

CITY COUNCIL AGENDA

City of Big Spring
Tuesday, October 9, 2012

Notice is hereby given that the City Council of the City of Big Spring, Texas will meet in Regular Session on Tuesday, October 9, 2012, at 5:30 p.m. in the City Council Chambers located at 307 East 4th Street, Big Spring, Texas.

The City Council may discuss and/or take action on each of the following items before it and may go into Executive Session on any item listed on the agenda in accordance with Chapter 551 of the Texas Government Code.

Presentations & Public Hearings

1. Invocation & Pledge of Allegiance to the United States Flag and to the Texas State Flag Duncan

Disposition of Minutes

2. Minutes of the Regular Meeting of September 25, 2012 4-9 Davis

Consent Items

3. Acceptance of Convention and Visitors Bureau Committee Minutes for Meeting of August 1, 2012 10-12 Walker
4. Acceptance of McMahon-Wrinkle Airpark Development Board Minutes for Meeting of August 16, 2012 13-14 Walker

Routine Business

5. Vouchers for 09/27/12 \$ 551,311.59 Boyd
Vouchers for 10/04/12 \$ 944,564.87

New Business

6. First Reading of a Resolution Amending the Authorized Representatives Empowered to Transmit and Withdraw Funds from TexPool; and Declaring an Effective Date 15-17 Walker
7. First Reading of a Resolution Amending the Authorized Representative Empowered to Transmit and Withdraw Funds from TexSTAR; and Declaring an Effective Date 18-20 Walker

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| 8. | Emergency Reading of a Resolution Adopting Citizen Complaint Procedures and a Citizen Participation Plan as Part of the Texas Community Development Block Grant Program Application to the Texas Department of Agriculture for the Community Development Fund | 21-26 | Darden |
| 9. | Award Contract for Engineering Services as Part of the Texas Department of Agriculture Grant Application for Water System Improvements | 27 | Darden |
| 10. | <u>First Reading of an Ordinance Granting to ATMOS Energy Corporation Certain Franchise Rights</u> | 28-35 | Walker |
| | First Reading of an Ordinance Granting to ATMOS Energy Corporation the Franchise and Rights to Conduct in Such City the Business of Acquiring, Maintaining, Constructing, Laying, Repairing, Removing, Replacing, Installing, Operating, and Disposing of a Gas System for the Sale, Transportation, and Distribution of Natural Gas within the Municipal Boundaries of the City and to the Residents and Businesses Located Therein for Light, Heat, Power, and any Other Purposes and the Right to use the Present and Future Streets, Roads, Highways, Alleys, Public Ways, and Real Property in Such City and Owned or Controlled by Such City for Such Purposes; Prescribing the Terms and Conditions to which such Franchise and Rights are Subject; and Prescribing the Term of Such Franchise and Rights | | |
| 11. | Approval of an Agreement between the City of Big Spring and Parkhill, Smith and Copper, Inc. for Professional Services for the 2013 Water Distribution System Improvements Project and Authorizing the Mayor or His Designee to Execute Any Necessary Documents | 36-69 | Darden |
| 12. | Approval of a Interlocal Agreement between the City of Big Spring and Region VIII Education Service Center for Purchasing Cooperative and Authorizing the City Manager or His Designee to Execute Any Necessary Documents | 70-73 | Medina |
| 13. | Update on Settlement Agreement between ATMOS Energy Corp., West Texas Division and the Steering Committee of Cities served by ATMOS West Texas | | Walker |

City Manager's Report

- | | | | |
|-----|--|--|-------|
| 14. | | | Fuqua |
|-----|--|--|-------|

Council Input

15. Input

Duncan

Executive Session

16. Adjourn into an Executive Session under Section 551.071(2) of the Texas Government Code to Consult with the City Attorney regarding Attorney-Client Privileged Legal Matters related to Railroad Spur Operation and Track Agreements.

Sjogren

17. Reconvene into Regular Session and Take any Necessary Action.

18. Adjourn

I hereby certify that this agenda was posted on the official bulletin boards at the Big Spring City Hall Building, 310 Nolan Street, Big Spring, Texas on Friday, October 5, 2012 at 5:00 p.m. In addition this agenda and supporting documents are posted on the City of Big Spring's website, www.mybigspring.com in accordance with legal requirements.


Tami L. Davis, Assistant City Secretary

THE MEETING FACILITY IS ACCESSIBLE TO DISABLED PERSONS. ANY DISABLED PERSON NEEDING SPECIAL ACCOMMODATIONS OR HEARING-IMPAIRED PERSONS WISHING TO HAVE AN INTERPRETER SHOULD CONTACT LESA GAMBLE AT 264-2401. REQUESTS FOR AN INTERPRETER SHOULD BE MADE AT LEAST 48 HOURS IN ADVANCE OF THE MEETING TIME.

Agenda Removal Notice - This public notice was removed from the official posting board at the Big Spring City Hall Building, 310 Nolan Street, Big Spring, Texas on

October _____, 2012 at _____ a.m./p.m.

By: _____
City Secretary's Office

STATE OF TEXAS :
COUNTY OF HOWARD :
CITY OF BIG SPRING :

The City Council of the City of Big Spring, Texas, met in a regular meeting in the City Council Chambers located at 307 E. 4th, Big Spring, Texas, at 5:30 p.m., September 25, 2012, with the following members present:

TOMMY DUNCAN	Mayor
CRAIG OLSON	Mayor Pro Tem
MARCUS FERNANDEZ	Councilmember
CARMEN HARBOUR	Councilmember
GLEN CARRIGAN	Councilmember
BOBBY MCDONALD	Councilmember
MARVIN BOYD	Councilmember

Same and constituting a quorum; and

GARY FUQUA	City Manager
TODD DARDEN	Assistant City Manager
LINDA SJOGREN	City Attorney
PEGGY WALKER	Finance Director/City Secretary
JOHN MEDINA	Human Resources Director
LONNIE SMITH	Police Chief
CRAIG FERGUSON	Fire Chief
JIM LITTLE	Airpark Director
TIM GREEN	Municipal Court Judge

PRESENTATIONS & PUBLIC HEARINGS

INVOCATION & PLEDGE OF ALLEGIANCE

Burt Guzman, Family Faith Church, gave the invocation and Mayor Duncan led the Pledge of Allegiance to the American and State Flags.

PRESENTATION OF “STAR EMPLOYEE” AWARD

Mayor Duncan and Gary Fuqua, City Manager, presented “Star Employee” award for September to Angela Brown with the Sanitation Department.

PUBLIC HEARING – TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM – COMMUNITY DEVELOPMENT FUND

Motion was made by Councilmember Carrigan, seconded by Councilmember Boyd, with all members of the Council voting “aye” to open the public hearing on a Texas Community Development Block Grant Program.

Todd Darden, Assistant City Manager, and Kelly Davila, South Plains Association of Governments, explained the requirements of the Texas Department of Agriculture to receive the Texas Community Development Block Grant and feels that the City of Big Spring has a good chance to receive this grant.

Motion was made by Councilmember Fernandez, seconded by Councilmember Boyd, with all members of the Council voting "aye" to close the public hearing.

DISPOSITION OF MINUTES

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 11, 2012

Motion was made by Councilmember Harbour, seconded by Councilmember Boyd, with all members of the Council voting "aye" approving minutes of the regular meeting of September 11, 2012.

CONSENT ITEMS

FINAL READING OF AN ORDINANCE APPROVING AND ADOPTING THE CITY OF BIG SPRING'S ANNUAL BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2012 AND ENDING SEPTEMBER 30, 2013

FINAL READING OF AN ORDINANCE ESTABLISHING THE PAY SCHEDULE FOR CLASSIFIED POSITIONS WITHIN THE POLICE DEPARTMENT FOR THE FISCAL YEAR 2012-13; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

FINAL READING OF AN ORDINANCE ESTABLISHING THE FIRE DEPARTMENT PAY SCALE FOR FISCAL YEAR 2012-13; PROVIDING FOR CERTIFICATE, EDUCATION AND ASSIGNMENT PAY IN ACCORDANCE WITH CHAPTER 143 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE

ACCEPTANCE OF HOWARD COUNTY APPRAISAL DISTRICT BOARD OF DIRECTORS MINUTES OF AUGUST 8, 2012

Motion was made by Councilmember Fernandez, seconded by Councilmember Carrigan, with all members of the Council voting "aye" approving second and final reading of the above listed ordinances and minutes.

OTHER CONSENT ITEMS

FINAL READING OF AN ORDINANCE FIXING AND LEVYING MUNICIPAL AD VALOREM TAXES FOR THE YEAR 2012 AND DIRECTING THE ASSESSMENT AND COLLECTION THEREOF

Motion was made by Councilmember Fernandez, seconded by Councilmember Carrigan, with Councilmembers Fernandez, Harbour, Carrigan, Duncan, Olson and Boyd voting "aye" approving second and final reading of an ordinance fixing and levying municipal ad valorem taxes for the year 2012 and directing the assessment and collection thereof. Councilmember McDonald, being opposed, voting "nay" for passage of same. Motion passes six to one.

ROUTINE BUSINESS

Mayor Pro Tem Olson reviewed the vouchers. Motion was made by Mayor Pro Tem Olson, seconded by Councilmember Boyd, with all members of the Council voting "aye" approving vouchers in the amount of \$663,556.37 (9/13/12) and \$659,321.18 (9/20/12).

BIDS

AWARD ANNUAL BIDS AS FOLLOWS AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Councilmember McDonald, seconded by Councilmember Fernandez, with all members of the Council voting "aye" awarding annual bids and authorizing the City Manager or his designee to execute any necessary documents as follows:

Awarding Aluminum Sulfate (Alum) to Chameleon Industries in the amount of \$119,225.00.

Awarding Anhydrous Ammonia to Airgas in the amount of \$40,000.00.

Awarding Liquid Chlorine to DPC Industries, Inc. in the amount of \$97,225.00.

Awarding Polymer to Ashland Water Technologies in the amount of \$36,450.00.

Awarding Sulfur Dioxide to DPC Industries, Inc. in the amount of \$26,250.00.

Awarding Sodium Hydroxide to Hydro-Plus, Inc. in the amount of \$185,000.00.

Awarding Fleet Fuel Services to Parks Fuels Inc. in the amount of \$.08 over rack for unleaded and \$.08 over rack for diesel.

Awarding Dora Roberts Community Center Janitorial Services to Diaz Janitorial Service in the amount of \$5,400.00.

Awarding Uniforms to Ameripride Corp. in the amount of \$12,542.35.

No bids were received for the Radio Tower Maintenance.

