Council Communication

Department: Case/Project No. Applicant.	Ordinance No.6034	First Reading Second Reading Third Reading _____

Subject/Title

AN ORDINANCE to amend Chapter 8.44 "Property Damage" of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 8.44.044 "Public parks – Prohibited acts" and enacting a new Section 8.44.044 "Public parks – Prohibited acts", to prohibit the sale of merchandise or services within city parks and on city recreation trails without prior written authorization.

Background/Discussion

It has become necessary to regulate sales of merchandise and/or services in and near city parks. An ordinance has been prepared which requires the prior written authorization from the City's parks director for these activities. Proposals will be requested, and the Parks Board will review the proposals and make recommendations to the director.

Recommendation

Approve the ordinance that allows the parks director to regulate sale of merchandise and/or services in city parks and on city recreation trails.

Submitted by: Dick Wade, City Attorney

_____
Mayor Signature

ORDINANCE NO. 6034

AN ORDINANCE to amend Chapter 8.44 "Property Damage" of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 8.44.044 "Public parks – Prohibited acts" and enacting a new Section 8.44.044 "Public parks – Prohibited acts", to prohibit the sale of merchandise and/or services within city parks and on city recreation trails without prior written authorization.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 8.44 "Property Damage" of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 8.44.044 "Public parks – Prohibited acts", and enacting a new Section 8.44.044 "Public parks – Prohibited acts", to read as follows:

"**8.44.044 Public parks – Prohibited acts**. (a) It is unlawful for any person to be in a city park if the park is closed and the park hours are posted.

(b) No person shall offer for sale any merchandise or services within a Council Bluffs city park without the written authorization of the director of parks. If written authorization is granted, no sales or attempted sales shall occur without the written authorization being in the vendor's possession.

(c) For purposes of this section, 'city park' shall mean all parks identified in the Council Bluffs Parks catalog and all recreation trails. A list of the parks and trails is maintained of record in the Council Bluffs Department of Parks, Recreation and Public Property. This information is also available on the City's website at: http://parksandrec.councilbluffs-ia.gov/documents/pdf-park-catalog.pdf

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ordinance No. 5228, Section 3 1995.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND _____, 2009
APPROVED

_____
THOMAS P. HANAFAN Mayor

Attest: _____
JUDITH RIDGELEY City Clerk

First Consideration: _____
Second Consideration: _____
Public Hearing: _____
Third Consideration: _____

Council Communication

Department: Legal/Mayor Case/Project No. Applicant.	Ordinance No. 6033 Resolution No. _____	First Reading 04/13/2009 Second Reading 04/27/2009 Third Reading 05/11/2009

Subject/Title

An ordinance to amend Chapter 1.68 "Council Bluffs Airport Authority" of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 1.68.020 "Board" and enacting a new Section 1.68.020 "Board", to reduce the membership on the board from nine to seven.

BACKGROUND

The Council Bluffs Airport Authority currently has a nine member board. Due to vacancies on the board, the Mayor is proposing that the board membership be reduced to seven. An ordinance that accomplishes this has been prepared.

Recommendation

It is the recommendation of the Mayor and the City Attorney that the ordinance before the Council addressing these matters be approved.

Richard Wade

_____ _____

Department Head Signature Mayor Signature

Council Communication

Department: Legal/Mayor Case/Project No. Applicant.	Ordinance No. 6033 Resolution No. _____	First Reading 04/13/09 Second Reading 04/27/09 Third Reading 05/11/09

Subject/Title

An ordinance to amend Chapter 1.68 "Council Bluffs Airport Authority" of the 2005 Municipal Code of Council Bluffs, Iowa, by repealing Section 1.68.020 "Board" and enacting a new Section 1.68.020 "Board", to reduce the membership on the board from nine to seven.

BACKGROUND

The Council Bluffs Airport Authority currently has a nine member board. Due to vacancies on the board, the Mayor is proposing that the board membership be reduced to seven. An ordinance that accomplishes this has been prepared.

Recommendation

It is the recommendation of the Mayor and the City Attorney that the ordinance before the Council addressing these matters be approved.

Richard Wade

_____ _____

Department Head Signature Mayor Signature

Council Communication

Department: Finance	Resolution No:	
Case/Project No:		
Applicant: Art Hill		

Subject/Title

Call and Redeem General Obligation Bonds ($1,525,000) issued in April 2002.

Background/Discussion

Background/Discussion
In April 2002 the city issued general obligation bonds in the amount of $4.1 million.

Since issuance, $2.575 million of those bonds have been repaid, leaving a balance of $1.525 million that is payable on June 1, 2010.

The interest rate on those bonds is 4.5% and is paid to bond holders on December 1 and June 1.

The lowest current earnings rate on city funds is 0.6 % for funds in its checking account.

Funds are available to redeem (repay) the bonds prior to June 1, 2010 without adversely affecting any city operation.

Early redemption of bonds on June 1, 2009 would result in interest savings approximating $61,000.

Recommendation

Approval of a resolution authorizing the finance director to call $1.525 million of general obligation bonds issued in April, 2002.

Department Approval	Mayor

Council Member _____ introduced the following Resolution entitled "RESOLUTION DIRECTING THE ADVERTISEMENT FOR SALE OF $7,165,000 GENERAL OBLIGATION BONDS, SERIES 2009B, AND APPROVING ELECTRONIC BIDDING PROCEDURES" and moved its adoption. Council Member _____ seconded the Resolution to adopt. The roll was called and the vote was,

AYES: _____

_____

NAYS: _____

Whereupon, the Mayor declared the resolution duly adopted as follows:

RESOLUTION DIRECTING THE ADVERTISEMENT FOR SALE OF $7,165,000 GENERAL OBLIGATION BONDS, SERIES 2009B, AND APPROVING ELECTRONIC BIDDING PROCEDURES

WHEREAS, the Issuer is in need of funds to pay costs of acquisition, demolition and improvement of dangerous and dilapidated buildings, improvements to existing parks of the kind normally found in parks, traffic control devices, equipping the Fire Department, equipping the Police Department, equipment and facilities for emergency services, sanitary sewer improvements, and street improvements, an essential corporate purpose, (the "Project") and it is deemed necessary and advisable that General Obligation Bonds, Series 2009, in the amount of not to exceed $6,500,000 be issued; and

WHEREAS, pursuant to notice published as required by Section 384.25 of the Code of Iowa, as amended, this City has held a public meeting and hearing upon the proposal to institute proceedings for the issuance of General Obligation Bonds, Series 2009, and the Council is therefore now authorized to proceed with the issuance thereof; and

WHEREAS, the City is also in need of funds to pay the costs of improvements at the Fire Training Facility, a general corporate purpose, and it is deemed necessary and

advisable that General Obligation Bonds, Series 2009, in the amount of not to exceed $60,000 be issued for this purpose; and

WHEREAS, the City has a population of more than 5,000 but not more than 75,000; and

WHEREAS, pursuant to notice published as required by Section 384.26 of the Code, the Council of the City has held a public meeting and hearing upon the proposal to institute proceedings for the issuance of bonds for that portion of the general corporate purpose in the amount as above set forth, and, no petition for referendum having been received, the Council is therefore now authorized to proceed with the issuance thereof; and

WHEREAS, the City is also in need of funds to pay the costs of improvements to recreation grounds, including the golf course, a general corporate purpose, and it is deemed necessary and advisable that General Obligation Bonds, Series 2009, in the amount of not to exceed $540,000 be issued for this purpose; and

WHEREAS, the City has a population of more than 5,000 but not more than 75,000; and

WHEREAS, pursuant to notice published as required by Section 384.26 of the Code, the Council of the City has held a public meeting and hearing upon the proposal to institute proceedings for the issuance of bonds for that portion of the general corporate purpose in the amount as above set forth, and, no petition for referendum having been received, the Council is therefore now authorized to proceed with the issuance thereof; and

WHEREAS, the City is also in need of funds to pay the costs of recreation grounds, including construction and replacement of trails, and pool repairs and renovations, a general corporate purpose, and it is deemed necessary and advisable that General Obligation Bonds, Series 2009, in the amount of not to exceed $235,000 be issued for the purpose; and

WHEREAS, the City has a population of more than 5,000 but not more than 75,000; and

WHEREAS, pursuant to notice published as required by Section 384.26 of the Code, the Council of the City has held a public meeting and hearing upon the proposal to institute proceedings for the issuance of that portion of the bonds for general corporate

purpose in the amount as above set forth, and, no petition for referendum having been received, the Council is therefore now authorized to proceed with the issuance thereof; and

WHEREAS, pursuant to Section 384.28 of the City Code of Iowa, it is deemed appropriate that the various General Obligation Bonds, Series 2009B, authorized as hereinabove described shall be combined for the purpose of issuance in a single issue of Corporate Purpose General Obligation Bonds, Series 2009B, as hereinafter set forth; and

WHEREAS, the Council has received information from its Financial Consultant evaluating and recommending the procedure hereinafter described for electronic, facsimile and internet bidding to maintain the integrity and security of the competitive bidding process and to facilitate the delivery of bids by interested parties; and

WHEREAS, the Council deems it in the best interests of the City and the residents thereof to receive bids to purchase such Bonds by means of both sealed and electronic internet communication.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA:

Section 1. That the receipt of electronic bids by facsimile machine and through the Parity Competitive Bidding System described in the Notice of Sale are hereby found and determined to provide reasonable security and to maintain the integrity of the competitive bidding process, and to facilitate the delivery of bids by interested parties in connection with the offering at public sale.

Section 2. That the City Clerk is hereby directed to publish notice of sale of said bonds at least once, the last one of which shall be not less than four clear days nor more than twenty days before the date of the sale. Publication shall be made in the "Daily Nonpareil", a legal newspaper, printed wholly in the English language, published within the county in which the bonds are to be offered for sale or an adjacent county. Said notice is given pursuant to Chapter 75 of the Code of Iowa, and shall state that this Council, on the 11th day of May, 2009, at 7:00 o'clock P.M., will hold a meeting to act upon bids for said bonds, which bids were previously received and opened by City Officials at 11:00 o'clock A.M. on said date. The notice shall be in substantially the following form:

PASSED AND APPROVED this 27th day of April, 2009.

_____

Mayor

ATTEST:

_____

Clerk

Council Communication

Department: Legal Case/Project No. Applicant.	Resolution No. 09-113	First Reading Second Reading Third Reading _____

Subject/Title

A RESOLUTION authorizing the Mayor to execute an Order Accepting the Acknowledgement/ Settlement Agreement from Andrews Lounge, Inc., 1210 North 25th Street, for a violation of Iowa Code Section 453A.2(1).

Background/Discussion

A compliance check on or about January 28, 2009, resulted in a citation being issued to an employee of Andrews Lounge for providing tobacco to a minor. The necessary steps have been taken to pursue the civil penalty against the permittee. Andrews Lounge has submitted the executed Acknowledgement/ Settlement Agreement and paid the $300 civil penalty. A resolution has been prepared authorizing the Mayor to execute the Order to Accept the Acknowledgement/Settlement Agreement from Andrews Lounge.

Recommendation

Authorize the Mayor to execute the Order Accepting the Acknowledgement/Settlement Agreement from Andrews Lounge, 1210 North 25th Street, for a first violation of the State's tobacco laws.

Submitted by: Don Bauermeister
Asst. City Attorney

_____
Mayor Signature

RESOLUTION NO. 09-113

A RESOLUTION authorizing the Mayor to execute an Order Accepting the Acknowledgement/ Settlement Agreement from Andrews Lounge, Inc., 1210 North 25th Street, Council Bluffs, IA 51501, for a violation of Iowa Code Section 453A.2(1).

WHEREAS, the State of Iowa has enacted a comprehensive program aimed at reducing underage tobacco use; and

WHEREAS, compliance checks in Council Bluffs resulted in a citation being issued to an employee of Andrews Lounge, 1210 North 25th Street, on or about January 28, 2009; and

WHEREAS, the mandatory civil penalty has been paid, and it is in the best interest of the City to execute an Order accepting the Acknowledgement/Settlement Agreement from the above business for this violation.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor is hereby authorized to execute the Order Accepting the Acknowledgement/ Settlement Agreement from Andrews Lounge, 1210 North 25th Street, for a violation of Iowa Code Section 453A.2.

