO EXECUTE AN APPLICATION AND ALL DOCUMENTS NECESSARY FOR A GRANT IN THE AMOUNT OF \$5,000.00 THROUGH THE KENTUCKY OFFICE OF HIGHWAY SAFETY FOR OFFICER ENFORCEMENT OVERTIME FOR THE PADUCAH POLICE DEPARTMENT

BE IT ORDERED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The Mayor is hereby authorized to execute an application and all documents necessary for a grant through the Kentucky Office of Highway Safety in the amount of \$5,000.00. Said grant funds shall be expended for overtime traffic enforcement for the Paducah Police Department. No local cash or in-kind contribution is required.

SECTION 2. This Order shall be in full force and effect from and after the date of its adoption.

Mayor

ATTEST:

Tammara S. Sanderson, City Clerk

Adopted by the Board of Commissioners, July 23, 2013
Recorded by Tammara S. Sanderson, City Clerk, July 23, 2013
\\mo\grants\police-highway safety 2013-2014 -- \$5000

Agenda Action Form

Paducah City Commission

Meeting Date: July 9, 2013

Short Title: Pecan Drive Zone Change

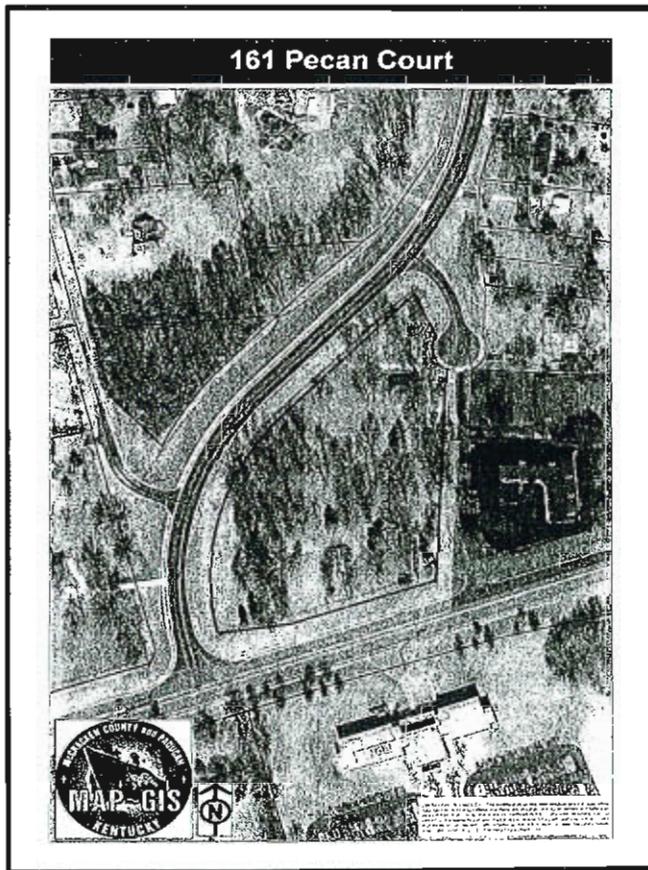
Ordinance Emergency Municipal Order Resolution

Staff Work By: Stephen Ervin

Presentation By: Stephen Ervin

Background Information:

Key Components:



The applicant, Marleene Andersen, is requesting a Zone Change for 161 Pecan Court from R-1 (Low Density Residential Zone) to R-4 (High Density Residential Zone). This is a large parcel that has one vacant home on it.

This zone change request was initiated because the Ophthalmology Group, currently located at 1903 Broadway, would like to construct a new 30,000 square foot medical office. Please see the attached preliminary development plan.

Professional offices are principally permitted in the R-4 Zone, pursuant to Section 126-105 (1) (d) of the Paducah Zoning Ordinance. The property to the east of Ms. Andersen's property is zoned R-4. Therefore, this would be a continuation of the R-4 High Density Residential zone.

Ms. Andersen, through her attorney, has submitted various reasons why the proposed rezoning is in compliance with the City's Comprehensive Plan. They include:

- The subject property is bordered on the East by R-4 zoning

- The area mainly consists of schools and professional offices
- Primary purpose is to provide medical care

Other ancillary uses may be located inside the building, such as the retail sale of glasses & contacts and a food service area, similar to a Starbucks. Staff has advised Ms. Andersen's attorney, Mr. Philip Little, previously that these uses would be permitted, provided they are accessory to the principal use of the medical office.

Site Data:

Area: approximately 7.7736 acres

Public Utilities: Adequate water and sewer service available.

Public Services: Sanitation, Police and fire service available.

Physical Characteristics: Largely vacant lot with a two-story rental home on the property.

Development Plan:

The Ophthalmology Group is proposing to construct a 30,000 square foot building for their medical practice. The building will have a partial lower level. 168 parking stalls are being proposed, which is adequate for this building. Upon approval by the Planning Commission, a final site plan will be submitted for review.

Land Use Patterns:

Several office, institutional and medical uses are located adjacent to the property or nearby. These include Heartland Physical Therapy, the Orthopedic Institute of Western Kentucky, WKCTC, Wyndor Square, Colgan Orthodontics, Purchase Cancer Group and the Baptist Rehabilitation Center. The area also has Heartland Worship Center, a duplex and single-family homes in the vicinity as well.

Adjacent Properties:

North: Pecan Drive—across Pecan are single-family homes.

East: A duplex and office building. These properties are zoned R-4 (High Density Residential)

South: Alben Barkley Drive—across Alben Barkley is the WKCTC.

West: Pecan Drive—across Pecan are two vacant parcels, Colonial Drive and one single-family home.

Zoning:

R-1 Low Density Residential on the North, South and West. R-4 High Density Residential on the East. The parcel is proposed to be changed to R-4 as follows:

Sec. 126-105. High Density Residential Zone, R-4.

The purpose of this zone is to provide an area that will combine compatible residential and business uses in such a manner that it will buffer low-density residential property from high density and commercial uses.

- (1) Principal permitted uses.
 - a. Any use permitted in the R-3 zone
 - b. Multi-family dwellings
 - c. Nursing homes and tourist homes
 - d. Professional office buildings (yard requirements for office buildings shall be the same as the B-1 zone requirements)
 - e. Day-care nurseries
 - f. Cemeteries
 - g. Bed and breakfast
 - h. Places of worship
 - i. Any other use not listed which, in the Commission's opinion, would be compatible with the above uses in the R-4 zone.
- (2) Conditionally permitted uses.
 - a. List of uses.
 1. Commercial greenhouses
 2. Funeral homes
 3. Home occupations
 4. Hotels or motels
 5. Beauty shops and barbershops
 6. Mobile home parks.
 - b. Board of Adjustment approval. The conditionally permitted uses listed above shall be considered as business uses and shall meet the requirements of the B-1 zone. All plans will be submitted to the Planning Commission prior to Board approval and the Commission shall require such conditions as are necessary to maintain the character of this zone. The Board may grant dimensional variances to businesses when lot requirements cannot be met.
- (3) Single- and two-family dwellings. Single-family dwellings and two-family dwellings shall comply with the requirements of the R-3 zone.
- (4) Multi-family dwellings and town houses.
 - a. Minimum yard requirements.
 1. Front yard: 25 feet.
 2. Side yard, each side: Six feet.
 3. Rear yard: 25 feet.
 - b. Minimum area requirements.
 1. Minimum lot area, per unit: 2,000 square feet.
 2. Minimum lot width: 50 feet.
 - c. Maximum building height. None.
 - d. Public parking area. Same as section 126-104(5)e.

Findings required for map amendment:

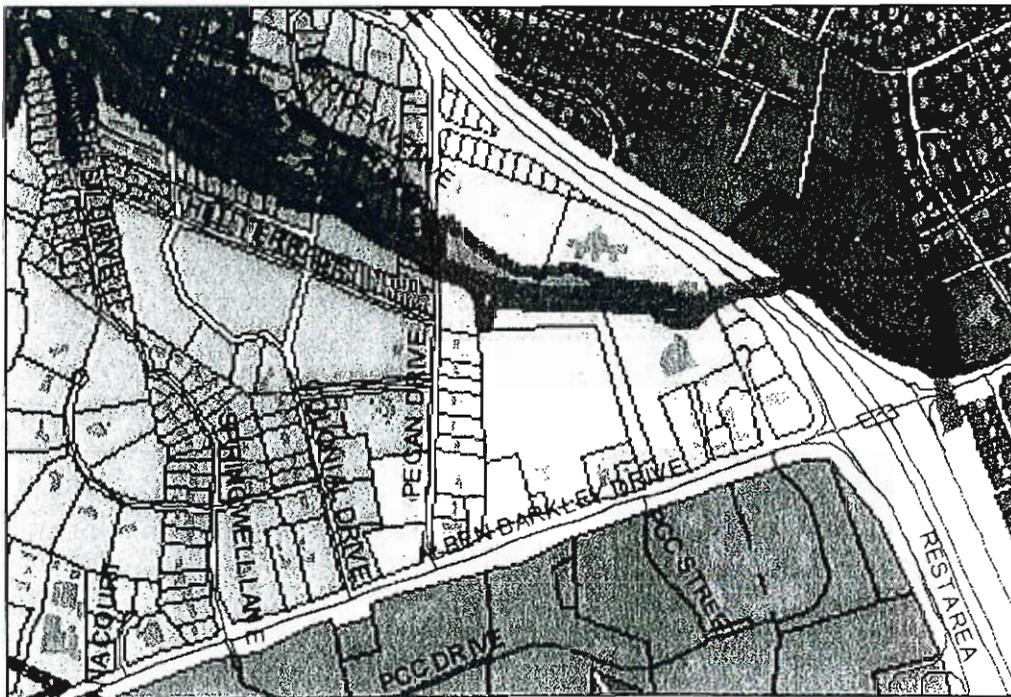
KRS – 100.213 Before any map amendment is granted, the Planning Commission must find that the map amendment is in agreement with the comprehensive plan, or in the absence of such a finding, that one or more of the following apply and such findings shall be recorded in the minutes and records of the Planning Commission and City Commission:

That the existing zoning classification given to the property is inappropriate and the proposed zoning classification is appropriate; or

That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the comprehensive plan and which have substantially altered the basic character of the area.

Staff Analysis – The majority of the area proposed to be re-zoned is in compliance with the Future Land Use Map. The Future Land Use Map shows the area to be zoned “Business Park”.

Future Land Use Map:



The City of Paducah Future Land Use Map shows the location as being zoned “business park”, not low-density residential. A professional business office is a principally permitted use in the R-4 Zone. However, the Future Land Use Map was generated before Pecan Drive was realigned. Approximately one acre of land on the east side of Colonial Drive was slated to remain “suburban”. This area is now contained in the island that the Ophthalmology Group would like to construct their office on. The Planning Commission made the following finding of facts to rezone this approximate acre as follows:

- Changes of an economic nature have occurred, as the realignment and widening of Pecan Drive has generated economic development.
- The Orthopedic Institute of Western Kentucky recently constructed a 41,407 square foot medical building at 4787 Alben Barkley Drive. Other medical uses as outlined above are nearby.
- Pecan Drive turns into Village Square Drive at James Sanders Boulevard. Over the past four years, three new medical facilities and two new restaurants have been constructed in this area. As the “mall” end of Pecan Drive continues to grow, more citizens of the heavily-populated Lone Oak area will continue to use Pecan Drive to access the Regional Trade Center. As this trend continues; office, medical and perhaps smaller scale retail can be expected on the WKCTC end of Pecan Drive.