NEW BUSINESS

EMERGENCY READING OF A RESOLUTION AUTHORIZING THE SUBMISSION OF A TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM APPLICATION TO THE TEXAS DEPARTMENT OF AGRICULTURE FOR THE COMMUNITY DEVELOPMENT FUND; AND AUTHORIZING THE MAYOR TO ACT AS THE CITY'S EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Motion was made by Councilmember Carrigan, seconded by Councilmember Boyd, with all members of the Council voting "aye" approving an emergency reading of a resolution authorizing the submission of a Texas Community Development Block Grant Program application to the Texas Department of Agriculture for the Community Development Fund; and authorizing the Mayor to act as the City's executive officer and authorized representative in all matters pertaining to the City's participation in the Community Development Block Grant Program.

APPROVAL OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF BIG SPRING AND HOWARD COUNTY TO PROVIDE FINANCIAL SUPPORT OF THE SENIOR CITIZENS CENTER AND AUTHORIZING THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTS

Motion was made by Councilmember Fernandez, seconded by Councilmember Boyd, with all members of the Council voting "aye" approving an interlocal agreement between the City of Big Spring and Howard County to provide financial support of the Senior Citizens Center and authorizing the Mayor to execute any necessary documents.

APPROVAL OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF BIG SPRING AND HOWARD COUNTY TO PROVIDE EMERGENCY AMBULANCE SERVICE AND AUTHORIZING THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTS

After a brief discussion, motion was made by Councilmember Fernandez, seconded by Councilmember Harbour, with all members of the Council voting "aye" approving a two month extension for the City to provide emergency ambulance service to Howard County residents, prorating the monthly cost based on last year's contract until the City of Big Spring and Howard County can work out a new agreement.

ACCEPTANCE OF BIG SPRING ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS MINUTES FOR REGULAR MEETING OF AUGUST 21, 2012 AND SPECIAL MEETING OF SEPTEMBER 5, 2012

Motion was made by Mayor Pro Tem Olson, seconded by Councilmember Carrigan, with all members of the Council voting “aye” approving Big Spring Economic Development Corporation Board of Directors minutes for regular meeting of August 21, 2012 and special meeting of September 5, 2012.

APPOINTMENTS TO BOARDS AND COMMITTEES THAT HAVE TERMS EXPIRING OR VACANCIES

APPOINTMENT TO MCMAHON/WRINKLE AIRPARK DEVELOPMENT BOARD

Jim Deville was appointed to re-serve on the McMahon/Wrinkle Airpark Development Board by paper ballot votes from the City Council.

APPOINTMENTS TO BOARD OF ADJUSTMENTS & APPEALS

Motion was made by Councilmember Boyd, seconded by Mayor Pro Tem Olson, with all members of the Council voting “aye” appointing Edward Roach and Ron Howell to re-serve on the Board of Adjustments & Appeals.

APPOINTMENT TO PLANNING & ZONING COMMISSION

Motion was made by Councilmember Carrigan, seconded by Councilmember Boyd, with all members of the Council voting “aye” appointing Lupe Dominguez to re-serve on the Planning & Zoning Commission.

APPOINTMENTS TO ZONING BOARD OF ADJUSTMENTS

Motion was made by Councilmember Boyd, seconded by Councilmember McDonald, with all members of the Council voting “aye” appointing Steve Herren and Ken Johnson to re-serve on the Zoning Board of Adjustments.

APPOINTMENT TO BIG SPRING ECONOMIC DEVELOPMENT CORPORATION BOARD

Frances Hobbs was appointed to serve on the Big Spring Economic Development Corporation Board by paper ballot votes from the City Council.

APPOINTMENTS TO TEEN COURT BOARD

Motion was made by Councilmember Harbour, seconded by Councilmember Carrigan, with all members of Council voting “aye” appointing Jamey Stegall and Lora Wofford to serve on the Teen Court Board.

CITY MANAGER’S REPORT

Gary Fuqua, City Manager, complemented City employees for working very hard to cover so many vacant positions within the City.

COUNCIL INPUT

Mayor Duncan announced that at a previous Council meeting he had recognized Mike Tarley for receiving "Patriot of the Year" in the state of Texas. In addition, Mike Tarpley has also received "Patriot of the Year" for Region V by the Military Order of Purple Hearts which includes New Mexico, Texas, Oklahoma, Kansas, Louisiana, Arkansas & Colorado.

EXECUTIVE SESSION

ADJOURN INTO EXECUTIVE SESSION AT 6:40 P.M.

EXECUTIVE SESSION UNDER THE PROVISIONS OF TITLE 5, TEXAS GOVERNMENT CODE, SECTION 551.074 TO EVALUATE THE CITY MANAGER, CITY ATTORNEY AND MUNICIPAL JUDGE

RECONVENE IN OPEN SESSION AND TAKE ANY NECESSARY ACTION AT 7:45 P.M.

Motion was made by Councilmember Fernandez, seconded by Councilmember Carrigan, with all members of the Council voting "aye" authorizing the Mayor to negotiate and execute employment contracts with the City Manager and City Attorney and continues employment of the Municipal Judge.

ADJOURN

Motion was made by Councilmember Fernandez, seconded by Councilmember Carrigan, with all members of the Council voting "aye" to adjourn at 7:47 p.m.

CITY OF BIG SPRING, TEXAS

Tommy Duncan, Mayor

ATTEST:

Tami L. Davis, Assistant City Secretary

**Convention and Visitors Bureau Committee
Minutes from Wednesday, August 1, 2012
City Council Chambers**

Present: Troy Tompkins, Jim Clements, Marcus Fernandez, Peggy Walker, Jay Patel

Staff: Debbie Wegman, Devoun Blount,

Absent: Gary Fuqua

Guests: Sandy Stewart, Executive Director United Way of Big Spring and Howard Co; Skip Burcham, Burcham Signs; Pat Simmons, Comanche Trail Festival of Lights

Marcus Fernandez called the meeting to order at 4:04 p.m.

Approval of minutes

The minutes from the meeting of June 12, 2012 were reviewed. Motion was made by Jim Clements to approve the minutes as written. Motion was seconded by Peggy Walker and passed unanimously.

Election of new Chairman of CVB Committee

Motion was made by Peggy Walker to elect Marcus Fernandez as Chairman of CVB Committee. Motion was seconded by Jim Clements and passed unanimously.

Discussion of Event Funding Requests

- a. United Way 6th Annual Empty Bowls Event. Sandy Stewart presented the request. The United Way is requesting an in kind use of the Dora Roberts Community Center (DRCC) in the amount of \$425 plus linen rental. Motion was made by Peggy Walker to approve the in kind use of DRCC plus use of the linens. Motion was seconded by Jay Patel and passed unanimously. Troy Tompkins abstained from voting since he is a member of the United Way Board.

Discussion of Follow-up Reports

- a. West Texas Disc Golf Champion's Tournament. Chanz Reed was not able to attend. Debbie Wegman, CVB coordinator presented the report. There were questions on the amount of their expenses. The tournament gives out cash prizes from the monies that are left over. There were some issues with hotel rooms. The tournament was a successful event.
- b. Harold Davis West Texas Shootout. Roy Green was not able to attend. Debbie Wegman, CVB coordinator presented the report. Mr. Roy Green's report was very good as usual. The tournament date was changed due to several issues; one of them being the lack of hotel rooms. He also continues to reduce that

amount of CVB funds that is requested. Mr. Green would like to continue to grow the tournament.

Other

- a. West Texas Classic, a softball tournament at Roy Anderson Sports Complex. The tournament was a recruiting tournament for college scouts to come and watch the high school girls play. The tournament director Tim Long provided information of teams participated and where they stayed. This event rented 116 hotel rooms.
- b. Poinsettia at the Water Tower. A written report was provided by Mr. Bobby McDonald. Ms. Pat Simmons was present to answer any question that the committee may have. CVB committee member, Marcus Fernandez stated that he had received several calls on the condition of the sign. CVB Committee, Peggy Walker also stated that the committee had previously discussed to replace the vinyl due to that is was too dark. Ms. Walker suggested that CVB research what is would cost to replace the vinyl. Skip Burcham with Burcham Signs was present to discuss the idea of placing a LED sign in conjunction with the vinyl. Burcham Signs can replace the vinyl sign for \$2.25 per sq. ft. If the committee would like to install a LED signs the total cost would \$400 per sq ft. CVB Committee Member, Jay Patel suggested that a consulting company should be brought in to determine what would be the best option for the sign.

Financials

Monthly financials were provided for review.

CVB Coordinator Report

Debbie Wegman reminded that on August 9-10, 2012 the CVB will be hosting the Texas Plains Trail Round up at the Dora Roberts Community Center. There are going to be many interesting speakers. There is a local speaker, Ricky Hamby providing a historical presentation.

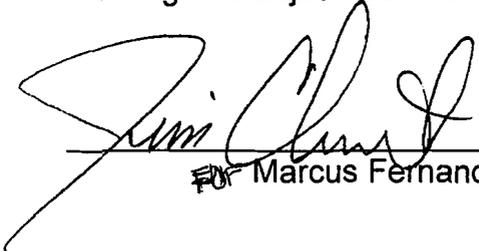
Members Comments

Marcus Fernandez stated that his passion is Moss Creek Lake and wanted to know if CVB funds could be used to improve 4-wheel track, equestrian trail and the ATV paths. There are some people that would also be willing volunteer some of the services. Peggy Walker stated that CVB funds are based on whether or not the project will bring people to stay in Big Spring. Several years ago the city received a grant to do an ATV track. Peggy Walker stated that she would check on that possibility and maybe looking at other funds that may be available to be used. Debbie Wegman stated that they are currently trying to inquire about what amenities are available at the hookups at the Moss Creek Lake to advertise those spaces.

Jim Clement inquired about the Heart of the City Park. There has been a change of Parks supervisor which has caused the project to be overlooked. There is money

budgeted for that projected but the engineer provided a budget that was way over what allotted. So the project will be put off until the next fiscal year.

Next meeting is scheduled for Wednesday, August 22, 2012
Meeting was adjourned at 5:00 p.m.



FOR Marcus Fernandez

8-22-12
Date

City of Big Spring
Big Spring McMahon-Wrinkle Airport and Industrial Park
Development Board Meeting Minutes
August 16, 2012

The Big Spring Airport and Industrial Park Development Board met in Regular Session at 5:30 p.m., Thursday, August 16, 2012 at the Airport Terminal conference room, 3200 Rickabaugh Drive, Big Spring, Texas. Marc Marchesseault called the meeting to order at 5:30 p.m. with the following members in attendance:

Marc Marchesseault	Paschal Odom
Ned Crandall	Jan Hansen
Jim DeVille	Wayne Dawson

Absent: Willie Rangel

Also in attendance: Jim Little, Airport Director Kelly Grant, Director's Assistant
Orville Spradling, Aviator

Item # 1
Call to Order

Marc called the meeting to order at 5:30 pm.