ADOPTED
AND _____, 2009
APPROVED

_____
THOMAS P. HANAFAN Mayor

Attest: _____
JUDITH RIDGELEY City Clerk

BEFORE THE CITY COUNCIL
FOR THE CITY OF COUNCIL BLUFFS, IOWA

IN RE:

Andrews Lounge
1210 North 25th Street
Council Bluffs, IA 51501

ORDER ACCEPTING ACKNOWLEDGEMENT/SETTLEMENT AGREEMENT

ON this _____ day of _____, 2009, in lieu of a public hearing on the matter, the City Council approves the attached Acknowledgement/Settlement Agreement between the above-captioned permittee and the City of Council Bluffs, Iowa.

THEREFORE, the City Council for the City of Council Bluffs, Iowa, FINDS that the above-captioned permittee has remitted to the City of Council Bluffs, Iowa, a civil penalty in the amount of three hundred dollars ($300.00). Be advised that this sanction will count as a first violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(a).

IT IS THEREFORE ORDERED that the judgment in this matter is hereby satisfied.

THOMAS P. HANAFAN Mayor

Attest:

JUDITH RIDGELEY City Clerk

COUNCIL COMMUNICATION

Department: Public Works | Ordinance No._____ | First Reading April 27, 2009
Case/Project No.: FY10-16 | Resolution No._____
Applicant: Ron Neal, P. E., City Engineer

SUBJECT/TITLE

Consideration of a resolution authorizing the Mayor to execute an agreement with Iowa Department of Transportation for Federal Highway Stimulus Funds. IDOT Project #ESL-1642(658)—7S-78 for the So. 35th Street Restoration. City Project #10-16.

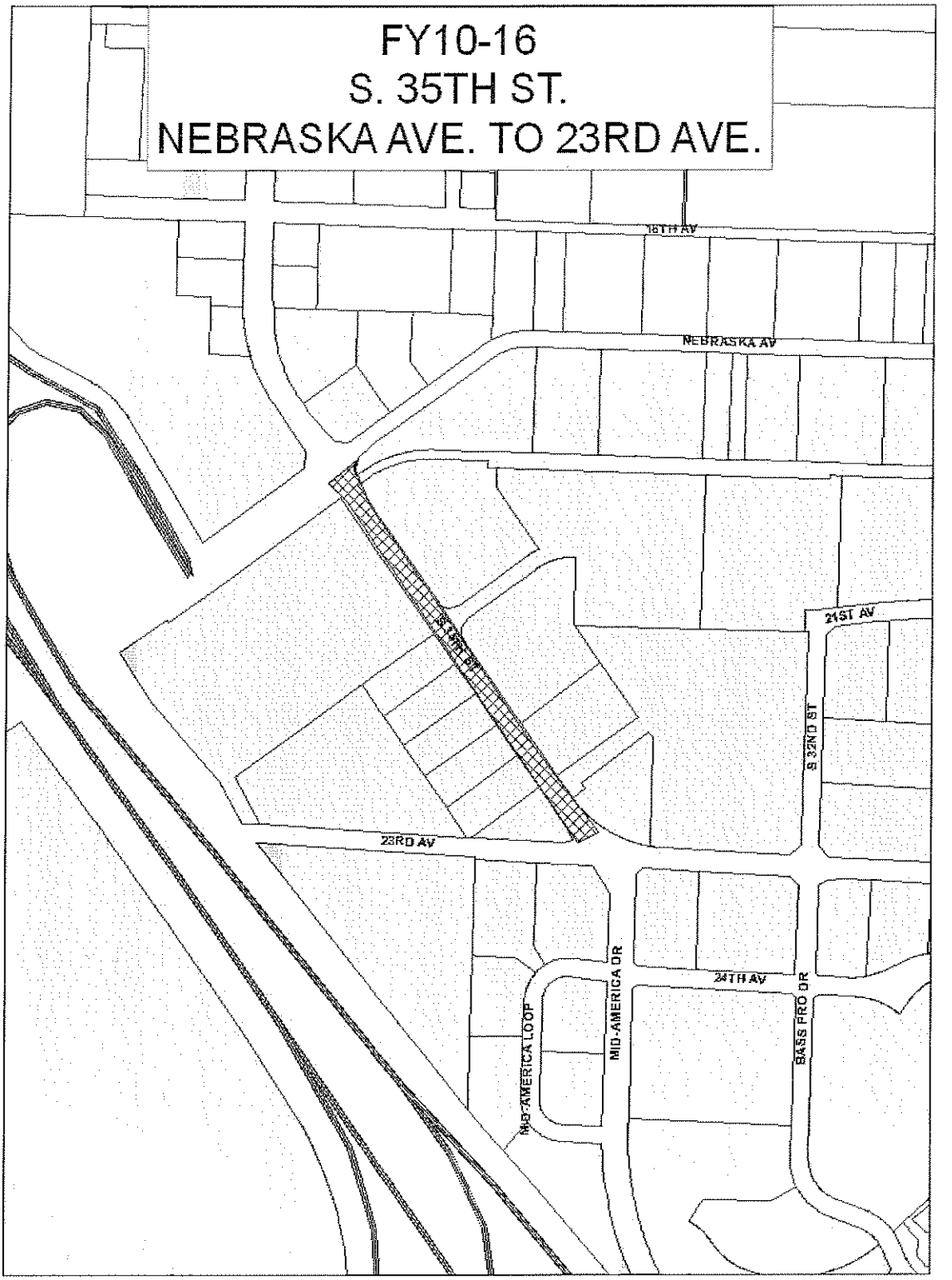
BACKGROUND/DISCUSSION

- So. 35th Street between Nebraska Avenue and 23th Avenue was constructed in 1987.
- Present day average annual daily traffic (AADT) volume is approximately 16,000 vehicles.
- The roadway is four lane divided, Portland cement concrete.
- This section of So. 35th Street is on the direct connection between I-29 and the MAC/Bass Pro/Casino complex area which is experiencing continued development with other service orientated businesses.
- The roadway is showing signs of isolated distress and is in need of some panel replacement, full depth partial patches, crack routing and sealing and surface diamond grading. These improvements should provide an additional 15 to 20 years of service.
- The project will be phased to maintain one lane of traffic in each direction during construction.
- Estimated construction cost of this project is $478,000. The project would be funded with federal stimulus funds in the amount of $478,000. The cost of engineering is $41,185.00 and will be a local expense to be paid from sales tax.
- This project will be added as project FY10-16 in the CIP and will be constructed when funding becomes available.
- The tentative schedule is as follows:

Set Public Hearing	June 8, 2009
Hold Public Hearing	June 22, 2009
IDOT Letting	July 21, 2009
Award	July 27, 2009

RECOMMENDATION
Approval of this resolution.

Greg Reeder, Public Works Director


FY10-16
S. 35TH ST.
NEBRASKA AVE. TO 23RD AVE.
18TH AV
NEBRASKA AV
21ST AV
S 32ND ST
23RD AV
24TH AV
MID-AMERICA DR
MID-AMERICA LOOP
BASS PRO DR

RESOLUTION
NO 09-114

RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH IDOT FOR FEDERAL HIGHWAY STIMULUS FUNDS AGREEMENT #ESL-1642(658)--7S-78 IN CONNECTION WITH THE SO. 35TH STREET RESTORATION FY10-16

WHEREAS, the city wishes to make improvements known as the So. 35th Street Restoration, within the city, as therein described; and

WHEREAS, IDOT. has submitted an agreement to provide Federal Highway Stimulus Funds for the work necessary for said improvements; and

WHEREAS, the city council deems approval of said agreement to be in the best interest of the City of Council Bluffs.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Clerk are hereby authorized and directed to execute an agreement with IDOT for Federal Highway Stimulus Funds relative to the So. 35th Street Restoration.

ADOPTED
AND
APPROVED_____, 2009

_____
Thomas P. Hanafan, Mayor

ATTEST: _____
Judith Ridgeley, City Clerk

March 2009

IOWA DEPARTMENT OF TRANSPORTATION
Agreement for a Federal Highway Stimulus Program Project

Recipient: City of Council Bluffs

Project No.: ESL-1642(658)--7S-78

Iowa DOT Agreement No.: 04-09-ESP-013

This is an agreement between the City of Council Bluffs, Iowa (hereinafter referred to as the Recipient) and the Iowa Department of Transportation (hereinafter referred to as the Department). Iowa Code Sections 306A.7 and 307.44 provide for the Recipient and the Department to enter into agreements with each other for the purpose of financing transportation improvement projects on streets and highways in Iowa with Federal funds. Federal regulations require Federal funds to be administered by the Department.

Title XII of Division A of the American Recovery and Reinvestment Act (ARRA) of 2009 provided Federal funds for a Highway Infrastructure Investment program, referred to hereinafter as "Federal stimulus funds." These funds may be used for any projects as specified by Section 133(b) of Title 23, United States Code (U.S.C.). This includes highway construction, reconstruction, rehabilitation, resurfacing, and restoration projects. It also includes transportation enhancements, operational or safety improvement projects on highways, bridges on any public road, and any other projects or activities as specified in 23 U.S.C. 133(b). Projects may not be located on roads classified as local or rural minor collector on the Federal Functional Classification system, except for transportation enhancement activities or as otherwise provided for in 23 U.S.C. 133(c).

Pursuant to the terms of this agreement, applicable statutes, and administrative rules, the Department agrees to provide Federal stimulus funding to the Recipient for the authorized and approved costs for eligible items associated with the project.

Under this agreement, the parties further agree as follows:

1. The Recipient shall be the lead local governmental agency for carrying out the provisions of this agreement.

2. All notices required under this agreement shall be made in writing to the appropriate contact person. The Department's contact person will be the District 4 Local Systems Engineer. The Recipient's contact person shall be the City Engineer.

3. The Recipient shall be responsible for the development and completion of the following project:

   Transverse Joint Repair on 35th St. from Nebraska Avenue to 23rd Avenue

4. The Recipient shall receive reimbursement for costs of authorized and approved eligible project activities from Federal stimulus funds. The portion of the project costs reimbursed by Federal stimulus funds shall be limited to a maximum of either 100 percent of eligible costs or the amount stipulated in the approved Statewide Transportation Improvement Program (STIP), whichever is less.

5. Due to the size, scope, and special purposes of the ARRA legislation, several special requirements will apply to this project, in addition to those required by Title 23 United States Code and its implementing regulations, as outlined in Exhibit 1. These special requirements include, but may not be limited to, the following:

   a. All construction contracts shall be let through the Department's competitive bidding process.

   b. The project construction must be let for bids no later than January 20, 2010.

   c. Once obligated, the Federal stimulus funds for this project will remain available for reimbursement of eligible project expenditures until September 30, 2015. After this date any remaining balance of obligated funds will be withdrawn and no additional reimbursements will be made from Federal stimulus funds.

   d. The Department will prepare and submit reports to the Federal Highway Administration (FHWA) for all projects that receive Federal stimulus funding. The Recipient shall provide data as required to the Department in order to meet these reporting requirements.

e. The mayor, chairperson of the Board of Supervisors, or other chief executive of the Recipient shall sign the certification attached as Exhibit 2.

6. If any part of this agreement is found to be void and unenforceable, the remaining provisions of this agreement shall remain in effect.

7. It is the intent of both parties that no third party beneficiaries be created by this agreement.

8. This agreement shall be executed and delivered in two or more copies, each of which so executed and delivered shall be deemed to be an original and shall constitute but one and the same agreement.

9. This agreement and the attached Exhibits constitute the entire agreement between the Department and the Recipient concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement shall be made in the form of an addendum to this agreement. The addendum shall become effective only upon written approval of the Department and the Recipient.

IN WITNESS WHEREOF, each of the parties hereto has executed this agreement as of the date shown opposite its signature below.

For City Recipients Only

By_____ Date _____, 20_____

_____
Title of city official

I,_____, certify that I am the City Clerk of Council Bluffs, and that_____, who signed said Agreement for and on behalf of the city was duly authorized to execute the same by virtue of a formal resolution duly passed and adopted by the city on the _____ day of _____, 20_____.

Signed_____ Date _____, 20_____

City Clerk of Council Bluffs, Iowa

For County Recipients Only

This agreement was approved by official action of the County Board of Supervisors in official session on the _____day of _____, 20_____.