Planning Commission Recommendation:

Recommend R-4 High Density Residential to the Paducah City Commission

Staff Recommendation:

Staff recommends approval for R-4 High Density Residential Zoning as the majority of the proposed zoning designation is in compliance with the Comprehensive Plan. Further, the approximate acre designated as “suburban” on the future land use map should be rezoned to R-4, based on the above findings of fact that the area has experienced major changes of an economic and physical nature, pursuant to KRS 100.213.

Funds Available: Account Name: N/A
 Account Number: N/A

Finance

Motion:

Attachments:

Planning Commission Resolution
 Zone Change Map/Development Plan

 Department Head	City Clerk	City Manager
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Agenda Action Form Paducah City Commission

Meeting Date: July 9, 2013

Short Title: Noble Park Pool Engineering Change Order #1

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Mark Thompson
Presentation By: Mark Thompson

Background Information: The original contract for the Noble Park Pool engineering with Florence & Hutcheson was authorized for \$98,700, Ord.2011-11-7881. However on May 8, 2012 the City chose to add the replacement of the baby pool as a portion of the project increasing the contract to \$143,200.00, Ord.2012-5-7920. The scope of the engineering has changed considerably as the project has continued. It became necessary to bid the project into three bids rather than two after the first bid came in a great deal over budget. The re-bids however saved over \$65,000 but required additional services for the coordination of three onsite contactors and the two re-bids themselves.

CO #1 totals \$40,995 for services through June increasing the contract with Florence & to \$184,195.00.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name: Noble Park Pool Project
Account Number: PA0095

 Finance

Staff Recommendation: Approval

Attachments: Invoice 11284-16

<i>MHT</i> Department Head	City Clerk	City Manager
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**Agenda Action Form
Paducah City Commission**

Meeting Date: July 9, 2013

Short Title: Noble Park Pool Concession Change Order #1

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Mark Thompson
Presentation By: Mark Thompson

Background Information: The original contract for the Noble Park Concession construction with Midstates Construction., Inc. was authorized for \$139,607.00. However it became necessary to remove an old asbestos water tank from an existing storage room. The options for removal were to cut the tank up exposing friable asbestos and carry it through existing openings or to make a hole in the wall and remove the tank without exposure issues. The second choice was used as this was the safer and least expensive option. Change Order #1 was required to accomplish this removal.

CO #1 totals \$15,727.61 increasing the contract with Midstates Construction to \$155,334.61.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name: Noble Park Pool Project
Account Number: PA0095

 Finance
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Staff Recommendation: Approval

Attachments: Change Order #1

<i>MHT</i> Department Head	City Clerk	City Manager
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Agenda Action Form Paducah City Commission

Meeting Date: 7/23/13

Short Title: Management Agreement for Information Technology Services

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Greg Mueller and John Hodges
Presentation By: Greg Mueller

Background Information: The City of Paducah and Joint Sewer Agency jointly fund and manage Information Technology (IT) services. The attached agreement identifies the responsibilities of both participating agencies.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name:
Account Number:

Finance

Staff Recommendation: Authorize the Mayor to execute an agreement for the management agreement.

Attachments: "Management Agreement between the City of Paducah and Paducah McCracken County Joint Sewer Agency for Information Technology Services"

Department Head	City Clerk	City Manager
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Management Agreement
between the
City of Paducah and Paducah McCracken County Joint Sewer Agency (JSA)
for Information Technology Services

The above-named parties are local units of government and desirous of serving the citizens of the City in an efficient and effective manner through cooperative and collaborative arrangements that avoid redundancies and makes full use of existing resources. The parties, therefore, entered into this agreement to fund and manage Information Technology (IT) services.

- I. The IT staff shall:
 1. Be supervised directly by and report directly to the Director of the City Information Technology Department.
 2. Maintain data, voice, and other telecommunications network hardware and software.
 3. Provide computer and telephone support for end users as directed.
 4. Perform other duties as required or assigned by the City Information Technology Director.

- II. The City of Paducah shall:
 1. Be the employer of record for the IT staff and provide all compensation and benefits.
 2. Provide office space and necessary office equipment and supplies for the IT staff.
 3. Direct and supervise IT staff in conjunction with the Joint Sewer Agency on IT work performed for the Joint Sewer Agency.
 4. Designate the City Information Technology Director as the primary point of contact for JSA for work to be performed by the IT staff.
 5. Designate the City Information Technology Director as the responsible party for ensuring IT staff work is shared accordingly.

- III. JSA shall:
 1. Through their Executive Director or another JSA Employee designated by him coordinate with the Director of Information Technology to establish work priorities and job scheduling.
 2. Compensate the City of Paducah \$17,600 annually for a percentage of IT salary and benefits. The \$17,600 amount is based on JSA's percentage of total IT work orders (4%) multiplied by the projected FY2014 budget for IT salaries and benefits (\$440,000).
 3. JSA's compensation to the City of Paducah will be adjusted annually based on the Cost of Living Adjustment (COLA) given to City non-union staff.
 4. Compensate the City of Paducah \$8 per month per JSA computer connected to the City's data network.
 5. Compensate the City of Paducah \$16.50 per month per JSA telephone connected to the City's voice network.

V. Turnover & Term:

1. Any of the 2 parties may withdraw from this agreement after giving 6 months written notice to the other party.

Executive Director, JSA
John C. Hodges

Date

Mayor, City of Paducah
Gayle D. Kaler

Date

Agenda Action Form

Paducah City Commission

Meeting Date: July 23, 2013

Short Title: ROOF STABILIZATION ASSISTANCE PROGRAM

Ordinance Emergency Municipal Order Resolution

Staff Work By: Stephen Ervin

Presentation By: Stephen Ervin

Background Information:

The intent of this agenda item is to adopt an ordinance establishing the Roof Stabilization Assistance Program. Property owners within a defined area (Map#1) will be eligible to apply for financial assistance that shall not exceed 50% of the construction costs or 50% of the fiscal year stabilization funds. Impetus for the program comes from the realization that roof stability is key to preserving building assets in the program area.

The ordinance directs the Director of Planning to administer the program and grants authority to the Urban Renewal & Community Development Agency (URCDA) to oversee the allocation of funds up to \$50,000.

The Ordinance further defines procedures for emergency roof repair by the City of Paducah. The City Commission shall review all emergency roof repair requests in excess of \$20,000. Funding for this program was proposed and approved in the 2013/2014 City budget. The amount of \$50,000 was appropriated from the investment fund. Approximately \$85,000 will be transferred from the former façade loan fund, resulting in a total of \$135,000 available for the first year of the program.

Funds Available: Account Name: Roof Stabilization
Account Number: 040-4411-592.23-07

Finance

Motion:

Attachments:

Department Head	City Clerk	 City Manager
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ORDINANCE NO. 2013-8-_____

AN ORDINANCE ESTABLISHING AND APPROVING THE ROOF STABILIZATION ASSISTANCE PROGRAM AND AUTHORIZING THE DIRECTOR OF PLANNING TO ADMINISTER THE PROGRAM AND PROVIDE FINANCIAL ASSISTANCE TO ELIGIBLE APPLICANTS FOR REPAIR OF DEFICIENT ROOFS IN THE PADUCAH DOWNTOWN HISTORIC DISTRICT.

WHEREAS, the City of Paducah has charged itself with the responsibility of overseeing the proper and orderly development or redevelopment of vacant, orphaned, or underutilized commercial properties located within its corporate boundaries and of insuring the integrity and quality of its existing historic commercial district; and

WHEREAS, the City of Paducah's economic well-being is related to and dependent upon, sustained growth of its tax revenue base through the proper and orderly development or redevelopment of vacant, orphaned, or underutilized commercial properties located within its corporate boundaries; and

WHEREAS, the City of Paducah proposes to stabilize downtown buildings located within the National Historic District; and

WHEREAS, the repair, stabilization, or replacement of roofs within the historic downtown will protect the historic built environment and will reduce further decline and which may lead to greater expenditures by the City of Paducah through demolition; and

WHEREAS, the City of Paducah desires to commit funds for the establishment of the Roof Stabilization Assistance Program (the "Program"), which will be utilized to accomplish the goals of the City of Paducah by providing funds to eligible applicants for the purpose of roof replacement or roof stabilization in the Downtown Historic District; and

WHEREAS, this Program will encourage roof stabilization of residential and commercial properties located in the Downtown Historic District where infrastructure and services are in place and promote quality commercial redevelopment consistent with the character of the adjacent structures.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

ARTICLE I

Section I Title

1.1 This ordinance shall be known and may be cited as the "Roof Stabilization Assistance Ordinance of the City of Paducah".

Section 2 Purpose

2.1 This ordinance is intended to establish and facilitate roof replacement and roof rehabilitation by property owners within the Downtown Historic District (Map #1) to combat roof problems that endanger the general health, safety and welfare of the of the inhabitants and visitors to the area within the Historic District that has been placed on the National Registry.

Section 3 Definitions

3.1 Project Manager. The Director of Planning or his designee.

3.2 Roof Stabilization. The restoration of a deficient or substandard roof to provide a water tight roof system free of leaks including all necessary flashing, decking repair, rafters, gutters, downspouts, and roof/attic ventilation to ensure the longevity of the roof system.

3.3 Qualified Roofing Contractor. A contractor that has been approved by the Department of Planning and has installation certification from the manufacturer.

3.4 URCDA. Urban Renewal and Community Development Agency

Section 4 General Provisions

4.1 Eligibility

a. Applications for a grant under the Program will be reviewed by the Project Manager upon the criteria outlined herein to determine eligibility.

b. All property receiving the financial assistance under the Program shall be located within the Downtown Historic District (Map #1).

c. Program parameters include:

1. The Program will target structures in need of roof stabilization.

2. Third party construction estimates by a qualified roofing contractor and owner's proof of financial ability to complete the project will be required.
3. Each grant shall not exceed 50% of the total roof stabilization costs, or 50% of funds allocated to the program for the budget year.
4. A City of Paducah letter of financial commitment will be given to the owner upon final approval of the grant by URCDCA.
5. Eligible roof stabilization improvements must be permanent. Eligible roof improvements shall include, but not limited to: a water tight, sustainable leak proof roofing system.
6. All work shall meet or exceed industry standards for roof repair/replacement and comply with all applicable building codes.

Section 5 Administration

5.1 Staff

a. The Project Manager shall perform the following duties:

1. Preparation of the necessary applications, financial statements, a summary of the commitments to the rules and regulations of the program, and such other forms to be executed in administering the program. The appropriate forms shall include, along with other data deemed appropriate, Roof Stabilization Assistance Program application, proof of ownership, financial qualifications and deed restrictions.
2. Review the eligibility of the applicant based on the requirements of this ordinance, review the data provided on the forms required as part of the application procedure and make a recommendation to the URCDCA.
3. Providing limited technical assistance to applicants.
4. Maintain a list of approved contractors based upon satisfactory references on past work performed.
5. Determine whether the proposed work to be performed meets the parameters of this ordinance and whether the cost to complete that work is reasonable. Said determination shall be in writing and kept on file as part of the application.
6. Conduct appropriate, periodic inspections of the work being done and, when satisfactorily completed, issue a certificate of compliance bearing the date the certificate was issued. A copy of this certificate shall be kept as part of the file.