Item # 2
Review and approve minutes from July 19, 2012 meeting

Motion to approve made by Wayne Dawson, seconded by Ned Crandall, with all members voting "aye" for acceptance of the minutes as written.

Item # 3
Big Spring Economic Development Corporation Update

Terry Wegman updated the board on several projects. Boyce Galvanizing has begun purchasing supplies and equipment. They plan to hire approximately 35 employees, with a \$1.5 Million annual payroll and \$5 Million in taxable property. The Settles Hotel is looking to open in early October, and has been almost \$30 Million in current project expenses. They plan to be at capacity for their opening occupancy, and possibly cash flow positive in the second year of opening. Transport Handling Specialists will be getting two locomotives instead of one, with the first to be arriving possibly by this Saturday and the second to be a week or so behind. THS already has several prospective businesses lined up for use of the spur. Fort Worth Pipe is one of the first customers that will be using the spur as well as several others, some of which are well known, publicly traded companies.

Item # 4
THS Update

Jim stated that the THS representatives will be here next week to view some airpark property and will begin training some of their new staff in two weeks, utilizing the Terminal conference room for classes.

Item # 5
Airport Terminal Apron Upgrade Project, Status

Jim stated that the design and engineering are complete and the project should be going out for bids soon.

Item # 6
Airport Fuel Tank Farm Project, Status

Jim stated that the project specs are being worked at this time. There may still be a delay in acquiring tanks due to the increased demand in the oilfield. Self-Serve fueling will be a secondary bid alternative to compare costs. The concrete tank pad construction may possibly be included in the Apron Upgrade project work.

Item # 7
Runway 17/35 Crack Seal Problems

Jim informed the board of the recent meeting with P&D Construction and PSC in Austin. The agenda for 8/16/12 Duinninck Brothers, Inc., that did the crack seal, is no longer in business, and TxDOT has agreed to include the

cost of repairs in their 90-10% Matching Grant for the Ramp Upgrade project. The estimated cost of the joint repairs will be in the neighborhood of \$200,000 with the Sponsor share being approximately \$20,000. The board discussed the matching grant option and a motion was made by Ned Crandall, and seconded by Paschal Odom with all members of the board voting "aye" to 'Support moving forward with the joint repairs as included in the 90-10% Matching Grant project for the Terminal Ramp Upgrade'.

Item #8

Airport Directors Update

Jim informed the board on his personal health progress stating that he is doing well and recovering as expected. He hopes to be back to full speed soon. Jim also mentioned the new XCOR project for the "Lynx" aircraft stating that it is already generating additional business for the airport in Midland. Jim discussed the new 2012-2013 Budget for the Airport, including the \$100,000 approved funds for the demolition of the old barracks and parachute buildings, as well as the funds for construction of new T-Hangars on the west side of the airfield. The Runway 06/24 crack seal project has been delayed temporarily, but there will be no issues with the Grant funding that will be used to pay for the project. The Truck Reliever Route is still in the works, and was commented on by the TxDOT Abilene District representative when in the terminal earlier this week. The July 4th Pop's In The Park flyover ended up costing less than anticipated with a donation of \$1,000 being made to the CAF High Sky Wing in Midland for their participation cost. Jim reminded the board of his upcoming travel for the TML Conference in Grapevine, on November 13-15. The National Hang Gliding Competitions were held the last week in July and were very successful. For Show & Tell, the board viewed a plaque that was made by a gentleman associated with the Hang Gliding competition, signed by all the competitors and coordinators.

Item # 9

Leased Building Issues

Jim updated the board on the JCPS and WC sprinkler system repairs, both of which are being worked currently. JCPS has the risers installed in the warehouse and are preparing to test the water pressure system. They are also having some roof leaks repaired. WC is in the process of relocating some product in their warehouse in order to begin the sprinkler system upgrade.

Item # 10

Airport Safety Committee Report

Wayne Dawson discussed tonight's upcoming program as well as ideas for the November Safety Meeting. He would like to have a "Taxi-In" event in order to showcase our local aircraft being stored on the field and have a tug available to assist in bringing over all of the aircraft in the T-Hangars.

Item # 11

Other Events & Activities

Orville Spradling presented some information regarding the Transient Pilot Log Book that has been a running record of visitors for over the past decade. While the log book is not a complete list of visitors, it does show that we have had people from all but two US states, as well as people from several other countries. Also, Orville made comment on some of the positive stories he has heard about our staff and facility from other airports and aviators.

Item # 12

Board Member Updates

There are no updates at this time.

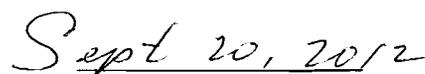
Item # 13

Next Meeting Date

September 20, 2012

Adjournment: 6:35 p.m.


Approved by Marc Marchesseault, Chairman


Date Approved

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING THE AUTHORIZED REPRESENTATIVES EMPOWERED TO TRANSMIT AND WITHDRAW FUNDS FROM TEXPOOL; AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City of Big Spring, Texas, Location Number 77776, (“Participant”) is a local government of the State of Texas and is empowered to delegate to a public funds investment pool the authority to invest funds and to act as custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the Texas Local Government Investment Pool (“TexPool/Texpool *Prime*”), a public funds investment pool, were created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING TEXAS:

- Section I. THAT the individuals, whose signatures appear in this Resolution, are Authorized Representatives of the Participant and are each hereby authorized to transmit funds for investment in TexPool/TexPool *Prime* and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.
- Section II. THAT an Authorized Representative of the Participant may be deleted by a written instrument signed by all remaining Authorized Representatives provided that the deleted Authorized Representative (1) is assigned job duties that no longer require access to the Participant’s TexPool/TexPool *Prime* account or (2) is no longer employed by the Participant; and
- Section III. THAT the Participant may by Amending Resolution signed by the Participant add an Authorized Representative provided the additional Authorized Representative is an officer, employee, or agent of the Participant;

List the Authorized Representatives of the Participant. Any new individuals will be issued personal identification numbers to transact business with TexPool Participant Services.

- | | | |
|----|-----------------------|-----------------------------------|
| 1. | Name: Tommy Duncan | Title: Mayor |
| | Signature: _____ | Phone Number: 432-264-2350 |
| 2. | Name: Peggy S. Walker | Title: Director of Finance |
| | Signature: _____ | Phone Number: 432-264-2514 |
| 3. | Name: Donald Moore | Title: Assistant Finance Director |
| | Signature: _____ | Phone Number: 432-264-2517 |

List the name of the Authorized Representative listed above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

Name: Peggy S. Walker
 Email: pwalker@mybigspring.com Fax Number: 432-264-2387

In addition and at the option of the Participant, one additional Authorized Representative can be designated to perform only inquiry of selected information. This limited representative cannot perform transactions. If the Participant desires to designate a representative with inquiry rights only, complete the following information.

Name: N/A Title: _____

Section IV. THAT this Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until TexPool Participant Services receives a copy of any such amendment or revocation.

Section V. THAT this Resolution shall supersede and replace all prior Authorized Representative designation and shall become effective immediately upon its final passage.

PASSED AND APPROVED on first reading at a regular meeting of the City Council of the City of Big Spring, Texas, on the 9th day of October, 2012 with all members present voting “aye” for passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council of the City of Big Spring, Texas, on the 23rd day of October, 2012 with all members present voting “aye” for passage of same.

Tommy Duncan, Mayor

ATTEST:

Tami L. Davis, Assistant City Secretary

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, AMENDING THE AUTHORIZED REPRESENTATIVES EMPOWERED TO TRANSMIT AND WITHDRAW FUNDS FROM TexSTAR; AND DECLARING AN EFFECTIVE DATE

WHEREAS, the City of Big Spring (the "Government Entity") by authority of the Application for Participation in TexSTAR (the "Application") has entered into an Interlocal Agreement (the "Agreement") and has become a participant in the public funds investment pool created thereunder known as TexSTAR Short Term Asset Reserve Fund "TexSTAR"); and

WHEREAS, the Application designated one or more "Authorized Representatives" within the meaning of the Agreement; and

WHEREAS, the Government Entity now wishes to update and designate the following persons as the "Authorized Representatives" within the meaning of the Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING TEXAS:

- Section I. THAT the following officers, officials or employees of the Government Entity specified in this document are hereby designated as "Authorized Representatives" within the meaning of the Agreement, with full power and authority to open accounts, to deposit and withdraw funds, to designate other authorized representatives, and to take all other action required or permitted by Government Entity under the Agreement created by the application, all in the name and on behalf of the Government Entity.
- Section II. THAT this document supersedes and replaces the Government Entity's previous designation of officers, officials or employees of the Government Entity as Authorized Representatives under the Agreement.
- Section III. THAT this resolution will continue in full force and effect until amended or revoked by Government Entity and written notice of the amendment or revocation is delivered to the TexSTAR Board.
- Section IV. THAT the terms used in this resolution have the meanings given to them by the Application.
- Section V. THAT this resolution shall become effective immediately upon its final passage and shall supersede and replace any prior authorized Representative designation.

Authorized Representatives. Each of the following Participant officials is designated as Participant's Authorized Representative authorized to give notices and instructions to the Board

PASSED AND APPROVED on first reading at a regular meeting of the City Council of the City of Big Spring, Texas, on the 9th day of October, 2012 with all members present voting “aye” for passage of same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council of the City of Big Spring, Texas, on the 23rd day of October, 2012 with all members present voting “aye” for passage of same.

Tommy Duncan, Mayor

ATTEST:

Tami L. Davis, Assistant City Secretary

RESOLUTION NO. _____

AN EMERGENCY READING OF A RESOLUTION OF THE CITY COUNCIL OF BIG SPRING, TEXAS, ADOPTING CITIZEN COMPLAINT PROCEDURES AND A CITIZEN PARTICIPATION PLAN AS PART OF THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM APPLICATION TO THE TEXAS DEPARTMENT OF AGRICULTURE FOR THE COMMUNITY DEVELOPMENT FUND.

WHEREAS, the City Council of Big Spring desires to develop a viable urban community, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-to-moderate income; and

WHEREAS, certain conditions exist which represent a threat to the public health and safety; and

WHEREAS, it is necessary and in the best interests of Big Spring to apply for funding under the Texas Community Development Block Grant Program; and

WHEREAS, as part of the grant program it is necessary to provide citizen complaint procedures as well as a citizen participation plan;

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

SECTION 1: The City of Big Spring hereby adopts the Citizen Complaint Procedures attached as Exhibit A and the Citizen Participation Plan attached as Exhibit B;

SECTION 2: The passage of this resolution constitutes an emergency and an imperative public necessity that the Charter Rule requiring that City resolutions be read at two separate meetings of the City Council be suspended, and said rule is hereby suspended, and this ordinance shall be effective immediately upon its passage on first and final reading.