_____ _____
County Auditor Chair, County Board of Supervisors

For the Iowa Department of Transportation
Highway Division

By_____ Date _____, 20_____
Vincent L. Ehlert, P.E.
Local Systems Engineer
District 4

EXHIBIT 1
General Agreement Provisions for use of Federal Highway Funds on Non-primary Highways

1. **General Requirements.**

   a. The Recipient shall take the necessary actions to comply with applicable State and Federal laws and regulations. To assist the Recipient, the Department has provided guidance in the Federal-aid Project Development Guide (Guide) and the Instructional Memorandums to Local Public Agencies (I.M.s) that are referenced by the Guide. Both are available on-line at: http://www.iowadot.gov/local_systems/publications/im/lpa_ims.htm. The Recipient shall follow the applicable procedures and guidelines contained in the Guide and I.M.s in effect at the time project activities are conducted.

   b. In accordance with Title VI of the Civil Rights Act of 1964 and associated subsequent nondiscrimination laws, regulations, and executive orders, the Recipient shall not discriminate against any person on the basis of race, color, national origin, sex, age, or disability. In accordance with Iowa Code Chapter 216, the Recipient shall not discriminate against any person on the basis of race, color, creed, age, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability.

   c. The Recipient shall comply with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the associated Federal regulations that implement these laws. When pedestrian facilities are constructed, reconstructed, or altered, the Recipient shall make such facilities compliant with the ADA and Section 504. Pedestrian facilities include facilities that are designed for pedestrian use, such as pedestrian signals and push buttons, sidewalks, multi-use trails, curb ramps, and the street surface in the pedestrian crossing area. Alterations are changes to the structure, grade, function, or use of the pedestrian facility, and include such activities as: full depth pavement replacement, widening, resurfacing, signal installation, pedestrian signal installation, and other projects of similar scale and effect. In addition, by signing this agreement, if the Recipient has 50 or more employees, it certifies one of the following: it has provided ADA compliant curb ramps at all intersections of sidewalks with public streets under its jurisdiction; it has a transition plan that meets the requirements of 28 CFR 35.150(d), including provisions for installation of curb ramps at all intersections of sidewalks with public streets under its jurisdiction; or it is working to develop such a transition plan. If the Recipient does not have a transition plan or its transition plan does not include curb ramps, the Recipient shall prepare or modify its transition plan to include curb ramps in accordance with I.M. 1.080, ADA Requirements.

   d. The Recipient agrees to indemnify, defend, and hold the Department harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection, or use of this project. This agreement to indemnify, defend, and hold harmless applies to all aspects of the Department's application review and approval process, plan and construction reviews, and funding participation.

   e. In case of dispute concerning the terms of this agreement, the parties shall submit the matter to arbitration pursuant to Iowa Code Chapter 679A. Either party has the right to submit the matter to arbitration after 10 days notice to the other party of their intent to seek arbitration. The written notice shall include a precise statement of the dispute. The Department and the Recipient agree to be bound by the decision of the appointed arbitrator. Neither party may seek any remedy with the State or Federal courts absent exhaustion of the provisions of this paragraph

   f. The Office of Management and Budget (OMB) Circular A-133 requires the Department to inform the Recipient of the appropriate Catalog of Federal Domestic Assistance (CFDA) number and title to be used on the Schedule of Expenditures of Federal Awards (SEFA) that is required by OMB Circular A-133. CFDA #20.205 and title, "Highway Planning and Construction" shall be used for the Federal funds awarded for this project. If the Recipient will pay initial project costs and request reimbursement from the Department, the Recipient shall report this project on its SEFA. If the Department will pay initial project costs and then credit those accounts from which initial costs were paid, the Department will report this project on its SEFA. In this case, the Recipient shall not report this project on its SEFA.

2. **Federal Authorization.**

   a. The Recipient shall be responsible for including the project in the appropriate Regional Planning Affiliation (RPA) or Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP). The Recipient shall also ensure that the appropriate RPA or MPO, through their TIP submittal to the Department,

includes the project in the Statewide Transportation Improvement Program (STIP). If the project is not included in the appropriate fiscal year of the STIP, Federal funds cannot be authorized.

b. Before beginning any work for which Federal funding reimbursement will be requested, the Recipient shall contact the Department to obtain the procedures necessary to secure FHWA authorization. The Recipient shall submit a written request for FHWA authorization to the Department. After reviewing the Recipient's request, the Department will forward the request to the FHWA for authorization and obligation of Federal funds. The Department will notify the Recipient when FHWA authorization is obtained. The cost of work performed prior to FHWA authorization will not be reimbursed with Federal funds.

3. In-House Services.

a. If Federal funding is requested for in-house services, the Recipient shall follow the procedure outlined in I.M. 3.310, Federal-aid Participation in In-House Services. If the Recipient desires to claim indirect costs under Federal awards, the Recipient shall prepare an indirect cost rate proposal and related documentation in accordance with the requirements of 2 CFR 225. Before incurring costs for in-house services, such an indirect cost rate proposal shall be certified by the FHWA or the Federal agency providing the largest amount of Federal funds to the Recipient.

4. Consultant Services

a. If the Recipient requests Federal funds for consultant services, the Recipient and the Consultant shall prepare a contract for consultant services in accordance with Title 23, Code of Federal Regulations, Part 172 - Administration of Negotiated Contracts (23 CFR 172). These regulations require a qualifications-based selection process. The Recipient shall follow the procedures for selecting and using consultants outlined in I.M. 3.305, Federal-aid Participation in Consultant Costs.

b. If preliminary engineering is Federally funded, and if the "do nothing" alternate is not selected, and if right-of-way acquisition for or actual construction of the road is not started by the close of the tenth fiscal year following the fiscal year in which the Federal funds were authorized, the Recipient shall repay to the Department an amount equal to the amount of Federal funds made available for such engineering.

5. Environmental Requirements and other Agreements or Permits.

a. The Recipient shall take the appropriate actions and prepare the necessary documents to fulfill the FHWA requirements for project environmental studies including historical/cultural reviews and location approval. The Recipient shall complete any mitigation agreed upon in the FHWA approval document.

b. If farmland is to be acquired, whether for use as project right-of-way or permanent easement, the Recipient shall submit the U.S. Department of Agriculture Farmland Conversion Impact Rating form, when required, to the U.S. Natural Resources Conservation Service (NRCS).

c. The Recipient shall obtain agreements, as needed, from railroad and utility companies; and shall obtain project permits and approvals, when necessary, from the Iowa Department of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers, the Department, etc.

d. The Recipient shall comply with the Policy for Accommodating Utilities on City and County Federal-aid Highway Right of Way, and the Policy for Accommodating Utilities on Primary Road System when on State's right of way. Certain utility relocation, alteration, adjustment, or removal costs to the Recipient for the project may be eligible for Federal funding reimbursement. If the Recipient desires Federal reimbursement of these costs, it shall submit a request for FHWA Authorization prior to beginning any utility relocation work, in accordance with the procedures outlined in I.M. 3.650, Federal-aid Participation in Utility Relocations

e. In all contracts entered into by the Recipient, and all subcontracts, in connection with this project that exceed $100,000, the Recipient shall comply with the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all their regulations and guidelines. In such contracts, the Recipient shall stipulate that any facility to be utilized in performance of or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities or is under consideration to be listed.

6. Right-of-Way.

a. The Recipient shall acquire the project right-of-way, whether by lease, easement, or fee title, and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in I.M. 3.605, Right-of-Way Acquisition, and the Department's Office of Right of Way Local Public Agency Manual. The Recipient shall contact the Department for assistance, as necessary, to ensure compliance with the required procedures, even if no Federal funds are used for right-of-way activities. The Recipient shall obtain environmental concurrence before acquiring any needed right-of-way. With prior approval, hardship and protective buying is possible. If the Recipient requests Federal funding for right-of-way acquisition, the Recipient shall also obtain FHWA authorization before purchasing any needed right-of-way.

b. If the project right-of-way is Federally funded and if the actual construction is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the Federal funds were authorized, the Recipient shall repay the sum or sums of Federal funds in the right-of-way to the Department.

7. Letting the Project.

a. The project plans, specifications, and project cost estimate (PS&E) shall be prepared and certified as appropriate by a Professional Engineer, Architect, or Landscape Architect licensed in the State of Iowa. The Recipient shall submit the plans, specifications, and other contract documents to the Department for review and approval to let the project.

b. The project shall be constructed under the Department's Standard Specifications for Highway and Bridge Construction. Prior to their use in the PS&E, specifications developed by the Recipient for individual construction items shall be approved by the Department.

c. The Recipient shall forward a completed Project Development Certification (Form 730002) and final PS&E to the Department. As a condition for the Department to let the project, the Recipient agrees that the Recipient has the financial resources to proceed with the project if bids submitted are 110% of the project cost estimate or less. If the Recipient is a city, the Recipient shall comply with the public hearing requirements of the Iowa Code section 26.12.

d. If the project is to be accomplished via a contract awarded by competitive bidding, the project will be let by the Department in accordance with its normal letting procedures. After bids are received and reviewed, the Department will furnish the Recipient with a tabulation of responsive bids.

e. When let by the Department, the Department will prepare an Iowa DOT Staff Action identifying the lowest responsive bidder. The Department will mail three originals of the unexecuted contract to the Recipient.

f. The Recipient shall take action to award a contract to the lowest responsive bidder or reject all bids. Following award of a contract, the Recipient shall forward to the Department two copies of the fully executed contract, two copies of the performance bond, and two copies of the certificate of insurance.

8. Construction.

a. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 761 IAC Chapter 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.

b. If Federal funding is requested for construction performed by local agency forces, the Recipient will follow the procedures outlined in I.M. 3.810, Federal-aid Construction by Local Agency Forces.

c. The Recipient shall comply with the procedures and responsibilities for materials testing according to the Department's Material I.M.s. The Department will bill the Recipient for testing services according to its normal policy. The Recipient should use the Department's Construction Manual as a guide for conducting other construction inspection activities.

9. Payments.

a. After costs have been incurred, the Recipient may submit to the Department periodic itemized claims for reimbursement for eligible project costs. Reimbursement claims shall include certification that all eligible project costs, for which reimbursement is requested, have been paid in full and completed in substantial compliance with the terms of this agreement.

b. The Department will reimburse the Recipient for properly documented and certified claims for eligible project costs, less a withholding of 5% of the Federal and / or State share of construction costs. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final audit or review, the Department determines the Recipient has been overpaid, the Recipient shall reimburse the overpaid amount to the Department. After the final audit or review is complete and after the Recipient has provided all required paperwork, the Department will release the Federal or State funds withheld.

c. The total funds collected by the Recipient for this project shall not exceed the total project costs. The total funds collected shall include any Federal or State funds received, and any special assessments made by the Recipient (exclusive of any associated interest or penalties), pursuant to Iowa Code Chapter 384 (cities) or Chapter 311 (counties). The total project costs shall include all costs that can be directly attributed to the project. In the event that the total funds collected by the Recipient does exceed the total project costs, the Recipient shall either:

1) refund to the assessed property owners the excess special assessments collected (including interest and penalties associated with the amount of the excess), or

2) refund to the Department all funds collected in excess of the total project costs (including interest and penalties associated with the amount of the excess) within 60 days of the receipt of any excess funds. In return, the Department will either credit reimbursement billings to the FHWA or credit the appropriate State fund account in the amount of refunds received from the Recipient.

10. Project Close-out.

a. Upon completion of the project, as appropriate, a Professional Engineer, Architect, or Landscape Architect, licensed in the State of Iowa shall certify in writing to the Department that the project was completed in substantial compliance with the plans and specifications set out in this agreement. Final reimbursement of Federal funds shall be made only after the Department accepts the project as complete.

b. The Recipient shall maintain all books, documents, papers, accounting records, reports, and other evidence pertaining to costs incurred for the project. The Recipient shall also make these materials available at all reasonable times for inspection by the Department, FHWA, or any authorized representatives of the Federal Government. Copies of these materials shall be furnished by the Recipient if requested. Such documents shall be retained for at least 3 years from the date of FHWA approval of the final amendment / modification to the project in the FHWA's Fiscal Management Information System (FMIS). Upon receipt of such approval by FHWA, the Department will notify the Recipient of the record retention date.

c. The Recipient shall maintain, or cause to be maintained, the completed improvement in a manner acceptable to the Department and the FHWA.