5.2 Funding

- a. The City of Paducah may make annual budgetary appropriation as it deems necessary to fund the program established by this ordinance and the administrative costs associated therewith.

Section 6 Procedures for Making Application, Review and Approval

6.1 Application

- a. Applications will only be accepted after a Request for Application public notice has been published in the Paducah Sun. Third party construction estimates and proof of financial ability from a qualified financial institution will be required.

- b. Applications and other required forms shall be made available at the Department of Planning. Technical assistance shall be available from that office to assist applicants in completing and submitting an application. There shall be no fee for filing an application.

6.2 Review

- a. The Project Manager shall determine the completeness of the application. Incomplete applications will not be processed.

- b. Upon a determination of completeness, the Project Manager shall make a determination as to whether the applicant meets the eligibility criteria under the Program.

- c. Upon a determination that the applicant is eligible under the Program, the Project Manager shall forward the application to the Urban Renewal & Community Development Agency (URCDA) for consideration.

- d. The URCDA will review rankings in accordance with the following criteria to determine applicant's eligibility.
 1. Urgency of roof stabilization. 25%
 2. Contributing structure on the National Register of Historic Places. 25%
 3. Historic relationship to adjacent structures. 25%
 4. Capital commitment of owner to rehabilitate remaining structure. 25%

- e. URCDA will have the authority to approve all projects that do not exceed \$50,000 in roof stabilization funds. Projects in excess of \$50,000 of roof stabilization funds will be forwarded to the City Commission for approval.

- f. Grant awards will be given based on availability of funds.

6.4 Property Owners Obligations upon Grant Approval from the City of Paducah.

Property Owner shall deliver to the Project Manager the following documents in fully executed form:

- a. A duly executed contract between the Property owner and the approved contractor outlining the roof work to be performed, the cost to be incurred, including an amount for retainage to assure the acceptable completion of the construction, and the time of performance. This contract must be reviewed by, and acceptable to the Project Manager.
- b. Any other documents which may be requested by the City of Paducah upon approval.

6.5 Disbursement of Grant.

a. Subject to the terms and conditions hereinafter provided, the property owner shall be entitled to draw proceeds from the grant when 100% of rehabilitation work has been completed. Under no circumstance will funds be advanced. However, notwithstanding the foregoing, disbursement shall only be made when the following condition precedents shall have been satisfied:

1. The Property Owner shall submit for the Project Manager's review a written request for reimbursement. The written request shall be signed by both the approved contractor and the Property Owner.
2. The Property Owner shall provide to Project Manager a certification executed by the approved contractor which shall certify the aforesaid costs incurred in the construction process have been paid in full.
3. At the request of the Project Manager, the Property Owner shall provide to Project Manager interim mechanics' or materialmen lien waivers to be executed by the approved contractor, subcontractors, materialmen and/or their employees or agents.
4. The Project Manager has verified that the construction is in accordance with building and construction plans and specifications.
5. The Property Owner has complied with the terms of this ordinance.

b. In the event all of the foregoing condition precedents are fully satisfied, the Project Manager shall within ten (10) business days following date of request remit directly to the approved applicant the permitted amount of draw.

c. In the event all of the foregoing condition precedents are not fully satisfied, the Project Manager shall have the right, at his discretion, to refuse the request in total until such time as all condition precedents are satisfied, or pay such portion of the request that the Project Manager deems appropriate. Additionally, the Project Manager shall have the right to pay the grant proceeds directly to any creditors who have provided labor or materials for the construction or the rehabilitation work, which payments shall be deemed for and in behalf of the Property Owner and as a part of the grant hereunder. The Project Manager's determination shall be binding and final upon the Property Owner and the approved contractor.

6.6 Issuance of Certificate of Completion.

Following completion of the work, the Project Manager shall inspect the roof and structure and certify whether or not the work has been satisfactorily completed. If the work is sufficient, a Certificate of Completion shall be issued.

6.7 Emergency Roof Stabilization

a. If it is determined by the Program Manager after review by the Deputy Fire Chief that a structure is in need of emergency roof stabilization, the Program Manager may utilize Roof Stabilization Assistance Program funds for the stabilization of the roof. The Program Manager shall review the following criteria to determine project eligibility.

1. The structure is located with the program area (Map #1).
2. The structure is a contributing structure on the National Register of Historic Places.
3. Without Emergency Roof Stabilization, the roof would be in danger of collapse.
4. Without Emergency Roof Stabilization, the roof would further decay resulting in increased demand for utilization of the Roof Stabilization Assistance Program funds.

b. The City Commission shall review Emergency Roof Stabilization projects in excess of \$20,000.

c. The city shall have the right to assess against the property owner all costs incurred by the city in the completion of the necessary repairs, and, additionally, the city shall have a lien against the property benefited by the repairs.

ARTICLE II

If any section, subparagraph, sentence, clause or phrase of this Ordinance shall be held to be invalid, such decision shall not invalidate the remaining portion of this Ordinance.

ARTICLE III

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.

ARTICLE IV

This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

MAYOR

ATTEST:

City Clerk

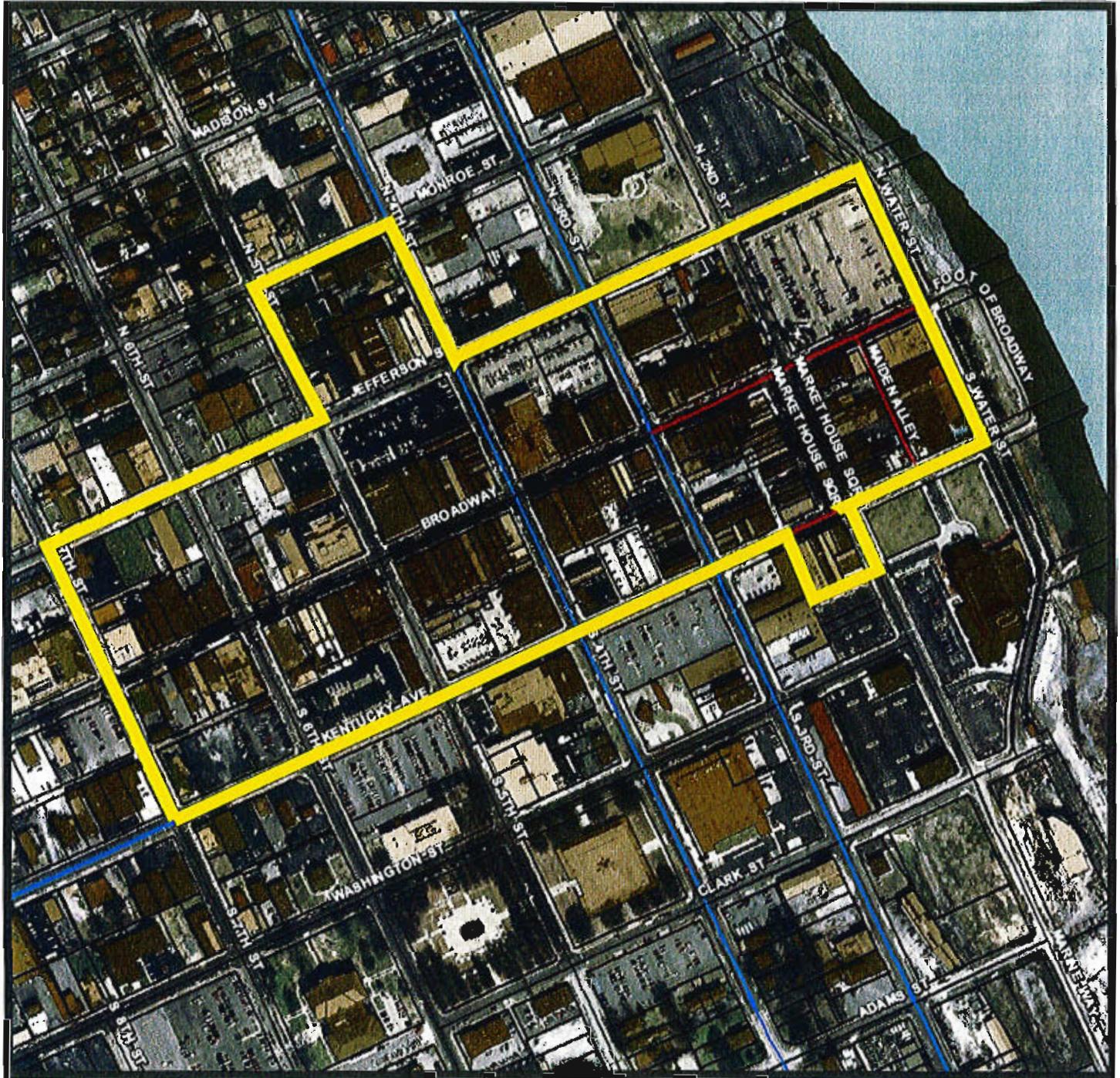
Introduced by the Board of Commissioners, _____, 2013

Adopted by the Board of Commissioners, _____, 2013

Recorded by City Clerk, _____, 2013

Published by *The Paducah Sun*, _____, 2013

Downtown Paducah Roof Stabilization Program



Roof Stabilization
Project Area

Map #1

Agenda Action Form Paducah City Commission

Meeting Date: July 23, 2013

Short Title: Purchase of Three (3) Ford Police Interceptor Vehicles for use by the Police Department utilizing the Kentucky State Contract

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Angela Weeks, Engr-Pub Works Proj Mgr
Neal Ford, EPW Fleet Supervisor

Presentation By: Rick Murphy, P.E., City Engineer-Public Works Director
Randy Crouch, EPW Maintenance Supt.

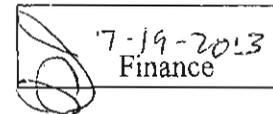
Background Information:

In accordance with the adopted budget, 3 new Police Interceptor pursuit vehicles for use by the Police Department were authorized to be purchased utilizing the Fleet Lease Trust Fund. The authorized Kentucky State Contract vendor for the 2013 Ford Police Interceptor vehicles is Crossroads Ford Lincoln, Inc. in Frankfort, KY, who quoted a price of \$90,707.01 for the three police vehicles, which is \$30,235.67 per vehicle. This amount is within the proposed budgeted amount of \$93,000.

The Kentucky Master Agreement number is MA #758-1200000522-1

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name: Rolling Stock/Vehicles
Fleet Lease Trust Fund
Account Number: 071-0210-542-4005 *cl*

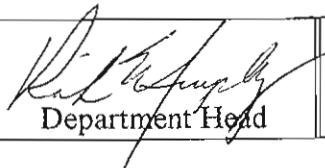


Staff Recommendation:

To authorize the purchase of three (3) 2013 Ford Police Interceptor vehicles for use by the Police Department from Crossroads Ford Lincoln, Inc., at the total quoted price of \$90,707.01.