PASSED AND APPROVED on Emergency reading by the City Council of the City of Big Spring, Texas, on this 9th day of October, 2012 at a regular meeting of the City Council, with all members present voting "aye" for passage of same.

Tommy Duncan, Mayor

Attest:

Tami Davis, Asst. City Secretary

Exhibit A

The City of Big Spring, TEXAS, CITIZEN COMPLAINT PROCEDURES

for the

TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

In order to comply with the TXCDBG Complaint System, 10 T.A.C. Sec.178.1 and 178.2, the following citizen complaint procedures, adopted by Big Spring, Texas, are intended to provide a timely written response to all complaints and grievances made against Big Spring, Texas, Community Development Program efforts:

- 1) A person who has a comment or complaint about the services funded or to be funded by a block grant administered by the City, may submit such comment or complaint in writing to the City Manager who is responsible for administering the block grant program.
- 2) The City Manager shall, within five work days of receiving the comments or complaints, conduct an investigation into same, determine an appropriate response to same and so advise the person who made said comments or complaints, in writing. If, for any reason this cannot be done, the City Manager will, within five working days of receiving the comment or complaint, advise the person making the comment or complaint, in writing, why the response cannot be provided within five working days of receiving the comment or complaint and when a response can be expected.
- 3) The City Manager shall notify the person who made said comments or complaints, in writing, of the final results of any investigation conducted. Unless unusual circumstances interfere, all investigative action and reports documenting the findings of same should be accomplished prior to the 15th working day after the comments or complaints were originally received. Should this final response be delayed, the person making the comments or complaints must be so advised in writing, to include the problems being encountered and a new date for final resolution of the comment or complaint.
- 4) A copy of the above outlined comment and/or complaint procedures can be obtained at the City Hall in Big Spring, Texas, between the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday (except holidays) .

Passed and approved by the City Council of Big Spring, Texas on _____, 2012.

Mayor _____

Exhibit B

Big Spring CITIZEN PARTICIPATION PLAN

Big Spring, Texas, shall comply with the following citizen participation plan requirements:

- (1) Provide for and encourage citizen participation, emphasizing participation by persons of low and moderate income residing in slum and blight areas and in areas in which TXCDBG funds are proposed to be used;
- (2) Provide citizens with reasonable and timely access to local meetings, information and records concerning the proposed and actual use of TXCDBG funds;
- (3) Provide for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing TXCDBG proposals with the level and type of assistance to be determined by the City;
- (4) Provide for public hearing(s) to obtain citizen views and to respond to questions and proposals at all stages of the community development program, including at least the development of needs and a review of program performance. Hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodations for disabled persons;
- (5) Provide for a timely written response to written complaints and grievances, within 15 working days where practicable; and
- (6) Identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

PUBLIC HEARING PROVISIONS

For each public hearing scheduled and conducted by Big Spring, Texas, the following public hearing provisions shall be observed:

- (1) Public notice of all hearings must be published at least three (3) calendar days prior to the scheduled hearing. The public notice must be published in a non-legal section of a local newspaper. Each public notice must include the date, time, location and topics to be considered at the public hearing. A published newspaper article can also be used to meet this requirement so long as it meets all content and timing requirements.
- (2) Each public hearing shall be held at a time (generally after 5:00 PM on weekdays or on Saturdays) and location convenient to potential or actual beneficiaries and will include accommodations for disabled persons.
- (3) When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, an interpreter will be present to accommodate the needs of the non-English speaking residents.

COMPLAINT PROCEDURES

Big Spring, Texas, has in place written citizen complaint procedures that provide a timely written response to complaints and grievances. The complaint procedures comply with the requirements

of the CDBG Complaint System, 10 T.A.C. Sec 178.1 and 178.2. Citizens will be made aware of the location and hours at which times they may obtain a copy of these written procedures.

TECHNICAL ASSISTANCE

When requested, Big Spring, Texas, will provide technical assistance to groups representative of persons of low and moderate income in developing proposals for the use of TXCDBG funds. The level and type of assistance shall be determined by the City based upon the specific needs of the community's residents.

The City will comply with the following citizen participation requirements for the preparation and submission of an application to the Texas Community Development Block Grant Program:

- (1) At a minimum, the City will hold at least one public hearing prior to developing the application. The City will also publish a public notice in a local newspaper prior to actual submission of the application.
- (2) If more than one public hearing is held, the public hearings will be held at least 7 days apart.
- (3) At least one of the public hearings will be held in the proposed project area.
- (4) The City will retain documentation of the hearings notice(s), a listing of persons attending the hearings(s), minutes of the hearing(s), and any other records concerning the proposed use of funds for a period of one year or until the project, if funded, is closed out. Such records will be made available to the public in accordance with Texas Civil Statutes, Article 6252-17a.
- (5) The first public hearing will include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the Texas Community Development Block Grant Program (TXCDBG), and the use of past TXCDBG contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, will be encouraged to submit their views and proposals regarding community development and housing needs. Citizens will be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing.
- (6) The second public notice will include information regarding the TXCDBG fund categories for which the application will be submitted, the amount of TXCDBG funds being requested, a short description of the proposed project activities, the locations of the project activities and the location and hours when the application will be available for public review.
- (7) While more than one application can be discussed at a single public hearing e.g., if the applicant is considering both a Community Development Fund and a Texas Capital Fund application - a hearing held for the previous program year's submittal of the same application (under either fund) is not acceptable for meeting the requirements for any subsequent competition.

The City will comply with the following citizen participation requirements in the event that it receives funding from the Texas Community Development Block Grant Program:

- (1) The City will hold a public hearing concerning any substantial change, as determined by the Department, proposed to be made in the use of TXCDBG funds from one eligible activity to another.
- (2) Upon completion of the community development program activities, the City will hold a public hearing and review its program performance including the actual use of the TXCDBG funds.
- (3) The City will retain documentation of the hearing notice(s), a listing of persons attending the hearing(s), minutes of the hearing(s), and any other records concerning the actual use of funds for a period of three years after the project is closed out. Such records will be made available to the public in accordance with Texas Civil Statutes, Article 6252-17a.

CITIZEN PARTICIPATION PLAN COMPLAINT SYSTEM

1. A citizen who has a comment or complaint about the quality of services provided by any subcontractor for the City related to a Texas Community Development Block Grant Program (TXCDBG) funded project or a comment or complaint related to any aspect of a TXCDBG project may submit such comment or complaint in writing to the City Manager.
2. The City Manager shall advise the complainant that his written comment or complaint will be presented to the City Council at the next regularly scheduled meeting of that body and the complainant shall be invited to attend the meeting to observe the action of the City Council.
3. The City Manager shall present the written comment or complaint to the City Council at its next regularly scheduled meeting and advise the Council that an investigation will be conducted. Further, he shall advise the Council that the findings of that investigation will be brought back to the Council at its next regularly scheduled meeting. The City Manager may, at his discretion, appoint a city staff person, a member of the City Council, or a committee of the Council to investigate the complaint or he may conduct the investigation himself.
4. At the next regularly scheduled meeting of the City Council, the appointed person or committee or the City Manager shall present a report of its (his/hers) findings. The City Manager shall then vote to adopt or reject the report and approve the action to be taken in response to the complaint. The complainant shall be informed of the meeting and be invited to observe the deliberations and decision of the Council.
5. The decision of the City Council shall be carried out and, if necessary, a report shall be given by the City Manager at the next regularly scheduled meeting of the Council confirming that the action required by the Council was completed. If a final report of the resolution of the comment or complaint is to be provided at the next Council meeting, the complainant shall be so informed.
6. The City shall report the comment and complaint received and the action taken in its quarterly report to the Department and close-out documentation for the TXCDBG project.

Passed and approved by the City Council of Big Spring, Texas on _____, 2012.

Mayor _____



CITY OF
Big Spring
PUBLIC WORKS
MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
MR. GARY FUQUA, CITY MANAGER

FROM: TODD DARDEN, ASSISTANT CITY MANAGER

SUBJECT: AWARD CONTRACT FOR ENGINEERING SERVICES AS PART OF THE
TEXAS DEPARTMENT OF AGRICULTURE GRANT APPLICATION FOR
WATER SYSTEM IMPROVEMENTS

DATE: OCTOBER 5, 2012

The City of Big Spring received two (2) submissions for engineering services to be provided for the Texas Department of Agriculture grant application for water system improvements. We received proposals from:

WTC Engineering, Inc.	Andrews, TX
Parkhill, Smith, & Cooper, Inc.	Big Spring, TX

Representatives of the City of Big Spring evaluated and scored the submittals based on qualifications.

Recommendation: The staff recommends that the submittal for the engineering services as pertaining to the grant application to the Texas Department of Agriculture be awarded to Parkhill, Smith & Cooper, Inc.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BIG SPRING, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION (A TEXAS AND VIRGINIA CORPORATION, WITH ITS PRINCIPAL OFFICE IN THE CITY OF DALLAS, DALLAS COUNTY, TEXAS) THE FRANCHISE AND RIGHTS TO CONDUCT IN SUCH CITY THE BUSINESS OF ACQUIRING, MAINTAINING, CONSTRUCTING, LAYING, REPAIRING, REMOVING, REPLACING, INSTALLING, OPERATING, AND DISPOSING OF A GAS SYSTEM FOR THE SALE, TRANSPORTATION, AND DISTRIBUTION OF NATURAL GAS WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY AND TO THE RESIDENTS AND BUSINESSES LOCATED THEREIN FOR LIGHT, HEAT, POWER, AND ANY OTHER PURPOSES AND THE RIGHT TO USE THE PRESENT AND FUTURE STREETS, ROADS, HIGHWAYS, ALLEYS, PUBLIC WAYS, AND REAL PROPERTY IN SUCH CITY AND OWNED OR CONTROLLED BY SUCH CITY FOR SUCH PURPOSES; PRESCRIBING THE TERMS AND CONDITIONS TO WHICH SUCH FRANCHISE AND RIGHTS ARE SUBJECT; AND PRESCRIBING THE TERM OF SUCH FRANCHISE AND RIGHTS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AS FOLLOWS:

The CITY of BIG SPRING, TEXAS (hereinafter referred to as the “City”) hereby ordains that, subject to the terms and conditions hereinafter set forth, ATMOS ENERGY CORPORATION, a Texas and Virginia corporation with its principal office in the City of Dallas, Dallas County, Texas (hereinafter referred to as “Atmos”), be, and hereby is, granted the non-exclusive franchise and rights to conduct in the City the business of acquiring (by purchase, lease, or otherwise), maintaining, constructing, laying, repairing, removing, replacing, installing, operating, and disposing of (by sale, lease, or otherwise) a gas system, as hereinafter defined, for the sale, transportation, and distribution of natural gas within the municipal boundaries of the City and to the residents and businesses located therein for light, heat, power, and any other purpose during the term set forth below. Such franchise and rights shall include, but not be limited to, the right to use the present and future streets, roads, highways, alleys, public ways, and other real property owned by or under the control of the City for purposes of maintaining, constructing, laying, repairing, removing, replacing, installing, and operating any and all components of the gas system, together with access, at all times and from time to time, to such streets, roads, highways, alleys, public ways, and other real property during the term hereof.