EXHIBIT 2

Recipient's Certification for Use of American Recovery and Reinvestment Act Funds

Agency Name: Council Bluffs, Iowa

Project Number: ESL-1642(658)–7S-78

Project Description: Transverse Joint Repair on 35th St. from Nebraska Avenue to 23rd Avenue

Estimated Total Cost: $478,000

Federal stimulus funds: $478,467

In accordance with the requirements of Section 1511 of Title XV of Division A of the American Recovery and Reinvestment Act of 2009, on behalf of the agency named above I hereby certify that the project described above has received the full review and vetting required by law and I accept responsibility that this investment is an appropriate use of taxpayer dollars.

Signature	Date
Printed name	Title of county or city official

March 2009

IOWA DEPARTMENT OF TRANSPORTATION
Agreement for a Federal Highway Stimulus Program Project

Recipient: City of Council Bluffs

Project No.: ESL-1642(658)–7S-78

Iowa DOT Agreement No.: 04-09-ESP-013

This is an agreement between the City of Council Bluffs, Iowa (hereinafter referred to as the Recipient) and the Iowa Department of Transportation (hereinafter referred to as the Department). Iowa Code Sections 306A.7 and 307.44 provide for the Recipient and the Department to enter into agreements with each other for the purpose of financing transportation improvement projects on streets and highways in Iowa with Federal funds. Federal regulations require Federal funds to be administered by the Department.

Title XII of Division A of the American Recovery and Reinvestment Act (ARRA) of 2009 provided Federal funds for a Highway Infrastructure Investment program, referred to hereinafter as "Federal stimulus funds." These funds may be used for any projects as specified by Section 133(b) of Title 23, United States Code (U.S.C.). This includes highway construction, reconstruction, rehabilitation, resurfacing, and restoration projects. It also includes transportation enhancements, operational or safety improvement projects on highways, bridges on any public road, and any other projects or activities as specified in 23 U.S.C. 133(b). Projects may not be located on roads classified as local or rural minor collector on the Federal Functional Classification system, except for transportation enhancement activities or as otherwise provided for in 23 U.S.C. 133(c).

Pursuant to the terms of this agreement, applicable statutes, and administrative rules, the Department agrees to provide Federal stimulus funding to the Recipient for the authorized and approved costs for eligible items associated with the project.

Under this agreement, the parties further agree as follows:

1. The Recipient shall be the lead local governmental agency for carrying out the provisions of this agreement.

2. All notices required under this agreement shall be made in writing to the appropriate contact person. The Department's contact person will be the District 4 Local Systems Engineer. The Recipient's contact person shall be the City Engineer.

3. The Recipient shall be responsible for the development and completion of the following project:

   Transverse Joint Repair on 35th St. from Nebraska Avenue to 23rd Avenue

4. The Recipient shall receive reimbursement for costs of authorized and approved eligible project activities from Federal stimulus funds. The portion of the project costs reimbursed by Federal stimulus funds shall be limited to a maximum of either 100 percent of eligible costs or the amount stipulated in the approved Statewide Transportation Improvement Program (STIP), whichever is less.

5. Due to the size, scope, and special purposes of the ARRA legislation, several special requirements will apply to this project, in addition to those required by Title 23 United States Code and its implementing regulations, as outlined in Exhibit 1. These special requirements include, but may not be limited to, the following:

   a. All construction contracts shall be let through the Department's competitive bidding process.

   b. The project construction must be let for bids no later than January 20, 2010.

   c. Once obligated, the Federal stimulus funds for this project will remain available for reimbursement of eligible project expenditures until September 30, 2015. After this date any remaining balance of obligated funds will be withdrawn and no additional reimbursements will be made from Federal stimulus funds.

   d. The Department will prepare and submit reports to the Federal Highway Administration (FHWA) for all projects that receive Federal stimulus funding. The Recipient shall provide data as required to the Department in order to meet these reporting requirements.

e. The mayor, chairperson of the Board of Supervisors, or other chief executive of the Recipient shall sign the certification attached as Exhibit 2.

6. If any part of this agreement is found to be void and unenforceable, the remaining provisions of this agreement shall remain in effect.

7. It is the intent of both parties that no third party beneficiaries be created by this agreement.

8. This agreement shall be executed and delivered in two or more copies, each of which so executed and delivered shall be deemed to be an original and shall constitute but one and the same agreement.

9. This agreement and the attached Exhibits constitute the entire agreement between the Department and the Recipient concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement shall be made in the form of an addendum to this agreement. The addendum shall become effective only upon written approval of the Department and the Recipient.

IN WITNESS WHEREOF, each of the parties hereto has executed this agreement as of the date shown opposite its signature below.

For City Recipients Only

By_____ Date _____, 20_____

_____
Title of city official

I,_____, certify that I am the City Clerk of Council Bluffs, and that_____, who signed said Agreement for and on behalf of the city was duly authorized to execute the same by virtue of a formal resolution duly passed and adopted by the city on the _____ day of _____, 20_____.

Signed_____ Date _____, 20_____

City Clerk of Council Bluffs, Iowa

For County Recipients Only

This agreement was approved by official action of the County Board of Supervisors in official session on the _____day of _____, 20_____.

_____ _____
County Auditor Chair, County Board of Supervisors

For the Iowa Department of Transportation
Highway Division

By_____ Date _____, 20_____
Vincent L. Ehlert, P.E.
Local Systems Engineer
District 4

EXHIBIT 1
General Agreement Provisions for use of Federal Highway Funds on Non-primary Highways

1. **General Requirements.**

   a. The Recipient shall take the necessary actions to comply with applicable State and Federal laws and regulations. To assist the Recipient, the Department has provided guidance in the Federal-aid Project Development Guide (Guide) and the Instructional Memorandums to Local Public Agencies (I.M.s) that are referenced by the Guide. Both are available on-line at: http://www.iowadot.gov/local_systems/publications/im/lpa_ims.htm. The Recipient shall follow the applicable procedures and guidelines contained in the Guide and I.M.s in effect at the time project activities are conducted.

   b. In accordance with Title VI of the Civil Rights Act of 1964 and associated subsequent nondiscrimination laws, regulations, and executive orders, the Recipient shall not discriminate against any person on the basis of race, color, national origin, sex, age, or disability. In accordance with Iowa Code Chapter 216, the Recipient shall not discriminate against any person on the basis of race, color, creed, age, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability.

   c. The Recipient shall comply with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the associated Federal regulations that implement these laws. When pedestrian facilities are constructed, reconstructed, or altered, the Recipient shall make such facilities compliant with the ADA and Section 504. Pedestrian facilities include facilities that are designed for pedestrian use, such as pedestrian signals and push buttons, sidewalks, multi-use trails, curb ramps, and the street surface in the pedestrian crossing area. Alterations are changes to the structure, grade, function, or use of the pedestrian facility, and include such activities as: full depth pavement replacement, widening, resurfacing, signal installation, pedestrian signal installation, and other projects of similar scale and effect. In addition, by signing this agreement, if the Recipient has 50 or more employees, it certifies one of the following: it has provided ADA compliant curb ramps at all intersections of sidewalks with public streets under its jurisdiction; it has a transition plan that meets the requirements of 28 CFR 35.150(d), including provisions for installation of curb ramps at all intersections of sidewalks with public streets under its jurisdiction; or it is working to develop such a transition plan. If the Recipient does not have a transition plan or its transition plan does not include curb ramps, the Recipient shall prepare or modify its transition plan to include curb ramps in accordance with I.M. 1.080, ADA Requirements.

   d. The Recipient agrees to indemnify, defend, and hold the Department harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection, or use of this project. This agreement to indemnify, defend, and hold harmless applies to all aspects of the Department's application review and approval process, plan and construction reviews, and funding participation.

   e. In case of dispute concerning the terms of this agreement, the parties shall submit the matter to arbitration pursuant to Iowa Code Chapter 679A. Either party has the right to submit the matter to arbitration after 10 days notice to the other party of their intent to seek arbitration. The written notice shall include a precise statement of the dispute. The Department and the Recipient agree to be bound by the decision of the appointed arbitrator. Neither party may seek any remedy with the State or Federal courts absent exhaustion of the provisions of this paragraph

   f. The Office of Management and Budget (OMB) Circular A-133 requires the Department to inform the Recipient of the appropriate Catalog of Federal Domestic Assistance (CFDA) number and title to be used on the Schedule of Expenditures of Federal Awards (SEFA) that is required by OMB Circular A-133. CFDA #20.205 and title, "Highway Planning and Construction" shall be used for the Federal funds awarded for this project. If the Recipient will pay initial project costs and request reimbursement from the Department, the Recipient shall report this project on its SEFA. If the Department will pay initial project costs and then credit those accounts from which initial costs were paid, the Department will report this project on its SEFA. In this case, the Recipient shall not report this project on its SEFA.

2. **Federal Authorization.**

   a. The Recipient shall be responsible for including the project in the appropriate Regional Planning Affiliation (RPA) or Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP). The Recipient shall also ensure that the appropriate RPA or MPO, through their TIP submittal to the Department,

includes the project in the Statewide Transportation Improvement Program (STIP). If the project is not included in the appropriate fiscal year of the STIP, Federal funds cannot be authorized.

b. Before beginning any work for which Federal funding reimbursement will be requested, the Recipient shall contact the Department to obtain the procedures necessary to secure FHWA authorization. The Recipient shall submit a written request for FHWA authorization to the Department. After reviewing the Recipient's request, the Department will forward the request to the FHWA for authorization and obligation of Federal funds. The Department will notify the Recipient when FHWA authorization is obtained. The cost of work performed prior to FHWA authorization will not be reimbursed with Federal funds.

3. In-House Services.

a. If Federal funding is requested for in-house services, the Recipient shall follow the procedure outlined in I.M. 3.310, Federal-aid Participation in In-House Services. If the Recipient desires to claim indirect costs under Federal awards, the Recipient shall prepare an indirect cost rate proposal and related documentation in accordance with the requirements of 2 CFR 225. Before incurring costs for in-house services, such an indirect cost rate proposal shall be certified by the FHWA or the Federal agency providing the largest amount of Federal funds to the Recipient.

4. Consultant Services

a. If the Recipient requests Federal funds for consultant services, the Recipient and the Consultant shall prepare a contract for consultant services in accordance with Title 23, Code of Federal Regulations, Part 172 - Administration of Negotiated Contracts (23 CFR 172). These regulations require a qualifications-based selection process. The Recipient shall follow the procedures for selecting and using consultants outlined in I.M. 3.305, Federal-aid Participation in Consultant Costs.

b. If preliminary engineering is Federally funded, and if the "do nothing" alternate is not selected, and if right-of-way acquisition for or actual construction of the road is not started by the close of the tenth fiscal year following the fiscal year in which the Federal funds were authorized, the Recipient shall repay to the Department an amount equal to the amount of Federal funds made available for such engineering.

5. Environmental Requirements and other Agreements or Permits.

a. The Recipient shall take the appropriate actions and prepare the necessary documents to fulfill the FHWA requirements for project environmental studies including historical/cultural reviews and location approval. The Recipient shall complete any mitigation agreed upon in the FHWA approval document.

b. If farmland is to be acquired, whether for use as project right-of-way or permanent easement, the Recipient shall submit the U.S. Department of Agriculture Farmland Conversion Impact Rating form, when required, to the U.S. Natural Resources Conservation Service (NRCS).

c. The Recipient shall obtain agreements, as needed, from railroad and utility companies; and shall obtain project permits and approvals, when necessary, from the Iowa Department of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers, the Department, etc.

d. The Recipient shall comply with the Policy for Accommodating Utilities on City and County Federal-aid Highway Right of Way, and the Policy for Accommodating Utilities on Primary Road System when on State's right of way. Certain utility relocation, alteration, adjustment, or removal costs to the Recipient for the project may be eligible for Federal funding reimbursement. If the Recipient desires Federal reimbursement of these costs, it shall submit a request for FHWA Authorization prior to beginning any utility relocation work, in accordance with the procedures outlined in I.M. 3.650, Federal-aid Participation in Utility Relocations

e. In all contracts entered into by the Recipient, and all subcontracts, in connection with this project that exceed $100,000, the Recipient shall comply with the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all their regulations and guidelines. In such contracts, the Recipient shall stipulate that any facility to be utilized in performance of or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities or is under consideration to be listed.