Attachments:

Quote

 Department Head	City Clerk	City Manager
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ORDINANCE NO. 2013-8-_____

AN ORDINANCE AUTHORIZING THE PURCHASE OF THREE (3) 2013 FORD POLICE INTERCEPTOR VEHICLES FOR USE BY THE PADUCAH POLICE DEPARTMENT

WHEREAS, these vehicles are available under State Contract No. MA 758-1200000522-1, and competitive bidding is not required.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the Finance Director is authorized to pay the total sum of \$90,707.01 to Crossroads Ford Lincoln, Inc., for the purchase of three (3) 2013 Ford Police Interceptor Vehicles for the City of Paducah's Police Department, in compliance with Kentucky State Publishing Contract.

SECTION 2. This purchase shall be charged to the Rolling Stock/Vehicles-Fleet Lease Trust Fund Account-071-0210-542-4005.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Mayor

ATTEST:

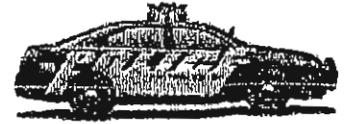
Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, July 23, 2013
Adopted by the Board of Commissioners, August _____, 2013
Recorded by Tammara S. Sanderson, City Clerk, August _____, 2013
Published by The Paducah Sun, _____
ord\pworks\vehicles - police interceptors-2013 8-2013



Crossroads Ford Lincoln, Inc.

1070 Versailles Road - Frankfort, KY 40601
 Toll Free 1-855-545-0196 Fax 1-513-732-2868
 Email: crossroads@fleetsharepro.com



SALES QUOTATION

Date: 6/6/13
 To: Neil Ford
 Paducah Police Department
 Paducah, KY

Phone: 270-444-8569
 Fax:
 Email:

We are pleased to quote the following per the Commonwealth of Kentucky Master Agreement #758-1200000522-1

MECHANICAL

- Alternator - 220Amp
- Auxillary Transmission Oil Cooler
- Battery - H.D. maintenance-free 78A/750 CCA
- Brakes - 4-Wheel Heavy-Duty Disc w/H.D. Front and Rear Calipers
- Column Shifter - vinyl molded-black shift knob
- Drivetrain - All-Wheel-Drive
- Dual Exhaust - Quasi
- Electric Power Assist Steering (EPAS) - Heavy-Duty
- Engine - 3.5L V6 TI-VCT FFV1 (Note: FFV is not available on the EcoBoost™ engine)
- Engine Hour Meter
- Engine Oil Cooler
- Fuel Tank - 19.0 gallons
- Independent Front Suspension with Front and Rear Stabilizer Bar
- Transmission - 6-Speed Transmission

EXTERIOR

- Decklid - Cylinder Lock
- Door Handles - Painted Black
- Front Door Lock Cylinders (Front Driver/Passenger)
- Glass - Solar-Tinted
- Grille - Black
- Headlights - Projector Halogen
- Mirrors - Black Caps (MIC), Power Electric Remote, Manual Folding with Integrated Blind Spot Mirrors (integrated blind spot mirrors not included when equipped with BLIS®)
- Nameplate Badging - "Police Interceptor" and "Road Leaf" FFV Badging
- Roof Mount Antenna
- Tail Lamps - Halogen with Halogen Decklid Lamps
- Tires
 - 245/55R18 A/S BSW
 - Wheels - 18" x 8" painted black steel with Wheel Hub Cover
 - Full Size Spare Tire P245/55R18 A/S BSW
 - Full size 18" Spare w/TPMS
- Underbody Deflector

INTERIOR / COMFORT

- Climate Control - Single Zone Manual
- Console Mounting Plate - Black e-Coat
- Door Locks
 - Power
 - Rear Door Handles and Locks Operable
- Floor - Heavy-Duty Thermoplastic Elastomer
- Grab Handles - (1 - Front passenger side)
- Pedals - Power adjustable
- Powerpoints - 2 located in I/P lower close-out
- Red/White Dome Lamp - 1st Row
- Scuff Plates - Front & Rear

INTERIOR / COMFORT (Continued)

- Seats
 - 1st Row Heavy-Duty Cloth Bucket
 - 6-way power driver (man recl, man lumbar) with 2-way manual passenger (man recl, no lumbar)
 - Built-in steel intrusion plates in both front-seatbacks
 - 2nd row Vinyl Bench
 - 2nd row door-panels - simplified, no pockets or door speakers, easy clean surface
- Speedometer - Calibrated
- Steering wheel - Manual/Tilt, Urethane Wrapped with Speed Controls / Audio Controls
- Storage - Overhead Console with dome/map lights and sunglass holder
- Sun visors - Non-Illuminated Driver/Passenger
- Trunk - Flat Load Floor
- Universal equipment tray atop instrument panel (ideal for radar and other police equipment)
- Windows
 - Power, 1-touch Up/Down Driver-Side
 - Window disable lock, 2nd Row
 - Power Rear Windows Driver Switch Only

SAFETY & SECURITY

- AdvanceTrac® w/ESC® (Electronic Stability Control™) w/Hydraulic Brake Assist
- Airbags
 - Front Airbags
 - Side-Impact Airbags
 - Safety Canopy® with rollover sensor
- Anti-Lock Brakes (ABS) with Traction Control
- Battery saver feature
- Belt-Minder® (Front Driver/Passenger)
- LATCH (Lower Anchors and Tethers for Children) system on rear outboard seat locations
- SOS Post-Crash Alert System™
- Tire Pressure Monitoring System (TPMS)

FUNCTIONAL

- Easy Fuel® Capless Fuel-Filler
- Front door tether straps (Driver/Passenger)
- MyFord™
 - Police Cluster
 - AM/FM / CD / MP3 Capable / Clock / 4 speakers
 - 4.2" Color LCD Screen Center Stack "Smart Display"
 - 5-way Steering Wheel Switches, Redundant Controls
 - Power digital harness
 - Simple Fleet Key (w/o microchip, easy to replace)
 - Two-way radio pre-wire
 - Wipers - Intermittent Fixed Interval

<u>Qty.</u>	<u>Code</u>	<u>Item #</u>	<u>Description</u>	<u>Each</u>	<u>Total</u>
3	P2M	1000.00	2013 Ford Police Interceptor Sedan AWD 3.5L V6 Ti-VCT Engine	\$22,739.24	\$68,217.72
3	13P	1000.06	Front Headlamp/Housing Only - Two (2) Predrilled Side Marker Holes For LED Lights	\$120.00	\$360.00
3	153	1000.14	License Plate Bracket - Front	\$0.00	\$0.00
3	13C	1000.15	Dark Car Feature - Courtesy Lamp Disable	\$35.00	\$105.00
3	96E	1000.17	Side Marker LED Fender Lights	\$265.00	\$795.00
3	51G	1000.18	Pre-Wire for Grill Lamp, Siren and Speaker	\$35.00	\$105.00
3	21D	1000.19	Spot Lamp - Driver's Side Incandescent Bulb	\$210.00	\$630.00
3	64L	1000.29	Wheel Covers Full	\$60.00	\$180.00
3	77B	1000.31	Rear View Camera - Electrochromatic Rear View Mirror	\$240.00	\$720.00
3	18G	1000.36	Rear Door Handles Inoperable / Locks Inoperable	\$35.00	\$105.00
3	549	1000.48	Mirrors - Heated Sideview	\$85.00	\$255.00
3	60P	1000.50	Remote Keyless Entry Key Fob w/o Keypad	\$255.00	\$765.00
609	DEL	1000.57	Delivery Charge Outside 50 Mile Radius of Frankfort, KY	\$1.45	\$883.05
3	UPF	1000.64	Vehicle Upfit: Per City of Paducah's Equipment Specifications	\$5,862.08	\$17,586.24
				Total Cost	\$90,707.01

Please Indicate Vehicle Color Selection Below

AQ Arizona Beige Metallic •

BU Medium Brown Metallic •

HG Smokestone Metallic •

J1 Kodiak Brown Metallic •

JL Dark Toreador Red Metallic •

KR Norsesea Blue Metallic •

LK Dark Blue

LM Royal Blue

LN Light Blue Metallic •

LS Light Ice Blue Metallic •

MM Ultra Blue Metallic •

TM Light Gray

TN Silver Gray Metallic •

UA Ebony

UJ Sterling Gray Metallic •

UX Ingot Silver Metallic •

YG Medium Titanium Metallic •

X YZ Oxford White

• Additional Charge Requires Option Code #NSP (1000.51) Non-Standard Paint Color \$125.00

Please fax quotation and copy of your purchase order to our government sales office at 1-513-732-2868. Within 3-5 business days you should receive an order conformation from our office to confirm your order. If not, please contact our sales office at 1-855-545-0196.

Thank you,

Dave Trimpe

Government Sales

Crossroads Ford Lincoln, Inc.

1070 Versailles Road

Frankfort, KY 40601

Auxiliary Equipment for Ford Interceptors

The following installed:

- ✓ > Whelen Liberty LED light bar, red and blue (clear lenses) with traffic advisor
- ✓ > 100W speaker mounted behind grille
- ✓ > Jotto Desk Console model #425-6174
- ✓ > Jotto Desk Cup Holder model #425-3704
- ✓ > Jotto Desk Arm Rest model #425-6411
- ✓ > Setina Model 10-XL Partition (XL series with horizontal sliding window)
- ✓ > Pro-Gard rear seat
- ✓ > Mastercom Siren model #389226
- * > Flashing Headlamps (wig-wags) *NEW CORNER LED'S - NO WIG WAG OUT TO PROJECTOR HEADLAMPS.*
- ✓ > Flashing LED's mounted in backup lamps
- ✓ > Charge Guard model #CG-1
- ✓ > Antenna and radio power wires ran to console
- ✓ > Sound-off signal intersector lights - model #ENT2B3W - mounted on mirrors - white
- ✓ > Gamber-Johnson tall computer cradle - model #7160-0250-01
- ✓ > Gamber-Johnson universal adapter - #7160-0454
- ✓ > Jotto desk computer mount - #425-5599
- ✓ > Install L3 mobile vision DVR camera system (camera system will be supplied by the City of Paducah)



Paducah Police Department

"Community and Police Partnership"

Paducah Police Department Fleet purchases

Currently meeting the replacement criteria for an "as needed" purchase:

Out:	In:
919	2013/14 drug detective vehicle
	2013/14 drug detective vehicle
933	2013/14 Patrol vehicle
946	2013/14 Patrol vehicle
998	2013/14 Patrol vehicle

Total out: 4

Total in: 5*

Our request is to purchase three Ford PPV's for use by the operations division. We also request the financial contributions made into the fleet fund to replace unit 919 be allocated to purchase two vehicles for use by the Drug and Vice Unit. We believe we can purchase two new or nearly new vehicles from local dealerships for 13K each that can serve as assigned vehicles for drug enforcement detectives. *These two vehicles (approximately the same cost as one unequipped Ford PPV) would then be added to the fleet trust fund and their annual replacement costs be paid at the smaller prorated purchase value.

As of February 25th, the mileage of units requested to be taken out of service upon replacement are as follows:

Unit 919- 88,576 miles

Unit 933- 84,971 miles

Unit 946- 91,274 miles

Unit 998- 88,450 miles

Currently there are seven detectives and one supervisor assigned to the DAVE unit. The supervisor is driving a seized vehicle with 152K miles; one detective is operating a seized vehicle with 142K miles and another detective is operating a seized vehicle with 154K miles. Currently, only one detective in the DAVE unit is operating a vehicle purchased from the fleet plan.