ARTICLE I
DEFINITIONS

For purposes of this Ordinance, the following terms shall have the meanings set forth below:

Section 1.1. Gas System. The term “gas system” shall mean any and all pipelines, as hereinafter defined, meters, valves, compressors, anti-corrosion items, facilities, structures, machinery, equipment, and appurtenances of any kind that Atmos, in its sole discretion, may deem necessary or advisable for the exercise of the franchise and rights granted to Atmos herein.

Section 1.2. Pipelines. The term “pipelines” shall mean any and all above-ground and below-ground pipes, including, but not limited to, mains, distribution lines, secondary lines, laterals, and other pipes, that have been, are being, or are intended to be used at any time in, or in connection with, the sale, transportation, or distribution of natural gas within the City.

ARTICLE II TERM

Section 2.1. Term. Unless earlier terminated in accordance with the terms and provisions hereof, the term of the franchise and rights hereby granted to Atmos shall be for a period of 10 (ten) years, commencing on the effective date hereof as defined in Section 7.6 below.

ARTICLE III ACKNOWLEDGMENT AND GRANT OF SPECIFIC RIGHTS OF ATMOS

In addition to the franchise and rights granted herein to Atmos, the City acknowledges that Atmos has, and hereby grants to Atmos, the following rights and powers:

Section 3.1. Right to Contract. Atmos may enter into separate gas service contracts with industrial or other consumers in the City whose average consumption of gas generally is substantially in excess of the average consumption by residential or commercial consumers or whose service requirements generally are substantially different from the average service requirements of residential or commercial consumers. Such contracts may provide for rates different from the rates applicable to such residential and commercial consumers.

Section 3.2. Discontinuance of Service. Atmos may discontinue service to any residential or commercial consumer for any lawful reason, including, but not limited to, such consumer's failure to pay, when due, any indebtedness owed by such consumer to Atmos.

Section 3.3. Reconnection Charges. In addition to any and all other proper charges, Atmos may charge and collect from any residential or commercial consumer whose service has been discontinued by Atmos a reasonable reconnection or similar charge for recommencing service to such consumer.

Section 3.4. Adoption of Rules. From time to time during the term hereof, Atmos may, subject to any and all valid and applicable statutes, ordinances, rules, and regulations of any federal or state governmental authority or agency, make and enforce reasonable rules pertaining to Atmos' business and operations, including, but not limited to, requiring any residential or commercial consumer to execute and deliver a written contract or amendment to an existing written contract prior, and as a condition, to the initial commencement, recommencement, or continuation of service to such consumer.

Section 3.5. Removal of Gas System. Atmos may remove all or any portion of the gas system upon the termination by the City, pursuant to Article VI of this Ordinance, of the franchise and rights granted hereby.

Section 3.6. Consumer Preferences. Atmos may give preference to residential consumers over other consumers during periods in which the total volume of gas available for distribution to and within the City is insufficient, for any reason whatsoever, to adequately supply all residential and commercial consumers.

ARTICLE IV **OBLIGATIONS OF ATMOS**

Section 4.1. Franchise Fee.

(a) As consideration for the grant of the franchise and rights herein and for the use by Atmos of the streets, roads, highways, alleys, public ways, and other real property owned or controlled by the City, Atmos shall pay to the City, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to three and half percent (3 1/2%) of Atmos' gross receipts derived from the sale, transportation, and distribution by Atmos of natural gas within the City limits during the preceding calendar quarter. Additionally, Atmos shall pay to the City, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to three and half percent (3 1/2%) of the value of gas transported by Atmos Energy for transport customers through the Gas System of Atmos within the City (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos' monthly Weighted Average Cost of Gas charged to industrial customers in the West Texas division, as reasonably near the time as the transportation service is performed. At any time during the term of this franchise, the City may increase the franchise fee payable hereunder, subject to and in accordance with all of the following terms and conditions:

- (1) The City may increase the franchise fee only if the franchise fee, as so increased, constitutes a charge for Atmos' use of the City's streets, roads, highways, alleys, public ways, and other real property that is reasonable and lawful. Such increase must be adopted by the governing body of the City at a public hearing that is held no earlier than thirty (30) days following the delivery to Atmos by the City, in person or by certified or registered mail, of a written notice stating the reason for, and the date, time, and place of, such hearing.
- (2) The franchise fee may not be increased pursuant to this Subsection 4.1(a) more than one time in any five-year period during the term of this franchise.
- (3) The franchise fee may not be increased at any one time by an amount exceeding one-half of one percent (1/2 of 1%) of Atmos' gross receipts derived from the sale, transportation, and distribution by Atmos of natural gas within the municipal boundaries of the City; and the total franchise fee

payable hereunder may not be increased during the term hereof to an amount exceeding the lesser of (i) five percent (5%) of such gross receipts or (ii) the percentage of gross receipts payable by any electric utility doing business within the City pursuant to a franchise granted by the City.

- (4) In the event the franchise fee provided herein exceeds that franchise fee amount that is recovered by Atmos as part of its base rates for natural gas service charged to its customers within the City, or if the franchise fee is increased in accordance with this Subsection 4.1(a), the City agrees that Atmos may immediately add a line-item surcharge to the monthly bills of Atmos' customers located within the City in an amount sufficient to recover such excess or increase.

(b) Nothing in Subsection 4.1(a) shall preclude, or be deemed to preclude, Atmos and the City from agreeing to an increase in the franchise fee in excess of the limitations imposed in such subsection.

(c) The franchise fee, together with any and all charges of the City for water, sewage, and garbage services provided by the City to Atmos, any and all sales taxes collected by Atmos, and any and all ad valorem taxes assessed by the City against Atmos' property, shall constitute the only amounts for which Atmos shall be obligated to pay to the City and shall be in lieu of any and all other costs, levies, assessments, fees, or other amounts, of any kind whatsoever, that the City, currently or in the future, may charge Atmos or assess against Atmos' property.

Section 4.2. No Obstruction of Public Property. Atmos shall not, unnecessarily or for any unreasonable period of time, obstruct or interfere with the public use of any of the streets, roads, highways, alleys, public ways, or other real property owned or controlled by the City.

Section 4.3. Repair of Damages. Atmos shall repair any and all damages caused solely by Atmos to any streets, roads, highways, alleys, public ways, or other real property owned or controlled by the City and shall restore, as nearly as practicable, such property to substantially its condition immediately prior to the incident causing such damage. The City may, from time to time, adopt reasonable ordinances regulating such work.

Section 4.4. Conduct of Work and Activities. Atmos shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property.

Section 4.5. Use of Alleys. Atmos shall attempt to utilize the alleys of the City insofar as is reasonably practicable in conducting its work and activities hereunder. Notwithstanding the foregoing, however, Atmos may, when reasonably necessary, utilize the streets and any other public ways owned or controlled by the City to perform such work and activities.

Section 4.6. Service and Supply. Atmos shall use reasonable care to furnish good and reliable service and an adequate supply of natural gas.

Section 4.7. Installation of Underground Pipelines. Atmos shall, when reasonably practicable, install all pipelines under-ground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, or underground wires, cables, or water or sewer pipes owned or controlled by the City.

Section 4.8. No Discrimination Between Consumers. Subject to Atmos' rights set forth in Article III of this Ordinance, Atmos shall not discriminate against any consumer with respect to charges for natural gas or services rendered under substantially the same circumstances to other consumers of the same classification.

Section 4.9. Changes in Gas System.

(a) Atmos shall, upon written request from the City, change the location, position, route, or depth of any pipeline or other component of the gas system if and when such change becomes reasonably necessary because of a change in the grade of any street, road, highway, alley, public way, or other real property owned or controlled by the City or because of any change in the location of, or in the manner of maintaining, constructing, laying, repairing, removing, replacing, installing, or operating any pavement, curbs, gutters, or underground wires, cables, or water or sewer pipes owned or controlled by the City. The City's written request for such change must set forth, in detail, all of the essential elements and specifications of the requested change.

(b) Atmos may seek payment from any governmental entity or agency, person, or party of any amount to which Atmos may be entitled because of such change in location, position, route, or depth or because of the abandonment of any pipeline or other component of the gas system regardless of whether such pipeline or component is wholly or partially located in any public or private way or right-of-way.

Section 4.10. Service to New Areas. If during the term of this franchise the boundaries of the Town are expanded, the Town will promptly notify Atmos in writing of any geographic areas annexed by the Town during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Atmos by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Atmos may reasonably require in ascertaining whether there exist any customers of Atmos receiving natural gas service in said annexed area. To the extent there are such Atmos customers therein, then the gross revenues of Atmos derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Atmos' billing cycle immediately following Atmos' receipt of the Annexation Notice. The failure by the Town to advise Atmos in writing through proper Annexation Notice of any geographic areas which are annexed by the Town shall relieve Atmos from any obligation to remit any franchise fees to Town based upon gross revenues derived by Atmos from the sale and distribution of natural gas to customers within the annexed area until Town delivers an Annexation Notice to Atmos in accordance with the terms hereof.

Section 4.11. Schedule of Rates. Atmos shall, at all times, keep on file with the City a schedule setting forth current residential and commercial rates for natural gas and services rendered to customers within the City. Nothing contained in this Ordinance, however, shall adversely affect Atmos' right to apply for an increase in all or any of its rates at any time and

from time to time during the term hereof and to a lawful and equitable decision with respect to any such application.

Section 4.12. Rebates. Atmos shall not grant, directly or indirectly, any rebate, in the form of money or any other thing of value, to any consumer in order to circumvent the rate schedule filed with the City pursuant to Section 4.10 of this Article IV.

Section 4.13. Maps of Gas System. Atmos shall have available a map or maps showing the current location of all pipelines and other components of Atmos' natural gas distribution facilities located in the City.

Section 4.14. Bond for Removal of Gas System. Atmos shall, upon electing to remove all or any portion of the gas system in accordance with Section 3.5 of Article III of this Ordinance, file with the Secretary of the City a bond in a reasonable amount and with a proper and adequate surety, securing Atmos' obligation to promptly repair, at Atmos' sole expense, any damage to any real property owned or controlled by the City caused by Atmos' removal of all or any portion of the gas system and to restore such property to substantially the same condition it was in immediately prior to the incident causing such damage.