6. Right-of-Way.

a. The Recipient shall acquire the project right-of-way, whether by lease, easement, or fee title, and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in I.M. 3.605, Right-of-Way Acquisition, and the Department's Office of Right of Way Local Public Agency Manual. The Recipient shall contact the Department for assistance, as necessary, to ensure compliance with the required procedures, even if no Federal funds are used for right-of-way activities. The Recipient shall obtain environmental concurrence before acquiring any needed right-of-way. With prior approval, hardship and protective buying is possible. If the Recipient requests Federal funding for right-of-way acquisition, the Recipient shall also obtain FHWA authorization before purchasing any needed right-of-way.

b. If the project right-of-way is Federally funded and if the actual construction is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the Federal funds were authorized, the Recipient shall repay the sum or sums of Federal funds in the right-of-way to the Department.

7. Letting the Project.

a. The project plans, specifications, and project cost estimate (PS&E) shall be prepared and certified as appropriate by a Professional Engineer, Architect, or Landscape Architect licensed in the State of Iowa. The Recipient shall submit the plans, specifications, and other contract documents to the Department for review and approval to let the project.

b. The project shall be constructed under the Department's Standard Specifications for Highway and Bridge Construction. Prior to their use in the PS&E, specifications developed by the Recipient for individual construction items shall be approved by the Department.

c. The Recipient shall forward a completed Project Development Certification (Form 730002) and final PS&E to the Department. As a condition for the Department to let the project, the Recipient agrees that the Recipient has the financial resources to proceed with the project if bids submitted are 110% of the project cost estimate or less. If the Recipient is a city, the Recipient shall comply with the public hearing requirements of the Iowa Code section 26.12.

d. If the project is to be accomplished via a contract awarded by competitive bidding, the project will be let by the Department in accordance with its normal letting procedures. After bids are received and reviewed, the Department will furnish the Recipient with a tabulation of responsive bids.

e. When let by the Department, the Department will prepare an Iowa DOT Staff Action identifying the lowest responsive bidder. The Department will mail three originals of the unexecuted contract to the Recipient.

f. The Recipient shall take action to award a contract to the lowest responsive bidder or reject all bids. Following award of a contract, the Recipient shall forward to the Department two copies of the fully executed contract, two copies of the performance bond, and two copies of the certificate of insurance.

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a. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 761 IAC Chapter 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.

b. If Federal funding is requested for construction performed by local agency forces, the Recipient will follow the procedures outlined in I.M. 3.810, Federal-aid Construction by Local Agency Forces.

c. The Recipient shall comply with the procedures and responsibilities for materials testing according to the Department's Material I.M.s. The Department will bill the Recipient for testing services according to its normal policy. The Recipient should use the Department's Construction Manual as a guide for conducting other construction inspection activities.

9. Payments.

a. After costs have been incurred, the Recipient may submit to the Department periodic itemized claims for reimbursement for eligible project costs. Reimbursement claims shall include certification that all eligible project costs, for which reimbursement is requested, have been paid in full and completed in substantial compliance with the terms of this agreement.

b. The Department will reimburse the Recipient for properly documented and certified claims for eligible project costs, less a withholding of 5% of the Federal and / or State share of construction costs. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final audit or review, the Department determines the Recipient has been overpaid, the Recipient shall reimburse the overpaid amount to the Department. After the final audit or review is complete and after the Recipient has provided all required paperwork, the Department will release the Federal or State funds withheld.

c. The total funds collected by the Recipient for this project shall not exceed the total project costs. The total funds collected shall include any Federal or State funds received, and any special assessments made by the Recipient (exclusive of any associated interest or penalties), pursuant to Iowa Code Chapter 384 (cities) or Chapter 311 (counties). The total project costs shall include all costs that can be directly attributed to the project. In the event that the total funds collected by the Recipient does exceed the total project costs, the Recipient shall either:

1) refund to the assessed property owners the excess special assessments collected (including interest and penalties associated with the amount of the excess), or

2) refund to the Department all funds collected in excess of the total project costs (including interest and penalties associated with the amount of the excess) within 60 days of the receipt of any excess funds. In return, the Department will either credit reimbursement billings to the FHWA or credit the appropriate State fund account in the amount of refunds received from the Recipient.

10. Project Close-out.

a. Upon completion of the project, as appropriate, a Professional Engineer, Architect, or Landscape Architect, licensed in the State of Iowa shall certify in writing to the Department that the project was completed in substantial compliance with the plans and specifications set out in this agreement. Final reimbursement of Federal funds shall be made only after the Department accepts the project as complete.

b. The Recipient shall maintain all books, documents, papers, accounting records, reports, and other evidence pertaining to costs incurred for the project. The Recipient shall also make these materials available at all reasonable times for inspection by the Department, FHWA, or any authorized representatives of the Federal Government. Copies of these materials shall be furnished by the Recipient if requested. Such documents shall be retained for at least 3 years from the date of FHWA approval of the final amendment / modification to the project in the FHWA's Fiscal Management Information System (FMIS). Upon receipt of such approval by FHWA, the Department will notify the Recipient of the record retention date.

c. The Recipient shall maintain, or cause to be maintained, the completed improvement in a manner acceptable to the Department and the FHWA.

EXHIBIT 2

Recipient's Certification for Use of American Recovery and Reinvestment Act Funds

Agency Name: Council Bluffs, Iowa

Project Number: ESL-1642(658)–7S-78

Project Description: Transverse Joint Repair on 35th St. from Nebraska Avenue to 23rd Avenue

Estimated Total Cost: $478,000

Federal stimulus funds: $478,467

In accordance with the requirements of Section 1511 of Title XV of Division A of the American Recovery and Reinvestment Act of 2009, on behalf of the agency named above I hereby certify that the project described above has received the full review and vetting required by law and I accept responsibility that this investment is an appropriate use of taxpayer dollars.

Signature	Date
Printed name	Title of county or city official

RESOLUTION NO. 09-115

A RESOLUTION authorizing the Mayor to adopt the Council Bluffs Pre-Disaster Mitigation Plan.

WHEREAS, the Metropolitan Area Planning Agency (MAPA), in conjunction with the Pottawattamie County Emergency Management Agency and the Council Bluffs Pre-Disaster Mitigation Planning Committee have prepared an update of the Council Bluffs Pre-Disaster Mitigation Plan, originally adopted in 2003; and

WHEREAS, the Disaster Mitigation Act of 2000 requires communities to adopt a pre-disaster mitigation plan, and mitigation activities must be identified in the Plan to be eligible for most Federal Emergency Management Agency (FEMA) funding programs; and

WHEREAS, the Planning Commission concurs with the Community Development Department recommendation to approve the Council Bluffs Pre-Disaster Mitigation Plan, as presented.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized to adopt the Council Bluffs Pre-Disaster Mitigation Plan.

ADOPTED
AND _____, 2009
APPROVED

_____
THOMAS P. HANAFAN Mayor

Attest: _____
JUDITH RIDGELEY City Clerk

MIS-09-001

Council Communication

Department: Community Development Case No. MIS-09-001 Applicant: City of Council Bluffs	Resolution No. _____	City Council: 4/27/09 Planning Commission: 4/14/09

Subject/Title

Adopt the Council Bluffs Pre-Disaster Mitigation Plan

Background/Discussion

The Metropolitan Area Planning Agency (MAPA), in conjunction with the Pottawattamie County Emergency Management Agency and the Council Bluffs Pre-Disaster Mitigation Planning Committee prepared an update of the *Council Bluffs Pre-Disaster Mitigation Plan,* originally adopted in 2003. The Disaster Mitigation Act of 2000 requires communities to adopt a pre-disaster mitigation plan. Mitigation activities must be identified within the Plan to be eligible for most Federal Emergency Management Agency (FEMA) funding programs. The plan update includes review worksheets and other tools to evaluate the goals and activities on an annual basis.

Pre-disaster mitigation is 'any action taken to permanently eliminate or reduce the long-term risk to human life and property from natural and man-made hazards'. This plan identified 37 hazards, set goals to address hazard reduction and developed strategies to minimize the impact of the hazards on the community. A hazard profile was developed for each and then each hazard was ranked according to the following criteria: historical occurrence, probability of occurrence, vulnerability, maximum geographic extent, speed of onset and severity of impact. Each hazard was ranked and placed in one of three priority groups. Current hazard mitigation activities for both the City and joint efforts with the County are listed.

Recommendation

The Community Development Department recommends approval of the *Council Bluffs Pre-Disaster Mitigation Plan,* as presented.

Public Hearing

Lynn Dittmer, MAPA appeared before the Planning Commission in favor of the request. No one appeared in opposition.

Planning Commission Recommendation

The Planning Commission recommends approval of the *Council Bluffs Pre-Disaster Mitigation Plan,* as presented.

VOTE: AYE 7 NAY 0 ABSTAIN 0 ABSENT 3 VACANT 1 Motion: Carried

Attachment: The plan document has been sent electronically by email to all Commissioners. For a print copy, please contact the Community Development Department at (712) 328-4629.

Report prepared by: Rose E. Brown, Urban Planner

Plan document prepared by: Metropolitan Area Planning Agency

FOX engineering

1601 Golden Aspen Drive • Suite 103 • Ames, Iowa 50010 • 800.433.3469 • www.foxeng.com

AGREEMENT FOR ENGINEERING SERVICES

April 16, 2009

Gregory Reeder
Public Works Director
City of Council Bluffs
209 Pearl Street
Council Bluffs, IA 51503

Re: **Digester Complex Equipment Upgrade**
WPCP Council Bluffs, Iowa
FOX PN: 2437-09B

Dear Greg:

In response to your request, we are pleased to submit this proposal /agreement for your consideration. FOX Engineering Associates, Inc. proposes to provide professional engineering services associated with the design, bidding, and construction of the Digester Complex Equipment Upgrade at the WPCP, hereinafter referred to as the Project. The project will be initiated with the design services as indicated below to obtain a construction permit from the IDNR.

Scope of Services

Most of the equipment in the digester complex at the WPCP has been in service for over 35 years and is in need of repair or replacement. The project scope includes the following items:

1. Repair of the two secondary digester floating covers including patching leaks, coating, insulation, and roofing. Some minor concrete repair inside the digester tanks is also anticipated. Replacement of some piping will also be required.

2. Replacement of the two sludge heaters for the digesters. This will include investigation of various heater types and arrangements for reuse of the digester gas. This will also require some pump and piping replacement.

3. Replacement of the original motor control center in the digester complex with new equipment. Some revision to the controls will also be required. It is anticipated that the new MCC will be installed in the same location.

4. Replacement of deteriorated digester gas piping and gas safety equipment. This will also include some instrumentation for operation of the digester gas system.

We propose to provide the engineering services for the Project in the following phases:

- Preliminary Design Phase
- Final Design Phase
- Bidding Phase
- Construction Phase
- Operation Phase

The scope of service for each phase is described in detail in the attached General Conditions of this Agreement and Attachment A. It is proposed that the preliminary design phase be initiated for the project, with final design, bidding, construction, and operational phases being authorized as the previous phase is completed.

Fees and Schedule

The engineering fees for the Project will be as follows:

• Preliminary Design Phase	$ 45,000.00 (fixed fee)
• Final Design Phase	$ 64,800.00 (fixed fee)
• Bidding Phase	$ 14,700.00 (fixed fee)
• Construction Phase	$ 74,000.00 (fixed fee)
• Operation Phase	$ 24,000.00 (hourly, estimated)

The fees will be billed monthly based on our determination of the percent completed. The work will begin on the Preliminary Design Phase immediately upon receipt of an executed contract. The completion of the Preliminary Design Phase will be by August 31, 2009 with submittal of a Preliminary Design Memorandum to the IDNR for review. It is anticipated that Final Design will be completed by October 31, 2009 with bidding and construction following in 2010.

If there are protracted delays for reasons beyond our control, we would expect to negotiate with you an equitable adjustment of the fees and schedule, taking into consideration the impact of such delay.

You will need to make available to us all pertinent existing data as well as full information as to your requirements, including any special or extraordinary services.