Submitted: March 1, 2013

Assistant Chief Brandon Barnhill

Assistant Chief Stacey Grimes



Agenda Action Form Paducah City Commission

Meeting Date: July 23, 2013

Short Title: Purchase of Roll-Out Solid Waste Containers for use by the EPW-Solid Waste Division utilizing the Kentucky State Contract

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Chris Yarber, EPW Operations Mgr
Pam Souder, EPW Admin Asst III
Angela Weeks, EPW Proj Mgr

Presentation By: Rick Murphy, P.E., City Engineer-Public Works Director

Background Information:

The EPW-Solid Waste Division is in currently need of new 96-gallon Solid Waste Roll-Out containers for distribution to the citizens of Paducah for solid waste pick-up. The authorized Kentucky State Contract vendor for this type of collection container is Toter, Inc., located in Statesville, NC. Toter has quoted a unit price of \$45.85 for each roll-out, along with \$2,000 for freight. An initial order of 1,048 green and 200 blue (ADA) Solid Waste Roll-Out Containers, including freight and stamp die charges will total \$59,220.80.

The 2014 FY Budget allocated \$80,000 for the purchase of Solid Waste Roll-Outs and necessary accessories. Therefore, in order to allow the purchase of additional roll-outs, lids and fittings as required throughout the fiscal year, we are requesting that authorization be given to allow purchases from Toter, Inc., in an amount not to exceed the FY2014 Budgeted amount of \$80,000.

The Kentucky Master Agreement number is MA 758-1100000312-3

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name: EPW - Solid Waste
Account Number: 050-2209-531-4210^{cd}
Non-Rolling Stock/Equipment - Other

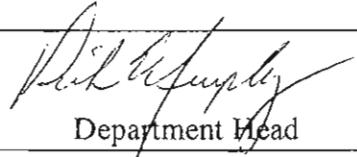
Finance
7-18-13

Staff Recommendation:

To adopt an Ordinance authorizing the purchase of Solid Waste Roll-Out containers, along with lids and fittings, for use by the EPW-Solid Waste Division during the 2013-2014 fiscal year from Toter, Inc., in an amount not to exceed the budgeted amount of \$80,000.

Attachments:

Toter, Inc., - Quote

 Department Head	City Clerk	City Manager
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AN ORDINANCE AUTHORIZING THE PURCHASE OF ROLL-OUT
CONTAINERS FROM TOTER, INC., FOR THE ENGINEERING-PUBLIC WORKS SOLID
WASTE DIVISION

WHEREAS, the Engineering-Public Works Solid Waste Division is in need of
new 96-gallon roll-out solid waste containers for distribution to the citizens of Paducah as
required for solid waste pick-up; and

WHEREAS, this equipment is available under State of Kentucky Master
Agreement Number MA 758-1100000312-3, and, therefore, competitive bidding is not required;
and

WHEREAS, a unit price of \$45.85 for each roll-out, along with \$2,000 for freight,
with a total price of \$59,220.80, has been quoted; and

WHEREAS, in order to allow the purchase for additional roll-outs, lids and
fittings as necessary throughout the fiscal year, we are requesting that authorization be given to
allow purchases in an amount not to exceed \$80,000.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the City of Paducah hereby authorizes the Finance Director to
make payment to Toter, Inc., for the purchase of roll-out refuse containers, lids and fittings for
the 2013-2014 fiscal year, in an amount not to exceed the City's budgeted amount of \$80,000.
These containers will be used by customers within the City limits of Paducah served by the Solid
Waste Division, Engineering-Public Works Department. This purchase is made in compliance
with the Kentucky State Purchasing Contract.

SECTION 2. This expenditure shall be charged to the Solid Waste Fund
replacement budget account (050-2209-531-4219).

SECTION 3. This ordinance shall be read on two separate days and will become
effective upon summary publication pursuant to KRS Chapter 424.

Mayor

ATTEST:

Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, July 23, 2013
Adopted by the Board of Commissioners, August _____, 2013
Recorded by Tammara S. Sanderson, City Clerk, August _____, 2013
Published by The Paducah Sun, _____
\\ord\pworks\refuse-rollout containers 2013



Toll Free: (800) 424-0422
 Fax: (704) 878-0734

QUOTATION

Quote #: 13-1444R1
 Date: 7/17/2013
 Sales Rep: Lori Cate

Prepared For:
 City of Paducah
 Pam Souder
 270-444-8532
 psouder@paducahky.gov

Ship To:
 City of Paducah
 1120 N. 10th Street
 Paducah, KY 42001

PRICING OFF KY STATE CONTRACT

Model	Description	Qty	Price	Ext Price	
79296	Toter 96 Gallon - EVR II Universal/Nestable Body Color - (709) Bluestone Lid Color - Standard Color (Black, Blue, Gray, Brown, Green) Toter Serial Number Hot Stamped in White on Front Body Hot Stamp on Both Sides in White - New Lid Hot Stamp - None Lid Insert - Toter Wheels - Standard 10" Sunburst Assembly - Lids Attached (lid, axle & stopbar installed) Warranty - 10 Year Unprorated (special exclusions may apply to non-standard options)	200	\$45.85	\$9,170.00	
79296	Toter 96 Gallon - EVR II Universal/Nestable <i>Same Specs As Above Except:</i> Body Color - (968) Greenstone	1,048	\$45.85	\$48,050.80	
	One-Time Die Charge for Hotstamp	1	\$300.00	\$300.00	
		Subtotal =		\$57,520.80	
		Freight =	2	\$1,000.00	\$2,000.00
		Total =		\$59,520.80	

Additional Information:

- * Freight: FOB Plant
- * Payment Terms: Net 30 days after shipment, pending credit approval
- * Delivery: To be determined at time of order

Due to an extremely volatile petrochemical market, actual prices and freight are subject to change and must be confirmed before acceptance of an order. Above pricing is based on orders placed in the quantities stated above. Orders placed for other than these quantities may be subject to additional freight and cost. Unless otherwise stated, container sizes indicated on sales literature, invoices, price lists, quotations and delivery tickets are nominal sizes. Actual volume may vary from nominal sizes. This proposal is subject to Wastequip/Toter standard terms and conditions. Quotation does not include any applicable taxes other than those specifically listed on this document.

Toter, LLC :
Lori Cate
 Sales Account Executive
 (865) 279-4225
 lcate@wastequip.com

Accepted By:

 City of Paducah Date

 PO #

Agenda Action Form

Paducah City Commission

Meeting Date: July 23, 2013

Short Title: Contract with Luther F. Carson Four Rivers Center

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Claudia Meeks
Presentation By: Jeff Pederson, City Manager

Background Information:

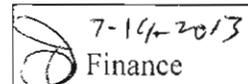
As part of the Investment Fund Decision Items for FY2014, the Commission approved appropriation of funding for the Luther F. Carson Four Rivers Center in the amount of \$66,685

When the City provides funds to any organization, we prepare a simple Contract For Services agreement that describes the public services the organization will provide as a result of receiving the city funds.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: This expenditure was appropriated in the FY2014 Budget.

Account Name: Investment Fund
Account Number: 004-0401-536-8061 *66*

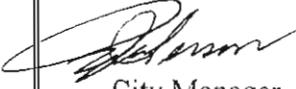


Staff Recommendation:

Authorize the Mayor to enter into a one-time Contract For Services with the Luther F. Carson Four Rivers Center in the amount of \$66,685.

Attachments:

Ordinance
Contract

Department Head	City Clerk	 City Manager
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ORDINANCE NO. 2012-8-_____

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE LUTHER F. CARSON FOUR RIVERS CENTER, INC. FOR SPECIFIC SERVICES

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the Mayor is hereby authorized to execute a contract with the Luther F. Carson Four Rivers Center Inc. in the amount of \$66,685. to be paid in quarterly installments of \$16,671.25 each, to provide an extensive youth performance schedule in continuing with their tradition of the "Class Act" series. This contract shall expire June 30, 2014.

SECTION 2. This expenditure shall be charged to the Investment Fund 004-0401-536-8061.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Mayor

ATTEST:

Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, July 23, 2013
Adopted by the Board of Commissioners, August ____, 2013
Recorded by Tammara S. Sanderson, City Clerk, August ____, 2013
Published by The Paducah Sun, _____
\\ord\contract-Carson Center FY2013-2014

CONTRACT FOR SERVICES

This Contract for Services, effective this _____ day of _____, 2013, by and between the **CITY OF PADUCAH** ("City") and **LUTHER F. CARSON FOUR RIVERS CENTER, INC.**

WITNESSETH:

WHEREAS, Luther F. Carson Four Rivers Center, Inc. will bring quality entertainment and cultural enrichment to Paducah and McCracken County; and

WHEREAS, promoting cultural enrichment quality entertainment and providing community-enhancing activities, in the Paducah area serves a valid public purpose; and

WHEREAS, the City of Paducah desires to contract with Luther F. Carson Four Rivers Center, Inc. for the services to be described herein under the terms and conditions set forth in this Contract for Services.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants as herein set forth, the parties do covenant and agree as follows:

SECTION 1: TERM The term of this contract for services shall be from the effective date of the contract until June 30, 2014.

SECTION 2: TERMINATION Either party may terminate this Contract for Services upon failure of any party to comply with any provision of this agreement provided any such party notifies the other in writing of such failure and the breaching party fails to correct the breach within thirty (30) calendar days of the notice.

SECTION 3: OPERATIONS PAYMENT In consideration of providing a youth performance schedule and to carry out the objectives of Luther F. Carson Four Rivers Center, Inc., upon receipt of quarterly invoices, the City shall pay Luther F. Carson Four Rivers Center, Inc. the sum of Sixty-Six Thousand Six Hundred Eighty-Five Dollars (\$66,685) in quarterly installments of \$16,671.25 each. Quarterly installments shall be paid no later than the last day of each quarter. In the event that this contract for services is terminated, the City shall not be obligated to make any further payments.

SECTION 4: OBJECTIVES AND SERVICES - Luther F. Carson Four Rivers Center, Inc. shall provide an extensive youth performance schedule in continuing with their tradition of the "Class Act" series, which over the past four seasons has brought in approximately 100,000 student visitors.

SECTION 5: ACCOUNTING

- (A) Luther F. Carson Four Rivers Center, Inc. shall conduct all accounting, payroll, and financial management.
- (B) Luther F. Carson Four Rivers Center, Inc. shall supply an annual financial audit to the City within two (2) weeks of receiving same.

SECTION 6: ENTIRE AGREEMENT This contract for services embodies the entire agreement between the parties and all prior negotiations and agreements are merged in this agreement. This agreement shall completely and fully supersede all other prior agreements, both written and oral, between the parties.

SECTION 7: WITHDRAWAL OF FUNDS Notwithstanding any other provision in this Contract for Services, in the event it is determined that any funds provided to Luther F. Carson Four Rivers Center, Inc. are used for some purpose other than in furtherance of the services described herein, the City shall have the right to immediately withdraw any and all further funding and shall immediately have the right to terminate this Contract for Services without advance notice and shall have the right to all remedies provided in the law to seek reimbursement for all monies not properly accounted.

Witness the signature of the parties as of the year and date first written above.

CITY OF PADUCAH

Gayle Kaler, Mayor

LUTHER F. CARSON FOUR RIVERS CENTER, INC.