ARTICLE V **RIGHTS OF THE CITY**

Section 5.1. Use of City Property. The right of Atmos hereunder to use any streets, roads, highways, alleys, public ways, and other real property owned or controlled by the City shall in no way affect the right of the City or its agents to maintain, construct, lay, repair, remove, replace, install, or operate any pavement, curbs, gutters, or underground wires, cables, or water or sewer pipes owned by the City and located on or near such streets, roads, highways, alleys, public ways, and other real property.

Section 5.2. Inspection of Books and Records. The City may, at its sole expense and, upon reasonable prior notice, at any reasonable time during normal business hours, inspect and copy any of Atmos' books and records, wherever located, pertaining to and directly affecting the rights of the City arising under or by virtue of this Ordinance.

ARTICLE VI **REMEDIES UPON DEFAULT BY ATMOS**

Section 6.1. Termination of Franchise and Rights. In the event of a substantial breach by Atmos of any material provision of this Ordinance, the City may terminate the franchise and rights granted to Atmos hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

(a) The City must deliver to Atmos, by certified or registered mail, a written notice signed by the Mayor, attested by the Secretary, and sealed with the official seal of the City. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Atmos that the City contends constitutes a substantial breach of any material provision hereof, (ii) designate which of the terms and conditions hereof the City contends Atmos breached, and (iii)

specify the date, time, and place at which a public hearing will be held by the governing body of the City for the purpose of determining whether the allegations contained in the notice did in fact occur, provided, however, that the date of such hearing may not be less than thirty (30) days after the date of such notice.

(b) Within ten (10) days following the adjournment of the public hearing described in Subsection 6.1(a) above, the City must deliver to Atmos, by certified or registered mail, a written notice signed by the Mayor, attested by the Secretary, and sealed with the official seal of the City, setting forth (i) the acts and omissions of Atmos described in the first notice that the governing body of the City determines to have in fact occurred and (ii) the specific terms and conditions of this Ordinance listed in the first notice that the governing body of the City determines to have in fact been breached by such acts or omissions of Atmos.

(c) The City must permit Atmos the opportunity to substantially correct all of the breaches hereof set forth in the written notice described in Subsection 6.1(b) above within sixty (60) days after Atmos' receipt of such notice.

ARTICLE VII **GENERAL PROVISIONS**

Section 7.1. Force Majeure. Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Atmos is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Atmos is so prevented shall not be counted against Atmos for any reason. The term "force majeure", as used herein, shall mean any cause not reasonably within Atmos' control and includes, but is not limited to, acts of God, strikes, lock-outs, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state, or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failures of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Ordinance.

Section 7.2. Other Ordinances. Except to the extent otherwise expressly provided herein, the franchise and rights granted hereby and the operations and activities performed by Atmos pursuant hereto shall be subject to all valid ordinances and regulations of the City and any valid amendments thereto insofar as, and only insofar as, such ordinances and regulations (i) do not shorten the term hereof or terminate, abrogate, or materially and adversely affect the franchise and rights granted to Atmos hereby or (ii) do not conflict with or are not inconsistent with the terms and provisions contained in this Ordinance, such conflicting or inconsistent ordinances hereby being repealed to the extent of such conflict or inconsistency.

Section 7.3. Amendments. This Ordinance and the franchise and rights granted herein may be amended only by written agreement of the City and Atmos to such amendment.

Section 7.4. Severability. In the event any part of this Ordinance is determined to be invalid or illegal for any reason whatsoever, such invalidity or illegality shall not affect the validity or legality of this Ordinance as a whole or of any part hereof.

Section 7.5. Binding Effect. This Ordinance shall extend to, be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 7.6. Effective Date. This Ordinance shall become effective on the date on which this Ordinance is finally adopted by the City in accordance with law, and Atmos shall file with the Secretary of the City a letter stating that Atmos accepts this Ordinance as adopted and agrees to comply with and be bound by all of the terms and conditions hereof. A true and correct copy of this Ordinance as finally adopted shall be attached to such letter and by reference made a part thereof, and the letter shall be addressed to the Mayor and the governing body of the City, dated, and executed by an authorized officer of Atmos. Upon this Ordinance becoming effective, this Ordinance shall supersede any and all prior ordinances of the City, including but not limited to the Franchise Agreement terminating October 31, 2012, regarding the subject matter of this Ordinance.

Section 7.7. Section and Other Headings. The section and other headings contained in this Ordinance are for reference purposes only and shall not affect in any way the meaning or interpretation of this Ordinance.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the 9th day of October, 2012, with all members present voting “aye” for passage of the same.

PASSED AND APPROVED on second and final reading at a regular meeting of the City Council on the 23rd day of October, 2012, with all members present voting “aye” for passage of same.

CITY OF BIG SPRING, TEXAS

Tommy Duncan, Mayor

ATTEST:

Peggy S. Walker, City Secretary

City’s Mailing Address and Phone Number:

City of Big Spring
310 Nolan
Big Spring, TX 79720
432-264-2514

**AGREEMENT
BETWEEN CITY OF BIG SPRING, TEXAS
AND
PARKHILL, SMITH & COOPER, INC.
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____, ("Effective Date")
Between City of Big Spring, Texas ("OWNER") and Parkhill, Smith & Cooper, Inc. ("ENGINEER").

OWNER intends to make certain improvements to the City's infrastructure, primarily the replacement of existing water lines that are currently maintenance issues. PSC shall coordinate with city personnel to determine the order of water line replacement in the most problematic areas. Area of interest is shown by Exhibit E – 2013 Water Distribution System Improvements ("Project").

OWNER and ENGINEER, in consideration of their mutual covenants as set forth herein, agree as follows:

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ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

- A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.
- B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A - Part 1.
- C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit C.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. OWNER shall have the responsibilities set forth herein.
- B. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including, design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any, budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.
- C. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- D. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- E. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or

time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

F. Authorize ENGINEER to provide Additional Services as set forth in Exhibit A - Part 2 of the Agreement as required.

G. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property, as required for ENGINEER to perform services under the Agreement.

H. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely, decisions pertaining thereto.

I. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may, be necessary for completion of each phase of the Project.

J. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.

3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.

4. Placement and payment for advertisement for Bids in appropriate publications.

K. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.

M. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

N. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof unless authorized as Additional Services under Exhibit A - Part 2.

ARTICLE 3-TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in this scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 - PAYMENTS TO ENGINEER

4.01 Methods of Payment for Basic Services and Additional Services of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A - Part 1, as set forth in Exhibit B.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A - Part 2, as set forth in Exhibit B.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit B.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day.

C. *Payments Upon Termination.* In the event of any termination, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit B for all services performed or furnished and all expenses incurred through the effective date of termination.

D. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER.

E. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished

by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

G. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER in any way contingent upon the ENGINEERs signing any such certification.

H. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

I. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

K. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions.

6.02 Authorized Project Representatives

A. ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A - Part 1.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.05 Insurance

A. ENGINEER shall procure and maintain the following insurance: Worker's Compensation, General Liability and Professional Liability.

B. At OWNER's request ENGINEER shall deliver certificates of insurance evidencing the coverage. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of this agreement.

C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER'S Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

6.06 Termination

- A. The obligation to provide further services under this Agreement may be terminated:

For cause, by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

For convenience, by OWNER effective upon the receipt of notice by ENGINEER.

6.07 Controlling Law

- A. This Agreement is to be governed by the law of the state in which the Project is located.
- B. Venue for any cause will be in Howard County, Texas.

6.08 Successors, Assigns, and Beneficiaries

A. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law.

6.09 Dispute Resolution

A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a minimum of 30 days from the date of notice. Should such negotiations fail, the OWNER and ENGINEER agree that any dispute between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation prior to exercising any other rights under law, unless the parties mutually agree otherwise.

6.10 Hazardous Environmental Condition

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

6.11 Allocation of Risks

A. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent

acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

B. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

C. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A - Part 2 of this Agreement.
3. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services", including those Exhibits listed in Article 8 hereof.
4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *Asbestos*--Any material that contains more than one percent of asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A - Part 1, of this Agreement.
7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
9. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.
10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor concerning the Work.
11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.
12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER. Construction Cost is one of the items comprising Total Project Costs.
13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendment, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement.

Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Construction Contract Times*--The numbers of days or the dates stated in the Construction Agreement to:
(i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *Direct Expenses*--The expenses incurred directly by ENGINEER in connection with the performing of Basic Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit B, to include but not limited to fax, reproduction, travel, telephone, meals and lodging, CAD charges, field supplies, models, renderings, photos, and postage.

20. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

21. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

22. *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

24. *Engineer's Consultants*--Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

25. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

26. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

27. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

28. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

29. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

30. *PCB's*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

33. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

34. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the performing of Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit B, to include but not limited to fax, reproduction, travel, telephone, meals and lodging, CAD charges, field supplies, models, renderings, photos, and postage.

35. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit C.

36. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

37. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

38. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

39. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

40. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) can

be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

41. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements the General Conditions.

42. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

43. *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment*--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8-EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- A. Exhibit A, "ENGINEER's Services", consisting of 8 pages.
- B. Exhibit B, "Payments to Engineer", consisting of 2 pages.
- C. Exhibit C, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative", consisting of 4 pages.
- D. Exhibit D, "Notice of Acceptability of Work", consisting of 2 pages
- E. Exhibit E, "2013 Water Distribution System Improvements", consisting of 1 page

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 32 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, the Effective Date of which is indicated on page 1

OWNER:

ENGINEER:

City of Big Spring, Texas

Parkhill, Smith & Cooper, Inc.

By: _____

By: _____

Tommy Duncan

Edwin E. "Butch" Davis, P.E.

Title: Mayor

Title: Vice President

Date Signed: _____

Date Signed: _____

Address for giving notices:

Address for giving notices:

310 Nolan Street
Big Spring, Texas 79720-2657

4222 85th Street
Lubbock, Texas 79423

IN DUPLICATE

EXHIBIT A ENGINEER'S SERVICES

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and authorized Additional Services as set forth below.

EXHIBIT A - PART 1 -- BASIC SERVICES

AI.01 *Design Phase*

A. ENGINEER shall:

1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
2. Advise OWNER as to the necessity of OWNER's providing data or services which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.
3. Establish the scope, and advise the OWNER, of any special investigations, field surveys or soil and foundation investigations which, in the opinion of the ENGINEER, may be required for the proper execution of the Study and Report Phase; and arrange with the OWNER for the conduct of such investigations and tests. The performance of these investigations and tests is not a part of the ENGINEER's Basic Services, and compensation therefore is not included in the Basic Fee; the investigations and tests may be performed by the ENGINEER, by agreement with the OWNER, in which case compensation shall be determined by the applicable portions of Exhibit B.
4. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.
5. Identify and evaluate alternate solutions available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment meet OWNER's requirements for the Project.
6. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners. The performance of field surveys is not a part of the ENGINEER's basic services, and compensation therefore is not included in the Basic Fee; the surveys may be performed by the ENGINEER, by agreement with the OWNER, in which case compensation shall be determined by applicable portions of Exhibit B.
7. Establish the scope, and advise the OWNER, of any additional soils or foundation investigations which, in the opinion of the ENGINEER, may be required for the proper execution of the Project; and arrange with the OWNER for the conduct of such investigations and tests. The performance of these investigations and tests is not a part of the ENGINEER's Basic Services, and compensation therefore is not included in the Basic Fee; the investigations and tests may be performed by the ENGINEER, by agreement with the OWNER, in which case compensation shall be determined by the applicable portions of Exhibit B.
8. Advise OWNER if additional reports, data, information, or services are necessary and assist OWNER in obtaining such reports, data, information, or services.
9. Prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.

10. Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.

11. Advise OWNER of any adjustments to the opinion of probable Construction Cost.

12. Prepare and furnish five (5) sets of Bidding Documents and a revised opinion of probable Construction Cost for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other related documents.

B. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is four (4).

C. ENGINEER's services under the Design Phase will be considered complete on the date when the final Bidding Documents have been delivered to OWNER.

AI.04 *Bidding or Negotiating Phase*

A. After acceptance by OWNER of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase and upon written authorization by OWNER to proceed, ENGINEER shall:

1. Furnish the number of copies of the Plans and Specifications as required by prospective bidders and furnishers of material and equipment. All sets of plans and specifications are to be paid for separately under Exhibit B as an Additional Service.

2. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.

3. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

4. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.

5. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

AI.05 *Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from OWNER, ENGINEER shall:

1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions.

2. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. Duties,

responsibilities, and authority of the RPR are as set forth in Exhibit C. The furnishing of such RPR's services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement. The performance of the RPR is not included in the ENGINEER's basic fee and may be performed by the ENGINEER, by agreement with the OWNER, in which case compensation shall be determined by applicable portions of Exhibit B.

3. *Selecting Independent Testing Laboratory.* Assist OWNER in the selection of an independent testing laboratory. The performance of these investigations and tests is not included in the ENGINEER's basic fee and may be performed by the ENGINEER, by agreement with the OWNER, in which case compensation shall be determined by applicable portions of Exhibit B.

4. *Pre-Construction Conference.* Conduct a Pre-Construction Conference prior to commencement of Work at the Site.

5. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in ENGINEER's judgment are necessary to enable Contractor to proceed. The performance of field surveys is not included in the ENGINEER's basic fee and may be performed by the ENGINEER, by agreement with the OWNER, in which case compensation shall be determined by applicable portions of Exhibit B.

6. *Visits to Site and Observation of Construction,* In connection with observations of Contractor's work in progress while it is in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.

b. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

7. *Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

8. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

9. *Change orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.

10. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety, precautions and programs incident thereto.

11. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

12. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents.

13. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

14. *Applications for Payment.* Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents).

15. *Contractor's Completion Documents.*

a. Receive and review maintenance and operating instructions, schedules, and guarantees.

b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples, annotated record drawings, and other data which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.

c. ENGINEER shall transmit these documents to OWNER.

16. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, ENGINEER considers the Work Substantially Complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

17. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice in the form attached hereto as Exhibit D (the "Notice of Acceptability of Work") that the Work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors. If the Project involves more than one prime contract, Construction Phase services may be rendered at different times in respect to the separate contracts.

C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

EXHIBIT A - PART 2 -- ADDITIONAL SERVICES

A2.01 *Additional Services Requiring OWNER's Authorization in Advance*

A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1. Providing design and/or construction surveys and staking to enable ENGINEER to perform its services and Contractor to perform his work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

2. Services of a Resident Project Representative and other field personnel, as required, for on-the-site observation of construction and for construction layout surveys.

3. Soil and foundation investigations, including field and laboratory tests, borings, related engineering analysis and recommendations.

4. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

5. Post-Construction Phase. The Post-Construction Phase includes, providing assistance in connection with the testing and adjusting of Project equipment or systems; Assisting OWNER in training OWNER's staff to operate and maintain Project, equipment, and systems; Assisting OWNER in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems; visiting the Project with the OWNER to observe any apparent defects in the Work, assist OWNER in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present; and in company with OWNER or OWNER's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

6. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

7. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

8. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

9. Services required as a result of OWNER's providing incomplete or incorrect Project information.

10. Providing renderings or models for OWNER's use.

11. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.

12. Furnishing services of ENGINEER's Consultants for other than Basic Services.

13. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.

14. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

15. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.

16. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.

17. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.

18. Providing Construction Phase services beyond the Contract Times set forth in Exhibit B.

19. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.

20. Preparation of operation and maintenance manuals.

21. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.

22. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER.

23. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.

24. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

25. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

26. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

27. Services in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.

28. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

29. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

30. Reimbursable expenses associated with providing additional services.

**EXHIBIT B
PAYMENTS TO ENGINEER
LUMP SUM METHOD**

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 -- PAYMENTS TO THE ENGINEER

B4.01 *For Basic Services Having A Determined Scope--Lump Sum Method of Payment*

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A-Part 1, as follows:

Water System Improvements

Lump Sum of \$ 76,500 with the following distribution

Preliminary Design Phase	\$ 26,000
Final Design Phase	\$ 22,500
Bid Phase	\$ 10,000
Construction Phase Services	\$ 18,000
Total	<u>\$ 76,500</u>

2. The Lump Sum includes compensation for ENGINEER's services and services of ENGINEER's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Direct Expenses.

3. The portion of the Lump Sum amount billed for ENGINEER's services will be based upon ENGINEER's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

4. The Lump Sum is conditioned on Construction Contract Times to complete the Work not exceeding 10 months. Should the Construction Contract Times to complete the Work be extended beyond this period, the total compensation to ENGINEER shall be appropriately adjusted.

5. If more prime contracts are awarded for Work designed or specified by ENGINEER for this Project than identified in Exhibit A - Part 1, the ENGINEER shall be compensated an additional amount equal to \$_____* for all Basic Services for each prime contract added.

*To be negotiated if required.

B4.02 For Authorized Additional Services --Standard Hourly Rates Method of Payment.

A. OWNER shall pay ENGINEER for authorized Additional Services set forth in Exhibit A - Part 2 as follows:

1. For labor on an hourly rate basis in accordance with Appendix 1.
2. For reimbursable expenses, on the basis of cost times a factor of 1.15.

B. The hourly rate schedule will be adjusted each January 1st to reflect cost of living adjustments.

C. Authorized Additional Services and corresponding not to exceed amounts for this Agreement are identified as follows:

Authorized Additional Service	Not to Exceed Amount
1. Surveying and Testing	\$25,000
2. Resident Project Representation	\$16,000
Total	\$41,000

**EXHIBIT C
DUTIES, RESPONSIBILITIES, AND LIMITATIONS
OF AUTHORITY
OF RESIDENT PROJECT REPRESENTATIVE**

Paragraph 1.01C of the Agreement is amended and supplemented to include the following agreement of the parties:

C6.02 Resident Project Representative

A. ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit C may provide full time representation or may provide representation to a lesser degree.

B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

C. The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:

1. *General:* RPR is ENGINEER's agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

4. *Liaison:*

a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents.

b. Assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-Site operations.

c. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

6. *Shop Drawings and Samples.*

a. Record date of receipt of Samples and approved Shop Drawings.

b. Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.

c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.

7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

8. *Review of Work and Rejection of Defective Work:*

a. Conduct on-Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.

b. Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Startups:*

a. Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.

b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.

c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.

d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.

10. *Records:*

a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.

b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders. Field Orders, Work

Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures: and send copies to ENGINEER.

- c. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.

11. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports.
- d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.

12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.

14. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize OWNER to occupy the Project in whole or in part.

EXHIBIT D

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

OWNER's Construction Contract Identification:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To: OWNER

And To: CONTRACTOR

The undersigned hereby gives notice to the above OWNER and CONTRACTOR that the completed Work furnished and performed by CONTRACTOR under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

By: _____

Title: _____

Dated:

_____, _____

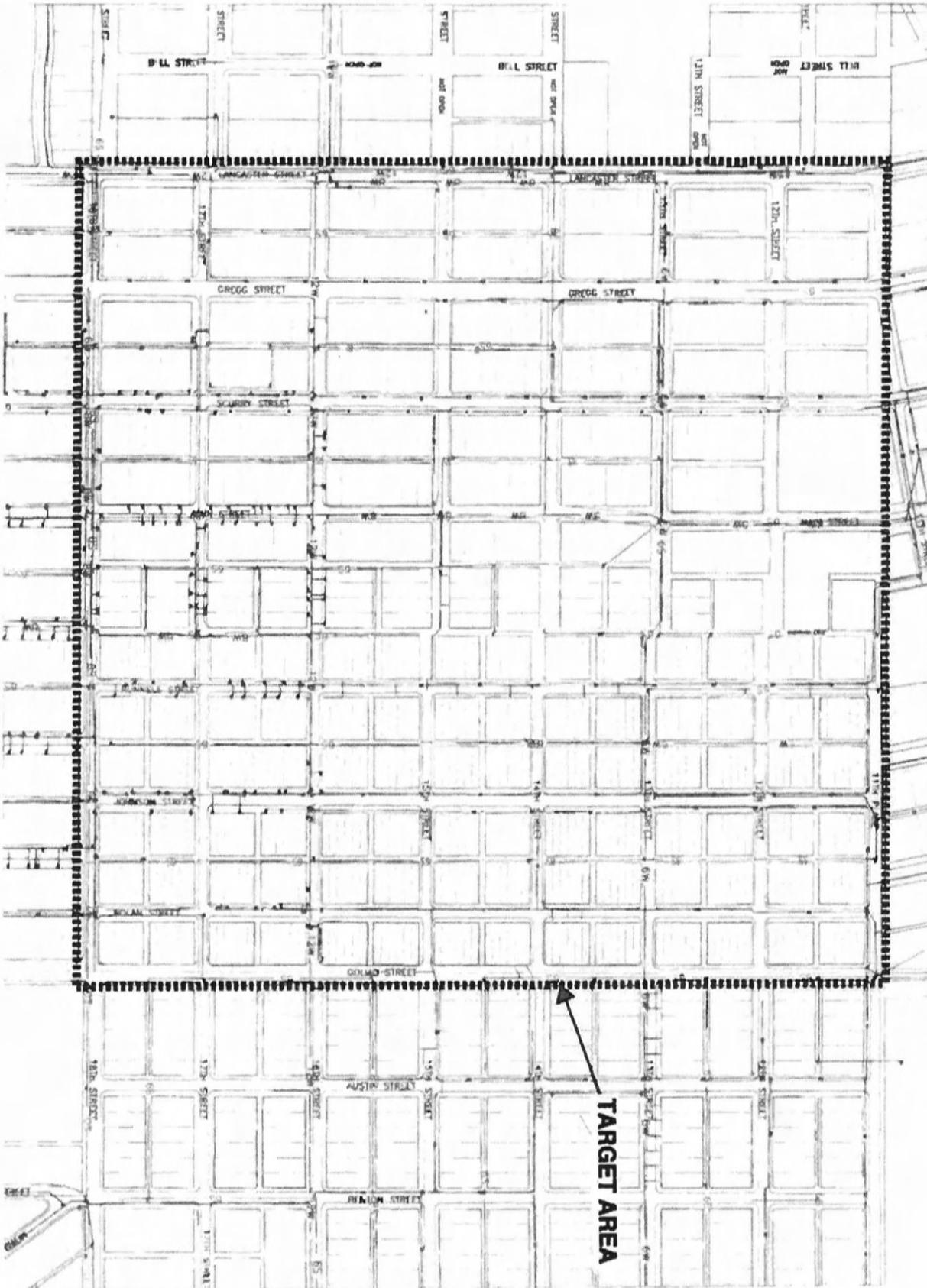
(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of ENGINEER.
3. Said Notice is given as to the best of ENGINEER's knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the CONTRACTOR's work) under ENGINEER's Agreement with OWNER and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of CONTRACTOR's performance under the Construction Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