The Agreement and the General Terms and Conditions consisting of eighteen (18) pages, and Exhibits A, C, G, and I, represent the entire understanding between the City of Council Bluffs, Iowa, and FOX Engineering Associates, Inc. in respect to the Project, and may only be modified in writing signed by both parties. If this Agreement satisfactorily sets forth your understanding of the Project, our services, and your responsibilities, please execute each of two (2) copies in the space provided below and return one (1) copy to us as notice to proceed. This Agreement is offered effective through May 30, 2009, unless extended in writing by us.

Respectfully Submitted,
FOX ENGINEERING ASSOCIATES, INC.

Keith L. Hobson
Vice President

Accepted this ___ day of _____, 2009, by the City of Council Bluffs

By: _____

Title: _____

GENERAL CONDITIONS
FOR
ENGINEERING SERVICES AGREEMENT
BETWEEN
CITY OF COUNCIL BLUFFS
AND
FOX ENGINEERING ASSOCIATES, INC.

The **OWNER,** City of Council Bluffs, Iowa, and the **ENGINEER,** FOX Engineering Associates, Inc., in consideration of their mutual covenants have agreed in a Letter Agreement dated April 16, 2009 and the **ENGINEER** shall perform or furnish professional engineering services with the respect to the Project described in the Letter Agreement, and these General Conditions and Exhibits are hereby attached and made a part of that Letter Agreement. Execution of the Letter Agreement by the **ENGINEER** and the **OWNER** constitutes **OWNER's** written authorization to the **ENGINEER** to proceed with the first phase of the Basic Services described in Section 2 below and as further set forth in Exhibits A, C, D, G, and L

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SECTION 1 – GENERAL

1.1. Standard of Care.

ENGINEER shall perform for or furnish to OWNER professional engineering and related services in all phases of the Project to which this Agreement applies as hereinafter provided. ENGINEER shall serve as OWNER's prime design professional and engineering representative for the Project providing professional engineering consultation and advice with respect thereto. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

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 conditions at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection to ENGINEER's services.

1.2. Coordination with Other Documents.

It is the intention of the parties that the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "*defective*" will be used in this Agreement as defined in the Standard General Conditions.

1.3. Definitions.

Wherever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.3.1. *Additional Services.* Additional Services means that services to be performed for or furnished to OWNER by ENGINEER described in Section 3 of this Agreement.

1.3.2. *Agreement.* Agreement means this Standard Form of Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Section 9 of this Agreement.

1.3.3. *Basic Services.* Basic Services means that services to be performed for or furnished to OWNER by ENGINEER described in Section 2 of this Agreement.

1.3.4. *Construction Cost.* Construction Cost means the total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's 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 pursuant to Section 4 of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

1.3.5. *Contractor.* Contractor means the person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.

1.3.6. *ENGINEER's Consultant.* ENGINEER's Consultant means a person or entity having a contract with ENGINEER to perform or furnish Basic or Additional Services as ENGINEER's independent professional associate or consultant engaged directly on the Project.

1.3.7. *Reimbursable Expenses.* Reimbursable Expenses means the expenses incurred directly in connection with the performance or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses" ("Exhibit C")

1.3.8. *Resident Project Representative.* Resident Project Representative means the authorized representative of ENGINEER who will be 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 set forth in Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit D").

1.3.9. *Standard General Conditions.* Standard General Conditions means the Standard General Conditions of the Construction Contract (No. 1910-8)(1990 Edition) of the Engineers Joint Contract Documents Committee.

1.3.10. *Total Project Costs.* Total Project Costs means the sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under paragraphs 4.4, 4.5 and 4.7 through 4.14, inclusive.

SECTION 2 - BASIC SERVICES OF ENGINEER

2.1 Study and Report Phase.

Upon this Agreement becoming effective, ENGINEER shall:

2.1.1. Consult with OWNER to understand OWNER's requirements for the Project and review available data.

2.1.2. Advise OWNER as to necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 4.4 which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.

2.1.3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER with whom consultation is to be undertaken in connection with the Project.

2.1.4. Evaluate various alternate solutions available to OWNER as described in Exhibit A, and, after consultation with Owner, recommend to OWNER those solutions which in ENGINEER's judgement best meet OWNER's requirements for the Project.

2.1.5. Prepare a report (the "report") which will contain the statement of OWNER's requirements for the Project and, as appropriate, will contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project, including the following which will be separately itemized; opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design professional and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.

2.1.6. Furnish the Report to and review it with OWNER.

2.1.7. Revise the Report in response to OWNER's comments, as appropriated, and furnish final copies of the Report in the number set forth in Exhibit A.

2.1.8. Submit the Report within the stipulated period indicated in Exhibit A.

2.1.9. ENGINEER's services under the Study and Report Phase will be considered complete at the earlier of (1) the date when the Report has been accepted by OWNER or (2) thirty days after the date when such Report is delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to review the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Study and Report Phase.

The duties and responsibilities of ENGINEER during the Study and Report Phase as set forth in this paragraph 2.1 are amended and supplemented as indicated in Exhibit A.

2.2. Preliminary Design Phase.

After acceptance by OWNER of the Report, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

2.2.1. On the basis of the Report, the recommended solution selected by OWNER and the specified modification or changes in the scope, extent, character or design requirements of the Project agreed upon by OWNER and ENGINEER, prepared Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.

2.2.2. Advise OWNER if additional reports, data or other information or services of the types described in paragraph 4.4 are necessary and assist OWNER in obtaining such reports, data or other information and services.

2.2.3. Based on the information contained in the Preliminary Design documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized as provided in paragraph 2.1.5.

2.2.4. Furnish the Preliminary Design documents to and review them with OWNER.

2.2.5. Submit the Preliminary Design documents and revised opinion of probable Construction Cost within the stipulated period indicated in Exhibit A.

2.2.6. ENGINEER's services under the Preliminary Design Phase will be considered complete at the earlier of (1) the date when the Preliminary Design documents have been accepted by OWNER or (2) thirty days after the date when such Preliminary Design documents are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the Preliminary Design documentation, if such approval is to be obtained during the Preliminary Design Phase.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase as set forth in this paragraph 2.2 are amended and supplemented as indicated in Exhibit A.

2.3. Final Design Phase.

After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

2.3.1. On the basis of the accepted Preliminary Design documents, the modifications or changes in the scope, extent, character or design requirements of the Project agreed upon by OWNER and ENGINEER and the revised opinion of probable Construction Cost, prepare for incorporation in the Contract Documents final Drawings showing the scope, extent and character of the work to be performed and furnished by Contractor and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute).

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

2.3.3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, itemized as provided in paragraph 2.1.5, as a result of changes in scope, extent or character or design requirements of the Project.

2.3.4. Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which will be generally consistent in

form and substance with the forms and pertinent guide sheets prepared by the Engineers Joint Contract Documents Committee), and assist in the preparation of other related documents.

2.3.5. Furnish the above documents, Drawings and Specifications to review them with OWNER.

2.3.6. Submit the above documents, Drawings and Specifications and a revised opinion of probable Construction Cost within the stipulated period indicated in Exhibit A.

2.3.7. ENGINEER's services under the Final Design Phase will be considered complete at the earlier of (1) the date when the submittals have been accepted by OWNER or (2) thirty days after the date when such submittals are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Final Design Phase.

The duties and responsibilities of ENGINEER during the Final Design Phase as set forth in this paragraph 2.3 are amended and supplemented as indicated in Exhibit A.

2.4. Bidding or Negotiating Phase.

After acceptance by OWNER of the ENGINEER=s Drawings, Specifications and other Final Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization to proceed, ENGINEER shall:

2.4.1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conference, if any, and receive and process deposits for Bidding Documents.

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

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

2.4.4. Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

2.4.5. The Bidding or Negotiating Phase will terminate and the services to be performed or furnished thereunder will be considered complete upon commencement of the Construction Phase or upon cessations of negotiations with prospective Contractors (except as may otherwise be required to complete the services called for in paragraph E7.2.5, if Exhibit F is a part of this Agreement.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase as set forth in this paragraph 2.4 are amended and supplemented as indicated in Exhibit A.

2.5. Construction Phase.

During the Construction Phase:

2.5.1. *General Administration of Construction Contract.* ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided in Exhibit A and except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

2.5.2. *Visits to Site and Observation of Construction.* In connection with observation of the work of Contractor while it is in progress:

2.5.2.1. ENGINEER shall 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 various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident Project Representative at the site to assist ENGINEER and to provide more continuous

observations of such work. The furnishing of such Resident Project Representative services will not extend ENGINEER=s responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 2.5. Such visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work 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 judgement as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 2.5.2.2. and other express or general limitations in this Agreement and elsewhere.

2.5.2.2. The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, 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, or safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders 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.

2.5.3. *Defective Work.* During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor=s work while it is in progress if 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.

2.5.4. *Clarifications and Interpretations; Field Orders.* ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the 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.

2.5.5. *Change Orders and Work Change Directives.* ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.

2.5.6. *Shop Drawings.* ENGINEER shall review and approve (or take other appropriate action in respect of) 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.

2.5.8. *Inspections and Tests.* ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders 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 and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

2.5.9. *Disagreements between OWNER and Contractor.* ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the 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.

2.5.10. *Applications for Payment.* Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

2.5.10.1. ENGINEER shall 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, the 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 such 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 the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 2.5.10.1 are expressly subject to the limitations set forth in paragraph 2.5.10.2 and other express or general limitations in this Agreement and elsewhere.

2.5.10.2. By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

2.5.11. *Contractor's Completion Documents.* ENGINEER shall receive, review and transmit to owner with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 2.5.6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

2.5.12. *Substantial Completion.* Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall 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.

2.5.13. *Final Notice of Acceptability of the Work.* ENGINEER shall 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 E (the "Notice of Acceptability of Work") that the work is acceptable (subject to the provisions of paragraph 2.5.10.2) to the best of ENGINEER=s knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

2.5.14. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

2.5.15. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the construction contract for the Project and any part thereof and will terminate upon written recommendation by ENGINEER of final payment. If the Project involves more than one prime contract as indicated in paragraph 5.5, Construction Phase services may be rendered at different times in respect of separate prime contracts.

The duties and responsibilities of ENGINEER during the Construction Phase as set forth in this paragraph 2.5 are amended and supplemented as indicated in Exhibit A.

2.6. Operational Phase.

During the Operational Phase, ENGINEER shall, when requested by OWNER:

2.6.1. Provide assistance in connection with the refining and adjusting of any equipment or system.

2.6.2. Assist OWNER in training OWNER's staff to operate and maintain the Project.

2.6.3. Assist OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.

2.6.4. Prepare a set of reproducible record drawings showing record information which ENGINEER considers significant based on the Drawings, Shop Drawings, and other record documents furnished by Contractor to ENGINEER which were annotated by Contractor to show all changes made during construction. ENGINEER will not be responsible for any errors in or omissions in the information provided by Contractor that is incorporated in the record drawings or other record documents.

2.6.5. In company with OWNER, visit the Project to observe any apparent defects in the completed work, assist OWNER in consultations and discussions with Contractor concerning correction of such defects, and make recommendations as to replacement or correction of defective work.

2.6.6. Provide miscellaneous services as requested by OWNER in connection with Project closeout.

2.6.7. The Operational Phase may commence during the Construction Phase and will terminate one year after the date of Substantial Completion.

The duties and responsibilities of ENGINEER during the Operational Phase as set forth in this paragraph 2.6 are amended and supplemented as indicated in Exhibit A.

SECTION 3 - ADDITIONAL SERVICE OF ENGINEER

3.1 Additional Services Requiring Authorization in Advance

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 3.1.1 through 3.1.19, inclusive as amended and supplemented as indicated in Exhibit A. These services are not included as part of Basic Services except to the extent otherwise provided in Exhibit A. These services will be paid for by OWNER as indicated in Section 6.

3.1.1. Preparation of applications and supporting documents (in additional 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 effect on the design requirements of 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.

3.1.2. 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.

3.1.3. Services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Exhibit A.

3.1.4. 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, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports, Drawings, Specifications, or Contract Documents, or are due to any other causes beyond ENGINEER'S control.

3.1.5. Services resulting from facts revealed about conditions:

3.1.5.1. which are different from information about such conditions that OWNER previously provided to ENGINEER under paragraph 4.4 and upon which ENGINEER was entitled to rely; or

3.1.5.2. as to which OWNER has responsibility to provide information under paragraph 4.4 if such information was not previously provided.