Name Brian J. Sanko
Title EXECUTIVE DIRECTOR

Agenda Action Form Paducah City Commission

Meeting Date: July 23, 2013

Short Title: Approval of Construction Agreement for TeleTech Building

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Jeff Pederson, City Manager

Presentation By: Jeff Pederson, City Manager

Background Information:

On November 1, 2012, Paducah Economic Development entered into a Memorandum of Understanding to bring TeleTech Services Corporation to Paducah and hire 450 full-time employees. Subsequently, the City Commission on November 13, 2012, agreed to contribute \$1.35 million towards the cost of constructing the building for TeleTech operations. McCracken County also authorized \$1.35 million for project. Paducah Economic Development authorized \$300,000, all of which was further outlined in an Interlocal Agreement between the parties which was approved by the City on April 8, 2013.

A process coordinated by the City Manager was put into place to procure a building to meet the needs of TeleTech. A & K Construction was selected through a competitive process that resulted in a building size and scope that amounts to \$3,296,000. Of that amount \$296,000 will be provided jointly by Paducah Economic Development and TeleTech to supplement the \$3 million that had previously been put in place per the aforementioned agreements. The building will be jointly owned by the City and McCracken County.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name:
Account Number:

Finance

Staff Recommendation: To proceed with contract for construction with A & K.

Attachments:

Department Head	City Clerk	City Manager
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ORDINANCE NO. 2013 - _____

AN ORDINANCE OF THE CITY OF PADUCAH, KENTUCKY, APPROVING THE AIA DESIGN-BUILD CONSTRUCTION AGREEMENT, AS AMENDED AND SUPPLEMENTED AMONG THE CITY OF PADUCAH, KENTUCKY, THE COUNTY OF MCCRACKEN, KENTUCKY, AND A&K CONSTRUCTION, INC., WITH RESPECT TO A PUBLIC PROJECT; AUTHORIZING THE EXECUTION OF THE AIA DESIGN-BUILD CONSTRUCTION AGREEMENT AND OTHER DOCUMENTS RELATED THERETO

WHEREAS, the City of Paducah, Kentucky (the "City") has previously determined, and hereby further determines, that it is a public purpose to reduce unemployment in the City, to increase the City's tax base, to foster economic development within the City and to promote the development of a skilled workforce, all to the benefit of the citizens and residents of the City; and

WHEREAS, by Ordinance No. 2012-11-7986 adopted by the City Commission on November 13, 2012, the City previously declared its support for an economic development project initiated by G.P.E.D.C., Inc., ("GPEDC") with TeleTech Services Corporation ("TeleTech") to develop and locate general and administrative offices for customer care centers that will bring approximately 450 new full time jobs ("Project") in Paducah, Kentucky, within the boundaries of Paducah, McCracken County, Kentucky.

WHEREAS, by Municipal Order No. 1716, adopted by the City Commission on March 26, 2013, and Interlocal Cooperative Agreement dated April 8, 2013 among the City and McCracken County, Kentucky (the "County"), the City and County, with the assistance of G.P.E.D.C. Inc., ("GPEDC") agreed to assumed the obligation of GPEDC under that certain lease agreement with TeleTech dated January 1, 2013 (the "Lease") and related Memorandum of Understanding ("MOU") dated November 1, 2012, also among GPEDC and TeleTech to construct and install a customer care center with a construction allowance of \$3,000,000.00; and

WHEREAS, as a result of the foregoing, the City, the County, and A&K Construction, Inc. ("A&K"), find it necessary and advisable that the City now authorize the AIA Design-Build Construction Agreement, as amended and supplemented, among City, County, and A&K with respect to the Project.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PADUCAH, KENTUCKY, AS FOLLOWS:

Section 1. Recitals and Authorization. The City hereby approves the AIA Design-Build Construction Agreement, as amended and supplemented, among City, County, and A&K (the "Agreement") in substantially the form attached hereto as Exhibit A and made part hereof. It is further determined that it is necessary and desirable and in the best interest of the City to enter into the Agreement for the purposes therein specified, and the execution and delivery of the

Agreement is hereby authorized and approved. The Mayor of the City is hereby authorized to execute the Agreement, together with such other agreements, instruments or certifications which may be necessary to accomplish the transaction contemplated by the Agreement with such changes in the Agreement not inconsistent with this Ordinance and not substantially adverse to the City as may be approved by the official executing the same on behalf of the City. The approval of such changes by said official, and that such are not substantially adverse to the City, shall be conclusively evidenced by the execution of such Agreement by such official.

Section 2. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 3. Compliance With Open Meetings Laws. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 4. Conflicts. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

Section 5. Effective Date. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

MAYOR

ATTEST:

City Clerk

Introduced by the Board of Commissioners, _____, 2013

Adopted by the Board of Commissioners, _____, 2013

Recorded by City Clerk, _____, 2013

Published by *The Paducah Sun*, _____, 2013

EXHIBIT A

THE AIA DESIGN-BUILD CONSTRUCTION AGREEMENT,
AS AMENDED AND SUPPLEMENTED

See attachment.



AIA[®] Document A141[™] – 2004

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)
City of Paducah and County of McCracken County

and the Design-Builder:
(Name, legal status, address and other information)
A&K Construction, Inc.
100 Calloway Court
Paducah, KY 42001

for the following Project:
(Name, location and detailed description)
Teletech Call Center
2301 McCracken Boulevard
Paducah, KY 42001

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

Allowance	Amount (\$0.00)	Included Items
-----------	-----------------	----------------

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE

§ 4.3.1 The Cost of the Work is as defined in Exhibit B.

§ 4.3.2 The Design-Builder's Fee is:

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

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:

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

(\$3,296,000.00) Three million two hundred ninety-six thousand dollars

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

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

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price (\$0.00)
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§ 4.4.3.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount (\$0.00)	Included Items
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§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 5.3.4 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2 of Exhibit A, Terms and Conditions:

(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A, Terms and Conditions, shall apply.)

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:
(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)
(Check one.)

- Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Relationship to Design-Builder	Other Information
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§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information
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§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information
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§ 7.4 The Owner's Designated Representative:

(Insert name, address, and other information.)

Jeff Packer
 City of Paducah
 Project Manager
 P.O. Box 2387
 Paducah, KY 42002

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

Bill Boyd
A&K Construction, Inc.
100 Calloway Court
Paducah, KY 42001

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build 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.)

percent (%)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

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

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:

(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

Title

Date

§ 8.1.4 The Design-Builder's Proposal, dated , consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Number

Date

Pages

§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

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

OWNER (Signature)

DESIGN-BUILDER (Signature)

(Printed name and title)

(Printed name and title)

OWNER (Signature)

(Printed name and title)

**AMENDMENT TO THE
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
AIA A141-2004**

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

1.1 Add the following to document to the list of documents that constitute the Design-Build Documents:
“RFP # 2013-01 CALL CENTER DESIGN BUILD SERVICES”.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 Revise subparagraph to read: “The date of commencement of the Work shall be the date of this Agreement.”

3.2 Add paragraphs 3.2.1 and 3.2.2 as follows:

“3.2.1 Liquidated Damages for Delay in Substantial Completion: Design-Builder shall pay Owner the sum of Two Thousand and 000/100 Dollars (\$2,000.00) per day for each and every calendar day of delay in achieving Substantial Completion beyond 260 days from the date of this Agreement (the “Substantial Completion Date”). Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner. Such liquidated damages shall apply regardless of whether Design-Builder has been terminated by Owner prior to Substantial Completion so long as Design-Builder’s actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design-Builder’s performance hereunder for matters other than delays in Substantial Completion. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design-Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design-Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design-Builder those funds withheld, but no longer applicable as liquidated damages.”

“3.2.2 Liquidated Damages for Delay in Final Completion: If Design-Builder fails to achieve Final Completion on or 276 days from the date of this Agreement (the “Final Completion”), the Design-Builder shall pay Owner Two Thousand and 00/100 Dollars (\$2,000.00) per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date established for Final Completion of the Work. Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner. Such liquidated damages shall apply regardless of whether Design-Builder has been terminated by Owner prior to Substantial Completion so long as Design-Builder’s actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design-Builder’s performance hereunder for matters other than delays in Substantial Completion. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design-Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design-Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design-Builder those funds withheld, but no longer applicable as liquidated damages.”

ARTICLE 4 CONTRACT SUM

4.2 STIPULATED SUM – Delete the entire section.

4.3 COST OF THE WORK PLUS DESIGN-BUILDER’S FEE – Delete the entire section.

4.4.1 Revise the subparagraph to read: “The Cost of the Work is as defined in Exhibit B, which includes the Design-Builder’s Fee and is subject to the Guaranteed Maximum Price as set forth in Section 4.4.3.1.”

ARTICLE 5 PAYMENTS

5.2 PROGRESS PAYMENTS – STIPULATED SUM – Delete entire section.

5.3 PROGRESS PAYMENTS – COST OF THE WORK PLUS A FEE – Delete entire section.

5.4 Add paragraph 5.4.4, as follows: “**5.4.4** Reduction or limitation of retainage shall be as follows: The Owner shall retain ten percent (10%) from each Application for Payment up to fifty percent (50%) completion of Work, then, provided the Work is on schedule and satisfactory, and upon written request of the Design-Builder together with consent of surety, the Owner shall approve a reduction in retainage to five percent (5%) of the current Contract Sum. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work, as defined in the General Conditions of the Contract for Construction. After Substantial Completion, a reduction to a lump sum amount less than five percent (5%) retainage may be approved by the Owner when deemed reasonable. The minimum lump sum retainage shall be twice the estimated cost to correct deficient or incomplete work.”

5.5.1 Add as condition to final payment the following: “the Design-Builder provides the Owner with affidavits that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with Work have been paid or otherwise satisfied, and with Consent of Surety for final payment.”

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.7.2 Delete entire section.

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

8.1.3 Add the following Project Criteria:

“Title

TELETECH BASE TECHNICAL REQUIREMENTS - RFP # 2013-01

8.1.4 Revise the sentence to read: “The Design-Builder’s Proposal, dated March 4, 2013, as revised per Addendum #5 dated March 26, 2013, to RFP # 2013-01 and re-submitted on April 3, 2013, by Design-Builder consists of the following:

Title

Scope of Work

Scope of Work (revised)

Date

March 4, 2013

April 3, 2013

8.1.5 Revise the sentence to read: “Amendments to the Design-Builder’s Proposal, if any, are as follows:

Title	Date
Scope of Work (revised)	June 25, 2013
Value Engineering Items	6-25-13
Schematic Floor Plan – New Facility for Teletech	6-14-13

END OF AMENDMENT



AIA[®] Document A141[™] – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:

(Name and location or address)

Teletech Call Center
2301 McCracken Boulevard
Paducah, KY 42001

THE OWNER:

(Name and location)

City of Paducah & County of McCracken County

THE DESIGN-BUILDER:

(Name and location)

A&K Construction, Inc.
100 Calloway Court
Paducah, KY 42001

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

- A.1 GENERAL PROVISIONS
- A.2 OWNER
- A.3 DESIGN-BUILDER
- A.4 DISPUTE RESOLUTION
- A.5 AWARD OF CONTRACTS
- A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- A.7 CHANGES IN THE WORK
- A.8 TIME
- A.9 PAYMENTS AND COMPLETION
- A.10 PROTECTION OF PERSONS AND PROPERTY
- A.11 INSURANCE AND BONDS
- A.12 UNCOVERING AND CORRECTION OF WORK
- A.13 MISCELLANEOUS PROVISIONS
- A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

§ A.1.1.8 NEUTRAL

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2 shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- .1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- .2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- .3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- .4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- .5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determination described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified in such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for

review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, 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.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build 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 Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-

an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

- .1 additional costs of professional services;
- .2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall 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 Design-Build

shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .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 Design-Builder;
 - .3 failure of the Design-Builder to make payments properly to Contractors or for design services 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 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 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 Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and

waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder 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 or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a 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 Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the 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 exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time

this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Design-Build Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and, by appropriate Change Order, the cost thereof shall be charged to the Owner. If the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above without so notifying the Design-Builder in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order

§ A.11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.11.4.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Design-Builder.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ A.11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power.; The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build 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, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

**AMENDMENT TO THE
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
AIA A141-2004 Exhibit A**

ARTICLE A.2 OWNER

A.2.2.8 – Delete the entire paragraph.