EXHIBIT E 2013 WATER DISTRIBUTION SYSTEM IMPROVEMENTS



APPENDIX 1

CURRENT HOURLY RATE SCHEDULE

Parkhill, Smith & Cooper, Inc.
Hourly Rate Schedule
Current through December 31, 2012

Client: City of Big Spring
 Project: 2013 Water Distribution System Improvements
 Agreement Date: October 2012

January 1, 2012

<u>Classification</u>	<u>Hourly Rate</u>	<u>Classification</u>	<u>Hourly Rate</u>
PROFESSIONAL LEVEL VII	\$178.00	PROFESSIONAL LEVEL I	\$79.00
Engineer VII		Intern (Architect) I	
Architect VII		Intern (Interiors) I	
Landscape Architect VII		Intern (Landscape Architect) I	
Interior Designer VII		Technologist I	
PROFESSIONAL LEVEL VI	\$151.00	Resident Project Representative I	
Engineer VI		Clerical Supervisor I	
Architect VI		SUPPORT STAFF III	\$76.00
Landscape Architect VI		Engineering Technician III, IV	
Interior Designer VI		CADD III, IV	
PROFESSIONAL LEVEL V	\$134.00	Administrative Secretary III	
Engineer V		Architect Technician III, IV	
Architect V		Project Assistant I/II	
Landscape Architect V		SUPPORT STAFF II	\$70.00
Interior Designer V		Architect Technician I, II	
PROFESSIONAL LEVEL IV	\$116.00	Engineering Technician I, II	
Engineer III, IV		CADD I, II	
Architect IV, Intern (Architect) IV		Accounting Clerk I, II	
Landscape Architect IV		Administrative Secretary I, II	
Interior Designer IV		Project Assistant EL	
Technologist IV		Word Processor I, II	
Resident Project Representative IV		Receptionist I, II	
PROFESSIONAL LEVEL III	\$98.00	File Clerk I	
Engineer I/II		SUPPORT STAFF I	\$40.00
Architect III, Intern (Architect) III		Architectural Student EL	
Landscape Architect III		Engineering Student EL	
Intern (Landscape Architect) III		Landscape Architecture Student EL	
Interior Designer III		Interiors Student EL	
Technologist III		CADD EL	
Resident Project Representative III		Accounting Clerk EL	
PROFESSIONAL LEVEL II	\$87.00	Word Processor EL	
Intern (Architect) II		Receptionist EL	
Interior Designer II, Intern (Interiors) II		File Clerk EL	
Landscape Architect II			
Technologist II			
Resident Project Representative II			
Clerical Supervisor II			

Expenses

Reimbursement for expenses, as listed below, but not limited to, incurred in connection with the services, will be at cost plus fifteen percent for items such as:

1. Maps, photographs, postage, telephone, reproductions, printing, equipment rental, and special supplies related to the services.
2. Consultants, soils engineers, surveyors, contractors, and other outside services.
3. Rented vehicles, local public transportation and taxis, road toll fees, travel, and subsistence.
4. Special or job specific fees, insurance, permits, and licenses applicable to the work services.
5. Mileage at IRS approved rate.

Rate for professional staff for legal proceedings or as expert witnesses will be a rate one and one-half times the Hourly Rates specified above. Excise and gross receipts taxes, if any, will be added as an expense.

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective January 1, 2012 through December 31, 2012. After December 31, 2012, invoices will reflect the Schedule of Charges currently in effect.

INTERLOCAL AGREEMENT
Region VIII Education Service Center
TEXAS PUBLIC AGENCY
(School, College, University, State, City or County Office)

TEXAS SCHOOL ENTITY OR PUBLIC AGENCY

Control Number (TIPS will Assign)
Schools enter County-District Number

Region VIII Education Service Center
Mt. Pleasant, Texas

225 - 950
County-District Number

Texas Education Code §8.002 permits regional education service centers, at the direction of the Commissioner of Education, to provide services to assist school districts, colleges and universities in improving student performance and increasing the efficiency and effectiveness of school, college and university operations. Authority for such services is granted under Texas Government Code §§ 791.001 *et seq* as amended. Cooperative Purchasing Services are extended to all Texas State, City and County Government Agencies.

This Interlocal Agreement (hereinafter the "Agreement") is effective _____ and shall be automatically renewed unless either party gives sixty (60) days prior written notice of non-renewal. This Agreement may be terminated without cause by either party upon (60) days prior written notice, or may also be determined for cause at anytime upon written notice stating the reason for and effective date of such terminations and after giving the affected party a thirty (30) day period to cure any breach.

Statement of Services to be Performed:

Region VIII Education Service Center, by this Agreement, agrees to provide cooperative purchasing services to the above-named public agency through a Program known as the The Interlocal Purchasing System (TIPS/TAPS) Program.

The purpose of the TIPS/TAPS Program shall be to obtain substantial savings for participating school entities or public agencies through cooperative purchasing.

Role of the TIPS/TAPS Purchasing Cooperative:

1. Provide for the organizational and administrative structure of the program.
2. Provide staff necessary for efficient operation of the program.
3. Provide marketing of the program to expand membership, number of vendor awarded contracts and commodity categories.
4. Initiate and implement activities required for competitive bidding and vendor award process including posting, advertising, collecting proposals, scoring proposals, and award of contracts.
5. Provide members with procedures for ordering, delivery, and billing.
6. Maintain filing system for all bidding procedure requirements.

INTERLOCAL AGREEMENT, continued

Role of the Public Agency:

1. Commitment to participate in the program by an authorized signature on membership forms.
2. Designation of Primary Contact and Technology Contact for agency.
3. Commitment to purchase products and services from TIPS/TAPS Vendors when in the best interest of the agency.
4. Prepare purchase orders issued to TIPS/TAPS Awarded Vendor and FAX to TIPS/TAPS.
5. Accept shipments of products ordered from Awarded Vendors in accordance with standard purchasing procedures.
6. Pay Awarded Vendors in a timely manner for all goods and services received.

General Provisions:

The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.

This Agreement shall be governed by the law of the State of Texas and venue shall be in the county in which the administrative offices of RESC VIII are located which is Titus County, Texas.

This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties.

If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect

The Parties to this Agreement expressly acknowledge and agree that all monies paid pursuant to this Agreement shall be paid from budgeted available funds for the current fiscal year of each such entity.

Before any party may resort to litigation, any claims, disputes or other matters in question between the Parties to this Agreement shall be submitted to nonbinding mediation

No Party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees, and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.

This Agreement may be negotiated and transmitted between the Parties by means of a facsimile machine and the terms and conditions agreed to are binding upon the Parties.

Authorization:

Region VIII Education Service Center and The Interlocal Purchasing System (TIPS/TAPS) Program have entered into an Agreement to provide cooperative purchasing opportunities to public agencies.

INTERLOCAL AGREEMENT, continued

This Agreement was approved by the governing boards of the respective parties at meetings that were posted and held in accordance with the Texas Open Meetings Act, Texas Government Code ch. 551.

The individuals signing below are authorized to do so by the respective parties to this Agreement.

Public Agency

Region VIII Education Service Center

By: _____
Authorized Signature

By: _____
Authorized Signature

Title: _____

Title: Executive Director Region VIII ESC

Date

Date

Public Agency Contact Information

Primary Purchasing Person Name

Street Address

City, State Zip

Telephone Number

Fax Number

Primary Person Email Address

Technology Person Name

Technology Person Email Address

Please send two signed original Interlocal Agreements and one copy of Board Resolution (if required) to TIPS/TAPS, Attn: Kim Thompson, C/O Region VIII Education Service Center, PO Box 1894, Mt. Pleasant, Texas 75456-1894. Upon execution, a signed original will be returned to the Purchasing Contact listed above.

ProMAS LLC
 PO Box 10035
 Russellville, AR 72812

ProMAS Technology That Matters **Quote**

Date	Quote
6/4/2012	3475

Name / Address
City of Big Spring 310 Nolan Big Spring, Texas 79720

Ship To
City of Big Spring 310 Nolan Big Spring, TX 79720

P.O. No.	Project

Description	Qty	Cost	Total
SonicWALL Network Security Appliance (NSA) 4500	1	4,995.00	4,995.00
Comprehensive Gateway Security - NSA 4500 (One Year)	3	2,830.00	8,490.00
Remote Administrator Training & Implementation Support	1	1,000.00	1,000.00
<hr/>			
Kaspersky Managed Endpoint Security - Three Year (with June purchase incentives included) Security Center management also included	110	27.00	2,970.00
Remote Administrator Training & Implementation Support	1	1,000.00	1,000.00
<hr/>			
TOTAL - FIREWALL WITH 3 YEARS SECURITY & KASPERSKY ENDPOINT SECURITY WITH GOLD PARTNER ROLLOUT SUPPORT			18,455.00
<hr/>			
Vendor product and ProMAS installation support discounting. Assumes June order on TIPS/TAPS contract		-4,710.00	-4,710.00
<hr/>			
NOTES: Comprehensive Gateway Security Suite (CGSS) subscription includes Gateway Anti-Virus, Anti-Spyware and Intrusion Prevention Service, Content Filtering Premium Service, ViewPoint and 24x7 Support (SonicWALL direct phone support also continues hardware warranty and overnight replacement service).			
<hr/>			
TIP/TAPS contract reference, ProMAS contract 04-082709			
<hr/>			
TERMS:Net 20. Projects exceeding \$2,500 require a 50% deposit with acceptance.		Subtotal	\$13,745.00

Sales Tax (0.00)	\$0.00
Total	\$13,745.00