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

3.1.7. Preparing documents for alternate bids requested by OWNER for Contractor's work which is not executed or documents for out-of-sequence work.

3.1.8. 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.

3.1.9. Furnishing services of ENGINEER's Consultants for other than Basic Services; and furnishing data or services of the types described in paragraph 4.4 when OWNER employs ENGINEER to provide such data or services in lieu of furnishing the same under paragraph 4.4.

3.1.10. Services attributable to a variation in the number of prime contracts from the number specified in Exhibit A for work designed or specified by ENGINEER.

3.1.11. Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 2.

3.1.12. 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 Constructability Review requesting by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or Contract Documents as a result of such review processes.

3.1.13. 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.

3.1.14. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services, except when such assistance is required to complete services called for in paragraph E7.2.5, if Exhibit F is a part of this Agreement.

3.1.15. Providing field surveys for design purposes, engineering surveys and staking to enable Contractor to proceed with its 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.

3.1.16. Preparation of operating, maintenance and staffing manuals to supplement Basic Services under paragraph 2.6.3.

3.1.17. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services under paragraphs 2.1.3. and 2.3.2.).

3.1.18. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 4.12.

3.1.19. Other additional services performed or furnished by ENGINEER in connection with the Project, including services which are to be furnished by OWNER under Section 4, and services not otherwise provided for in this Agreement.

3.2. Required Additional Services.

When required by the Contract Documents in connection with the performance or furnishing of ENGINEER's services during the Construction Phase, ENGINEER shall perform or furnish, without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 3.2.1 through 3.2.6, inclusive. These services are not included as part of Basic Services except to the extent provided in Exhibit A. Required Additional Services will be paid for by OWNER as indicated in Section 6. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.

3.2.1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER if, because of the method of compensation agreed upon by OWNER and ENGINEER, the resulting change in compensation for Basic Services is not commensurate with the extent of the additional services rendered.

3.2.2. 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 contract evaluating and determining the acceptability of a substitution which is inappropriate for the Project or an excessive number of substitutions.

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

3.2.4. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of *defective*, neglected or delayed work of Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by Contractor.

3.2.5. Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to its Substantial Completion.

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

SECTION 4 – OWNER'S RESPONSIBILITIES

Except as otherwise provided in Exhibit A, OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

4.1. Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER'S services for the Project.

4.2. Provide 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 expendability, 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.

4.3. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

4.4. Furnish to ENGINEER, as requested by ENGINEER for performance of Basic Services or as required by the Contract Documents, the following:

4.4.1. data prepared by or services of others, including without limitation 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;

4.4.2. the services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment prior to and after installation, or to evaluate the performance of materials, equipment and facilities of OWNER, prior to specification, and during construction;

4.4.3. appropriate professional interpretations of all of the foregoing;

4.4.4. environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;

4.4.5. field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;

4.4.6. property descriptions;

4.4.7. zoning, deed and other land use restrictions; and

4.4.8. other special data or consultations not covered in Section 2.

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

4.5. Provide, as required by the Contract Documents, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.

4.6. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

4.7. 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 consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.

4.8. Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.

4.9. Provide, as may be required for the Project:

4.9.1. accounting, bond and financial advisory, independent cost estimating and insurance counseling services;

4.9.2. such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and

4.9.3. such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.

4.10. Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:

4.10.1. that Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work; or

4.10.2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 4.10.1 and 4.10.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

4.11. 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, Construction Management, Cost Estimating, Project Peer Review, Value Engineering and Constructability Review. If OWNER designates a person or entity other than, or in addition to ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other part and the relation thereof to the duties, responsibilities and authority of ENGINEER.

4.12. Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.

4.13. If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.

4.14. Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 4.4, 4.5 and 4.7 through 4.14, inclusive) and other costs of the types referred to in paragraph 2.1.5 so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion to Total Project Costs.

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

4.16. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affect the scope or time of performance or furnishing of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

4.17. Furnish, or direct ENGINEER to provide, Additional Services as stipulated in paragraph 3.1 of this Agreement or other services as required.

SECTION 5 - TIMES FOR RENDERING SERVICES

5.1 ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project though completion of the Construction Phase. Unless specific periods of time or specific dates for providing services are specified in the Agreement, ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of construction contracts, construction and initial operation of the Project including extra work and required extensions thereto.

5.2. 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 the scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

5.3. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within the stipulated period identified in this Agreement (plus such additional time as may be required to complete the services called for under paragraph F7.2.5 if Exhibit F is a part of this Agreement) after completion of the Final Design Phase or does not proceed in an orderly and continuous progression, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

5.4. If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER:

5.4.1 for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised; or

5.4.2. for more than one year through no fault of ENGINEER, or if ENGINEER for any reason is required to render Construction Phase services more than one year after Substantial Completion is achieved, the rates and amounts of compensation provided for elsewhere in this Agreement will be subject to equitable adjustment to reflect, among other things, changes in the various elements that comprise such rates of compensation.

5.5. In the event that the work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in Exhibit A whether or not the work under such contracts is to proceed concurrently.

SECTION 6 - PAYMENTS TO ENGINEER SERVICES AND REIMBURSABLE EXPENSES

6.1. Methods of Payment for Services and Expenses of ENGINEER.

6.1.1. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Section 2 on the basis set forth in Exhibit C.

6.1.2. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Section 3 on the basis set forth in Exhibit C.

6.1.3. *For Reimbursable Expenses.* In addition to payments provided for in paragraph 6.1.1 and 6.1.2, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C. The amount payable for Reimbursable Expenses will include a factor to the extent so indicated in Exhibit C.

6.2. Other Provisions Concerning Payments.

6.2.1. *Preparation of Invoices.* Invoices for Basic and Additional Services and Reimbursable Expenses will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. The amount billed for Basic Services and Additional Services in each invoice will be calculated on the basis set forth in Exhibit C. Invoices are due and payable on receipt.

6.2.2. *Unpaid Invoices.* If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefore, the amounts due ENGINEER will be increased at the rate of 15% per year (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

6.2.3. *Payments Upon Termination.*

6.2.3.1. *Termination by OWNER for Cause.* In the event of termination by OWNER for cause under paragraph 8.1.1:

6.2.3.1.1. Upon the completion of any phase of Basic Services, progress payments due ENGINEER in accordance with this Agreement for all such services performed or furnished by ENGINEER and ENGINEER's Consultants through the completion of such phase will constitute total payment for such services. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

6.2.3.1.2. During any phase of the Basic Services, ENGINEER also will be paid for such services performed or furnished in accordance with this Agreement by ENGINEER during that phase through the date of termination on the basis specified in Exhibit D. ENGINEER also will be paid for the charges of ENGINEER's Consultants employed to perform or furnish Basic Services to the extent such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

6.2.3.2. *Termination by OWNER for Convenience.* In the event of termination by OWNER under paragraph 8.1.2:

6.2.3.2.1. Upon the completion of any phase of Basic Services, progress payments due ENGINEER in accordance with this Agreement for all such services performed or furnished by ENGINEER and ENGINEER's Consultants through the completion of such phase will constitute total payment for such services. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, and for termination expenses under subparagraph 6.2.3.2.3. below.

6.2.3.2.2. During any phase of Basic Services, ENGINEER also will be paid for such services performed or furnished by ENGINEER during that phase through the date of termination on the basis specified in Exhibit C. In addition, ENGINEER will be paid for the charges of ENGINEER's Consultants employed to perform or furnish Basic Services through the effective date of the termination. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, and for termination expenses under subparagraph 6.2.3.2.3. below.

6.2.3.2.3. In the event of termination by OWNER for convenience during or at completion of any phase of Basic Services, OWNER shall pay ENGINEER's reasonable expenses directly attributable to termination in accordance with rates applicable to the various categories of Additional Services measured

from the date of termination, including other fair and reasonable sums for overhead and profit, and costs of terminating contracts with ENGINEER's Consultants.

6.2.3.3. *Termination By ENGINEER for Cause.* In the event of termination by ENGINEER for cause under paragraph 8.1.1, ENGINEER shall be entitled to receive compensation calculated as set forth in paragraph 6.2.3.2.

6.2.4. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

SECTION 7 - OPINIONS OF COST

7.2. Designing to Construction Cost Limit.

If a Construction Cost limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit", to this Agreement.

7.3. Opinions of Total Project Costs.

ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs provided for in Section 2.

SECTION 8 - GENERAL CONSIDERATIONS

8.1. Termination.

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

8.1.1. *For cause,*

8.1.1.1. by either party upon thirty 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. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty days of receipt thereof; *provided, however,* that if and to the extent such substantial failure cannot be reasonably cured within such thirty-day period, and if such part has diligently to cure the same, then the cure period provided from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

8.1.1.2. by ENGINEER:

8.1.1.2.1. upon seven days' written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed design professional; or

8.1.1.2.2. upon seven days' written notice if the ENGINEER's services for design or during the construction of the Project are delayed or suspended for more than ninety days for reasons beyond ENGINEER's control.

8.1.1.2.3. In the case of termination under this paragraph 8.1.1.2, ENGINEER shall have no liability to OWNER on account of such termination.

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

8.2. Reuse of Documents.

All documents including Drawings and Specifications provided or furnished by ENGINEER (or ENGINEER's Consultants) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER and ENGINEER's Consultants, as appropriate, shall retain an ownership and property interest therein (including the right of reuse by and at the discretion of ENGINEER and ENGINEER's Consultants, as appropriate) whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, 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 without written verification or

adaptation by ENGINEER and ENGINEER's Consultants, 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, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

8.3. Insurance.

8.3.1. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance", for protection from claims under workers= compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. ENGINEER shall list OWNER as an additional insured on ENGINEER's general liability insurance policy.

8.3.2. OWNER shall list ENGINEER and ENGINEER's Consultants as additional insured on any general liability or property insurance policies carried by OWNER which are applicable to the Project. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list ENGINEER and ENGINEER's Consultants as additional insureds with respect to such liability, property and other insurance purchased and maintained by Contractor. All policies of property insurance shall contain provisions to the effect that ENGINEER=s and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insureds thereunder.

8.3.3. At any time OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, different limits or revised deductibles in excess of those specified in Exhibit G. If so requested by OWNER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits or revised deductibles, for such periods of time as requested by OWNER, at OWNER's sole expense, and Exhibit G will be supplemented to incorporate these requirements.

8.4. Controlling Law.

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

8.5. Successors and Assigns.

8.5.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 8.5.2 and assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

8.5.2. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

8.5.3. Unless expressly provided otherwise in this Agreement:

> 8.5.3.1. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Contractor, Subcontractor, Supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.

8.5.3.2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph shall appear in the Contract Documents.

8.6. Dispute Resolution.

If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any is set forth in Exhibit H, "Dispute Resolution." OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under Exhibit H or other provisions of this Agreement, or under law.

8.7. Allocation of Risks - Indemnification.

8.7.1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, employees and agents from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other disputed resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks", if any.

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

8.7.3. In addition to the indemnity provided under paragraph 8.7.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and agents and ENGINEER's Consultants from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to the presence, discharge, release, or escape of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material at, on, under or from the Project site.

8.8. Notices.

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

8.9. Survival.

All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive the completion of all services of ENGINEER under this Agreement or the termination of this Agreement for any reason.

8.10. Severability.

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation 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.

SECTION 9 - EXHIBITS AND SPECIAL PROVISIONS

9.1. This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

9.1.1. Exhibit A, "Further Description of Basic Engineering Services and Related Matters", consisting of 3 pages.

9.1.2. Exhibit B, Owner's Responsibilities", not included.

9.1.3. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses", consisting of 3 pages.

9.1.4. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative", consisting of 4 pages.

9.1.5. Exhibit E, "Notice of Acceptability of Work", not included.

9.1.6. Exhibit F, "Construction Cost Limit", not included.

9.1.7. Exhibit G, "Insurance", consisting of 2 pages.

9.1.8. Exhibit H. "Dispute Resolution", not included.

9.1.9. Exhibit I, "Allocation of Risks", consisting of 2 pages.

9.1.10. Exhibit J, "Special Provisions", not included.

9.2. This Agreement (consisting of pages 1 to 18, inclusive and 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.

END OF GENERAL CONDITIONS

This is **Exhibit A**, consisting of three (3) pages, referred to in the **Agreement between OWNER and ENGINEER for Professional Services**, dated April 16, 2009.