ARTICLE A.7 CHANGES IN WORK

A.7.3.6 Revise the paragraph to read: "...in case of an increase in Contract Sum, an amount for overhead and profit not to exceed fifteen percent (15%) of the net cost of the change. In such case..."

A.7.3.8 Insert "approved and executed" before the term "Change Order" in the first and third sentence.

ARTICLE A.9 PAYMENTS AND COMPLETION

A.9.3 APPLICATIONS FOR PAYMENT

A.9.3.1 Change "retainage if provided for in the Design-Build Documents" to "retainage as stipulated in Subparagraph 9.3.4."

A.9.3.1.1 Delete the entire paragraph.

A.9.3.4 Add Subparagraph 9.3.4 as follows: "The Owner shall retain ten percent (10%) from each Application for Payment up to fifty percent (50%) completion of the Work, then, provided the Work is on schedule and satisfactory, and upon written request of the Design-Builder, the Owner shall approve reduction in retainage to five percent (5%) of the Contract Sum. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work, as defined in Section 9.8. After Substantial Completion, if reasons for reduction of the retainage are approved by the Owner, a reduction to a lump sum amount less than the five percent (5%) retainage may be approved by the Owner when deemed reasonable. The minimum lump sum amount shall be twice the estimated cost to correct deficient or incomplete work."

A.9.6 PROGRESS PAYMENTS

A.9.6.1 Revise the paragraph to read: "...within the time provided in the Design-Build Documents or as required by state law, whichever is more restrictive."

ARTICLE A.11 INSURANCE AND BONDS

A.11.1 Add the following: "Such insurance shall be no less than the following amounts:

<u>Type of Insurance</u>	<u>Limits</u>
Worker's Compensation	Statutory
Commercial General Liability	\$3,000,000/\$3,000,000 CSL
Commercial Automobile Liability	\$1,000,000
Builders Risk (incl. earthquake and flood coverage)	Full value of the contract"

A.11.2 Add Paragraph 11.2 as follows: "On all general and automobile liability policies of insurance Design-Builder shall have the Owner named as an additional insured and shall further require that their liability carrier(s) notify the Owner at least thirty (30) days prior to the effective date of any change(s) in

or cancellations of said insurance policies. A current copy of the proposer's insurance certificate providing proof of insurance as stated above must be on file with the Owner."

A.11.5 Delete "have the right to" from the first sentence.

A.13.1 GOVERNING LAW

A.13.1.1 Add Paragraph 13.1.1 as follows: "None of the Design-Build Documents for this project shall be construed against the party preparing documents on the grounds that the party prepared or drafted the document, or any portion thereof."

END OF AMENDMENT

EXHIBIT B

RFP # 2013-01
DEADLINE: 2:00 p.m. Prevailing Local Time
Monday, March 4, 2013

CALL CENTER DESIGN BUILD SERVICES

IX EXHIBITS

EXHIBIT A
TELETECH BASE TECHNICAL REQUIREMENTS

Scope of the Project

- A. The new building will be 30,000 net rentable square feet (NRSF), and will be a single story Teletch (TTEC) customer contact center. The program for these spaces will be as mutually agreed after the selection of the successful candidate.
- B. The Onsite Development shall assume and include, without limitation all earthwork, wet and dry utilities, vehicular paving, pedestrian paving, landscaping, site furnishings and other improvements necessary to comply with the Master Site Developer's requirement for the property; as well as meet local, state and Federal regulations, and generally comply with the standards of the industry for buildings of this type.

Specifically, the Onsite Development shall include, at a minimum:

- 1. A 2" domestic water line;
- 2. A 6" sanitary sewer line;
- 3. All fire lines and hydrants per local jurisdictional requirements;
- 4. Natural gas line to and meter at the building per local authority requirements;
- 5. Concrete curbs and gutters;
- 6. Storm lines and on site detention as required by local jurisdictions.
- 7. Asphalt paving per the geotechnical engineer's requirements.
- 8. All storm water and sewer taps, tap fees, meters and tanks necessary for system operation and on-site distribution.

RFP # 2013-01
DEADLINE: 2:00 p.m. Prevailing Local Time
Monday, March 4, 2013

CALL CENTER DESIGN BUILD SERVICES

- 9 Site lighting per IES requirements, using light poles that meet local jurisdictional requirements;
 10. Electrical distribution and primary feeds to the building; Dual entry power,
 11. Fiber optic connection to the building ("lit"); self healing, dually redundant fiber feeds
 12. Landscaping & site furnishings per local jurisdictional requirements.
- C. The Building Core and Shell shall provide, without limitation, the substructure, superstructure, exterior closure, roof, mechanical, and electrical systems necessary to have a code compliant, heated and cooled weather tight building per standards of the industry for core and shell, ready for the tenant to begin installation of interiors.
- More specifically, the Building Core and Shell shall include, at a minimum, the following components:
1. Foundations assuming the same conditions as described in the geotechnical reports from adjacent buildings;
 - 2 Tilt-up +/- 7-1/4" panel structure with steel columns, bar joists and metal deck infill, 24'-0" clear;
 - 3 6" cast in place concrete slab floor;
 - 4 Exterior finishes and architecture similar to the buildings in the commerce park,
 - 5 Double aluminum storefront entrances with sidelights
 - 6 Code required minimums for egress doors;

RFP # 2013-01
DEADLINE: 2:00 p.m. Prevailing Local Time
Monday, March 4, 2013

CALL CENTER DESIGN BUILD SERVICES

7. TPO roof with a 20 year warranty; or regionally acceptable roofing system;
 8. Two (2) 6" under-slab, longitudinal sanitary lines for use by tenant;
 9. Two (2) 1" under-slab, longitudinal domestic water lines for use by tenant;
 10. HVAC system with 300 SF/ton of cooling, DDC control compatible and capable of handling not less than 75 zones (one point of control);
 11. Fire sprinkler system per code minimums, with heads turned up plus fire pump;
 12. Electrical system to include an 800 amp service 480v/3phase and main distribution center is included (sub-panels and breakers for tenant loads by tenant);
 13. Two (2) 4" empty under-slab data cabling conduit mains w/pull tapes mains run longitudinally down the building center;
 14. Fire alarm panel and core and shell fire alarm system per code minimums; and
 15. The building shall achieve an Energy Star Rating per current Federal standards
- D) The Offsite Improvements shall include the improvements necessary to comply with the Master Site Developer's requirements for the property, and those required provide connection to the Onsite Development systems above to make them fully operational

The Tenant Improvements shall be included and completed in accordance with TTEC GREO Design Standards and the delivery center will seat an estimated 400 production seats. This includes all design, engineering, interior construction, tele/data cabling, and other tenant costs not included with the Building Core and Shell costs above.

RFP # 2013-01
DEADLINE: 2:00 p.m. Prevailing Local Time
Monday, March 4, 2013

CALL CENTER DESIGN BUILD SERVICES

- F. All preconstruction and construction services typically provided by a development team for a core and shell building, including but not limited to the coordination with the tenant's design and construction team, should be included in the scope of this proposal.
- G. All submittals for entitlements by local authorities having jurisdiction, and the services required to obtain those entitlements for a core and shell building shall be included in the scope of this proposal.
- H. Providing the building ready for occupancy on the date scheduled will be conditions of the agreement, and both will be subject to liquidated damages for failure to perform.

Scope of Work

Dated: March 4, 2013

Division 1 – General Conditions

- Project Management
- On Site Supervision
- Architectural and Engineering Fees
- Soils Report
- Daily Clean Up
- Final Cleaning
- Layout
- Tools and Equipment
- Temporary Facilities
- Builder's Risk Insurance
- Building Permit

Division 2 – Site Work

- Earthwork
- Storm Sewer
- Asphalt Paving
- Concrete Curbs
- Concrete Sidewalks
- Concrete Entrance
- Concrete Dumpster Pad
- Concrete Patio

Division 3 – Concrete

- Concrete Foundations
- 4" Concrete Floor Slab

Division 4 – Masonry

- Masonry Veneer

Division 5 – Structural Steel

- Pre-engineered Metal Building Structure
- Steel Deck

Division 6 – Wood and Plastics

- Rough Carpentry
- Millwork

Division 7 – Thermal and Moisture Protection

- Building Insulation
- Single Ply Membrane Roofing



- Sheet Metal and Flashing
- Joint Sealants

Division 8 – Doors and Windows

- Hollow Metal Doors and Frames
- Solid Core Wood Doors
- Aluminum Entrances and Storefronts
- Aluminum Windows
- Finish Hardware
- Glass and Glazing

Division 9 – Finishes

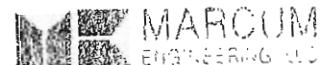
- Metal Stud Framing
- Drywall
- Acoustical Ceiling Tiles
- Ceramic Tile in Restrooms
- Resilient Floor Tile
- Carpeting
- Painting

Division 10 – Specialties

- Toilet Partitions
- Interior Signage
- Fire Extinguishers and Cabinets
- Toilet Accessories

Division 15 – Mechanical

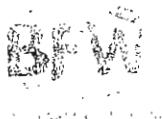
- Plumbing Fixtures
- Domestic Water Piping
- PVC Sanitary Sewer and Vent Piping
- 2-1/2" PVC Domestic Water Service Piping Including 2" Meter
- 4" Exterior PVC Sanitary Sewer Piping Including Tap Fee
- Gas Piping
- (10) Rooftop Package HVAC Units
- (6) Ductless Split Heat Pumps
- (1) Computer Room Air Conditioner
- (9) Exhaust Fans
- Supply, Return and Exhaust Ductwork System
- Refrigerant Piping
- Seismic Material and Calculations on All Duct, Pipe and Equipment
- Mechanical Insulation
- DDC Controls
- Certified Air Balance
- Wet Automatic Fire Sprinkler System



- 6" Ductile Iron Pipe Underground Fire Main Service
- 4" PVC C-900 Pipe for the Remote Fire Department Connection

Division 16 – Electrical

- Switchgear Package
- Lighting Package
- Site Lighting
- Power Company Feed
- Transformer Pad
- Aluminum Wire and MC Cable per Code
- Cable Tray
- Fire Alarm System
- Temporary Lighting
- Temporary Power



Scope of Work
April 3, 2013

Design Services

- Architectural Design
- Civil Engineering Design
- Structural Engineering Design
- Mechanical Engineering Design
- Working Drawings
- Soils Investigation and Report
- Construction Administration/Inspections

Division 1 – General Conditions

- Project Management
- On Site Supervision
- Daily Clean Up
- Final Cleaning
- Layout
- Tools and Equipment
- Temporary Facilities
- Builder's Risk Insurance
- Payment and Performance Bond
- Building Permit

Division 2 – Site Work

- Earthwork – Cut and Fill as Necessary to Balance the Site
- Storm Sewer
- Asphalt Paving – 8" Compacted DGA and 3" Asphalt
- Post Formed Concrete Curbs
- 4" Concrete Sidewalks Utilizing 4,000 psi Concrete
- 6" Concrete Entrance Utilizing 4,000 psi Concrete
- 6" Concrete Dumpster Pad Utilizing 4,000 psi Concrete
- Topsoil Replacement
- Seeding
- Landscaping Allowance of \$25,000.00

Division 3 – Concrete

- Concrete Foundations as Shown Utilizing 4,000 psi Concrete
- 4" Concrete Floor Slab Utilizing 4,000 psi Concrete

Division 4 – Masonry

- Brick Veneer on Exterior Walls Including \$350.00/1,000 Brick Allowance

Division 5 – Structural Steel

- Pre-engineered Structural Steel Framing



- 22 ga. Steel Deck

Division 6 – Wood and Plastics

- Rough Carpentry Including Roof Blocking and Miscellaneous Blocking
- Reception Desk – Custom Designed and Built
- Plastic Laminate Break Room Counter as Shown
- Plastic Laminate Restroom Vanities

Division 7 – Thermal and Moisture Protection

- R-38 Simple Saver Insulation System in the Roof
- R-19 Batt Insulation in the Walls
- 2" Exterior Insulation and Finish System
- 60-mil. TPO Membrane Roofing with 20 year Warranty
- Sheet Metal and Flashing
- Joint Sealants

Division 8 – Doors and Windows

- Exterior Doors to be Hollow Metal Doors and Frames
- Interior Doors to be Solid Core Wood Doors and Hollow Metal Frames
- Aluminum Entrances and Storefronts
- Aluminum Windows
- Finish Hardware
- Glass and Glazing
- Restroom Mirrors

Division 9 – Finishes

- Exterior Walls to be 12 ga. Metal Studs, 6" Batt Insulation, DensGlass Sheathing, 5/8" Drywall
- Non-Load Bearing Interior Walls to be 25 ga. Metal Studs, Sound Batt Insulation, 5/8" Drywall both Sides
- 2' x 2' Revealed Edge Acoustical Ceilings with 15/16" Grid at All Public Areas, Offices, Training Areas, and Conference Rooms
- 2' x 2' Square Edge Acoustical Ceilings with 15/16" Grid at All Other Areas
- Ceramic Tile in Restrooms and Vestibule, \$8.00/sf Installed
- Resilient Floor Tile in Break Room, Comm./Elec. and Storage Closets
- Carpeting in Waiting, Reception, Offices, Conference Rooms, Training, TA Staff, TA Testing, and Production Area, \$27.00/sy Installed
- Painting as Necessary

Division 10 – Specialties

- Toilet Partitions as Shown
- Interior Signage as Required
- Fire Extinguishers and Cabinets per Code
- Toilet Accessories as Required



Division 15 – Utilities

- 2-1/2" PVC Domestic Water Service Piping Including 2" Meter
- 6" Ductile Iron Pipe Underground Fire Main Service Including Tap and Bore Under McCracken Boulevard
- 4" PVC C-900 Pipe for the Remote Fire Department Connection
- 4" Exterior PVC Sanitary Sewer Piping Including Tap Fee
- Natural Gas Piping

Division 15 – Mechanical

- Plumbing Fixtures – Flush Valve Type Toilets and Urinals
- Copper Domestic Water Piping
- PVC Sanitary Sewer and Vent Piping
- Natural Gas Piping
- (10) Rooftop Package HVAC Units
- (6) Ductless Split Heat Pumps
- (1) Computer Room Air Conditioner
- (9) Exhaust Fans
- Supply, Return and Exhaust Ductwork System – Including Duct Sock in Production Area
- Refrigerant Piping
- Seismic Material and Calculations on All Duct, Pipe and Equipment
- Mechanical Insulation
- DDC Controls
- Certified Air Balance
- Wet Automatic Fire Sprinkler System

Division 16 – Electrical

- Switchgear Package
- Lighting Fixtures
- Site Lighting
- 800A Power Company Feed
- Transformer Pad
- Aluminum Wire and MC Cable per Code
- Cable Tray for Data Wiring
- Fire Alarm System
- Temporary Lighting
- Temporary Power

Exceptions to the Specifications

- Water heaters will be electric. Natural gas is only utilized for rooftop HVAC units.
- Sub-panels and breakers shall be provided by the Contractor in lieu of the Tenant as referenced.



TeleTech Call Center Design Build Services

- Fire Alarm shall be provided complete by the Contractor in lieu of the core and shell as referenced.
- Height of the building is approximately 20'-0" to the roof line in lieu of 24'-0" clear height as referenced.
- A 4" thick concrete slab will be provided in lieu of the referenced 6" thick concrete slab.
- A 2-1/2" water line is required for the facility in lieu of the referenced 2" water line.
- A 4" sanitary sewer will serve the facility in lieu of the referenced 6" sanitary sewer line.
- Two (2) 6" under-slab, longitudinal sanitary lines are excluded.
- Two (2) 1" under-slab, longitudinal domestic water lines are excluded.
- Fire pump is excluded as that it is not required for standard 100% coverage.
- Provisions for TTEC GREO Design Standards are excluded as that none were received.
- Communication systems (jacks, cabling, racks, patch panels, switches, routers, phones, etc.) are excluded.
- Emergency generator is excluded.



Scope of Work

June 25, 2013

Design Services

- Architectural Design
- Civil Engineering Design
- Structural Engineering Design
- Mechanical Engineering Design
- Working Drawings
- Soils Investigation and Report
- Construction Administration/Inspections

Division 1 – General Conditions

- Project Management
- On Site Supervision
- Daily Clean Up
- Final Cleaning
- Layout
- Tools and Equipment
- Temporary Facilities
- Builder's Risk Insurance
- Payment and Performance Bond
- Building Permit

Division 2 – Site Work

- Earthwork – Cut and Fill as Necessary to Balance the Site
- Storm Sewer
- Asphalt Paving – 8" Compacted DGA and 3" Asphalt
- Post Formed Concrete Curbs
- 4" Concrete Sidewalks Utilizing 4,000 psi Concrete
- 6" Concrete Entrance Utilizing 4,000 psi Concrete
- 6" Concrete Dumpster Pad Utilizing 4,000 psi Concrete
- Topsoil Replacement
- Seeding
- Landscaping Allowance of \$10,000.00

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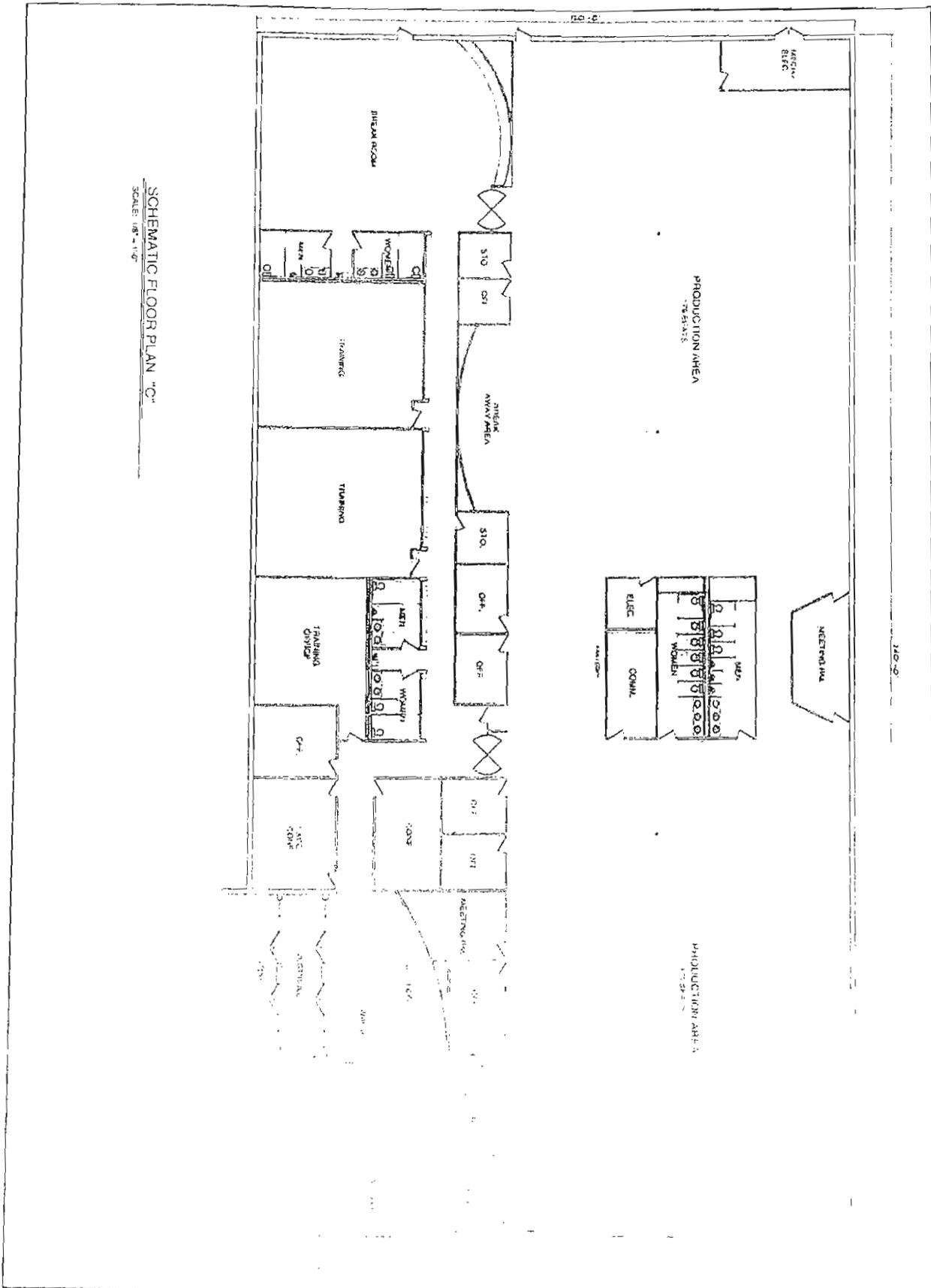
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SCHEMATIC FLOOR PLAN "C"
SCALE: 1/8" = 1'-0"

SHEET
A-1

DATE	DESCRIPTION

SCHEMATIC FLOOR PLAN
NEW FACILITY FOR
TELETECH



A & K Construction, Inc.
10000 W. 10th Ave., Suite 100
Denver, CO 80202
Tel: 303.751.1000
Fax: 303.751.1001