Initial:
OWNER_____
ENGINEER___

Further Description of Basic Engineering Services and Related Matters

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Various Sections of the Agreement are amended and supplemented as indicated below:

SECTION 1 - GENERAL

No Change

SECTION 2 - BASIC SERVICES OF THE ENGINEER

2.1 Study and Report Phase – Not Used

2.2 Preliminary Design - No Change

2.3 Final Design Phase - No Change

2.4 Bidding or Negotiating Phase - No Change

2.5 Construction Phase - No Change

2.6 Operational Phase – No Change

SECTION 3 - ADDITIONAL SERVICES OF THE ENGINEER

No Change

SECTION 4 - OWNER'S RESPONSIBILITIES

4.1 The Owner shall designate representatives who are authorized to make decisions relating to final design, construction work change directives, construction change orders, and acceptability of the construction. The following designated Owner representatives are authorized to make such decisions and shall be available on an on-call basis as required by the Design Professional and shall be called in the order listed herein:

Name: Greg Reeder - Public Works Director
Name: Hank Pangelina - Wastewater Superintendent

4.2 &
4.3 No Change

4.4.1 thru
4.4.8 No Change

4.5 thru
4.17 No Change

SECTION 5 - TIMES FOR RENDERING SERVICES

5.1.1 General - As per letter of Agreement; Exhibit E is not included.

SECTION 6 - PAYMENTS TO ENGINEER

6.0 General - As per letter of Agreement and Exhibit C.

SECTION 7 - OPINIONS OF COST

No Change

SECTION 8 - GENERAL CONDITIONS

8.7 See Exhibit I - Allocation of Risks - Limitation of Engineer's Liability

8.11 Changed Conditions - The Owner shall rely on the Engineer's judgement as to the continued adequacy of this Agreement in light of occurrences or discoveries that were not originally contemplated by or known to the Engineer. Should the Engineer call for contract renegotiation, the Engineer shall identify the changed conditions necessitating renegotiating and the Engineer and the Owner shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.

8.12 Confidentiality - The Owner agrees that the technical methods, techniques, and pricing information contained in any proposal submitted by the Engineer pertaining to this project or in this Agreement or any addendum thereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the Engineer.

8.14 Delays - The Engineer is not responsible for delays caused by factors beyond the Engineer's reasonable control, including but not limited to delays because of labor strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Owner to furnish timely information or approve or disapprove of the Engineer's services or work product promptly, or delays caused by faulty performance by the Owner or by contractors. When such delay beyond the Engineer□s reasonable control occur, the Owner agrees the Engineer is not responsible for damages, nor shall the Engineer be deemed to be in default of this Agreement.

8.15 No Warranty - The Engineer has endeavored to perform the services pursuant to generally accepted standards of practices in effect at the time of performance. The Engineer makes no warranty, either expressed or implied, as to his or her findings, recommendations, plans, specifications, or professional advice.

4.4.1 thru
4.4.8 No Change

4.5 thru
4.17 No Change

SECTION 5 - TIMES FOR RENDERING SERVICES

5.1.1 General - As per letter of Agreement; Exhibit E is not included.

SECTION 6 - PAYMENTS TO ENGINEER

6.0 General - As per letter of Agreement and Exhibit C.

SECTION 7 - OPINIONS OF COST

No Change

SECTION 8 - GENERAL CONDITIONS

8.7 See Exhibit I - Allocation of Risks - Limitation of Engineer's Liability

8.11 Changed Conditions - The Owner shall rely on the Engineer's judgement as to the continued adequacy of this Agreement in light of occurrences or discoveries that were not originally contemplated by or known to the Engineer. Should the Engineer call for contract renegotiation, the Engineer shall identify the changed conditions necessitating renegotiating and the Engineer and the Owner shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.

8.12 Confidentiality - The Owner agrees that the technical methods, techniques, and pricing information contained in any proposal submitted by the Engineer pertaining to this project or in this Agreement or any addendum thereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the Engineer.

8.14 Delays - The Engineer is not responsible for delays caused by factors beyond the Engineer's reasonable control, including but not limited to delays because of labor strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Owner to furnish timely information or approve or disapprove of the Engineer's services or work product promptly, or delays caused by faulty performance by the Owner or by contractors. When such delay beyond the Engineer's reasonable control occur, the Owner agrees the Engineer is not responsible for damages, nor shall the Engineer be deemed to be in default of this Agreement.

8.15 No Warranty - The Engineer has endeavored to perform the services pursuant to generally accepted standards of practices in effect at the time of performance. The Engineer makes no warranty, either expressed or implied, as to his or her findings, recommendations, plans, specifications, or professional advice.

SECTION 9 - EXHIBITS

9.1.1 Exhibit A (included) consisting of three (3) pages
9.1.2 Exhibit B (not included)
9.1.3 Exhibit C (included) consisting of three (3) pages
9.1.4 Exhibit D (included) consisting of four (4) pages
9.1.5 Exhibit E (not included)
9.1.6 Exhibit F (not included)
9.1.7 Exhibit G (included) consisting of two (2) pages
9.1.8 Exhibit H (not included)
9.1.9 Exhibit I (included) consisting of two (2) pages
9.1.10 Exhibit J (not included)

This is **EXHIBIT C,** consisting of 3 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated April 16, 2009.

Initial:
OWNER _____
ENGINEER _____

Payments to ENGINEER for Services and Reimbursable Expenses

Section 6 of the Agreement is amended and supplemented to include the following agreement of the parties:

SECTION 6 – PAYMENT TO THE ENGINEER

C6.1.1.1. *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, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. A Lump Sum amount of $198,500 based on the following assumed distribution of compensation:

a. Study and Report Phase	NA
b. Preliminary Design Phase	$45,000.00
c. Final Design Phase	$64,800.00
d. Bidding & Negotiation Phase	$14,700.00
e. Construction Phase	$74,000.00

2. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the OWNER.

3. 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 Reimbursable Expenses.

4. 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.

5. The Lump Sum is conditioned on Contract Times to complete the Work not exceeding thirty-six (36) months. Should the Contract Times to complete the Work be extended beyond this period, the total compensation to ENGINEER shall be appropriately adjusted.

C6.1.1.2 *For Basic Services Having An Undetermined Scope – Direct Labor Costs Times a Factor Method of Payment*

A. OWNER shall pay ENGINEER for:

1. *Resident Project Representative Services.* For services of ENGINEER's Resident Project Representative, if any, under paragraph 2.5.2 of the Agreement, an amount equal to ENGINEER's Direct Labor Costs times a Factor of 3.246 for the services of ENGINEER's employees engaged directly in resident Project representation, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

2. *Operational Phase Services.* For Operational Phase services under paragraph 2.6 of Agreement, an amount equal to the ENGINEER's Direct Labor Costs times a Factor of 3.246 for the services of ENGINEER's employees engaged directly on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges.

C6.1.2. *For Additional Services*

A. OWNER shall pay ENGINEER for Additional Services as follows:

1. *General.* For services of ENGINEER's employees engaged directly on the Project pursuant to Section 3 of the Agreement, except for services as a consultant or witness under paragraph 3.1.17, an amount equal to ENGINEER's Direct Labor Costs times a Factor of 3.246, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

C6.1.3. *For Reimbursable Expenses*

A. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by OWNER, overtime work requiring higher than regular rates. In addition, if authorized in advance by OWNER, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.

B. The amounts payable to ENGINEER for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by ENGINEER, plus all invoiced external Reimbursable Expenses allocable to the Project.

C6.1.4. *For ENGINEER's Consultant's Charges*

A. Whenever compensation to ENGINEER herein is stated to include charges of ENGINEER's Consultants, those charges shall be the amounts billed by ENGINEER's Consultants to ENGINEER.

C6.1.5. *Direct Labor Costs*

A. Direct Labor Costs means salaries and wages paid to ENGINEER's employees but does not include payroll related costs or benefits.

B. The Direct Labor Costs and the Factor applied to Direct Labor Costs will be adjusted annually to reflect equitable changes in compensation payable to ENGINEER.

C6.1.6. *Factors*

A. The Direct Labor Costs Factor includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto; the cost of general and administrative overhead, which includes salaries and wages of principals and employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including

but not limited to, business taxes, legal, rent, utilities, office supplies, insurance, and other operating costs; plus operating margin or profit.

B. External Reimbursable Expenses and ENGINEER's Consultant's Factors include ENGINEER's overhead and profit associated with ENGINEER's responsibility for the administration of such services and costs.

C6.1.7. *Other Provisions Concerning Payment*

A. *Progress Payments.* The portion of the amounts billed for ENGINEER's services which are identified in paragraphs 6.1.1.2 and 6.1.2, will be based on the Direct Labor Costs for the cumulative hours charged to the Project during the billing period by all of ENGINEER's employees, times the Applicable Direct Labor Costs Factor, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

B. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period identified in paragraph C6.1.1.1., payment for ENGINEER's services on the basis of the Direct Labor Costs Times a Factor Method of Payment shall be continued.

C. *Estimated Compensation Amounts.*

1. ENGINEER's estimate of the amounts that will become payable for Basic Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to ENGINEER under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to ENGINEER that a compensation amount thus estimated will be exceeded, ENGINEER shall give OWNER written notice thereof. Promptly thereafter OWNER and ENGINEER shall review the matter of services remaining to be performed and compensation of such services. OWNER shall either agree to such compensation exceeding said estimated amount or OWNER and ENGINEER shall agree to a reduction in the remaining services to be rendered by ENGINEER, so that total compensation for such services will not exceed said estimated amount when such services are completed. If ENGINEER exceeds the estimated amount before OWNER and ENGINEER have agreed to an increase in the compensation due ENGINEER or a reduction in the remaining services, the ENGINEER shall be paid for all services rendered hereunder.

This is **EXHIBIT D**, consisting of 4 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated April 16, 2009.

Initial:
OWNER _____
ENGINEER _____

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Paragraph 1.3.8 of the Agreement is amended and supplemented to include the following agreement of the parties

D1.3.8 *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 Work. The RPR, assistants, and other field staff under this Exhibit D 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 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 Law 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 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 Drawings and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.

3. *Conference 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.

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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 Startup:*

   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.

2437-09B

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 for 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 Drawings 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 Drawings 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 Application 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 inspection 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 advise 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 Drawings or Sample submittals from anyone other than Contractor.

8. Authorize OWNER to occupy the Project in whole or in part.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated April 16, 2009.

Initial:
OWNER: _____
ENGINEER ____

Insurance

Paragraph 8.3 of the Agreement is amended and supplemented to include the following agreement of the parties.

G8.3 *Insurance*

A. The limits of liability for the insurance required by paragraph 8.3.1 and 8.3.2 of the Agreement are as follows:

1. By ENGINEER:

a. Worker's Compensation:	Statutory
b. Employer's Liability –	
1) Each Accident:	$ 500,000.00
2) Disease, Policy Limit:	$ 500,000.00
3) Disease, Each Employee:	$ 500,000.00
c. General Liability –	
1) Each Occurrence (Bodily Injury and Property Damage):	$1,000,000.00
2) General Aggregate	$2,000,000.00
d. Automobile Liability –	
1) Combined Single Limit (Bodily Injury and Property Damage): Each Accident	$ 500,000.00
e. Professional Errors and Omissions	$ 1,000,000.00

2. By OWNER:

a. Worker's Compensation	Statutory
b. Employer's Liability –	
1) Each Accident	$ 500,000.00
2) Disease, Policy Limit	$ 500,000.00
3) Disease, Each Employee	$ 500,000.00
c. General Liability –	
1) General Aggregate:	$2,000,000.00
2) Each Occurrence (Bodily Injury and Property Damage):	$1,000,000.00

d. Automobile Liability --
1) Bodily Injury:
a) Each Accident $ 500,000.00

B. *Additional Insureds*

1. The following persons or entities are to be listed on OWNER's policies of insurance as additional insured as provided in Paragraph 8.3.2.:

a. FOX Engineering Associates, Inc.
ENGINEER

b. Structural Engineers P.C.
Engineering Consultants

c. Brewer Engineering
Engineering Consultants

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated April 16, 2009.

Initial:
OWNER _____
ENGINEER _____

Allocation of Risks

Paragraph 8.7 of the Agreement is amended and supplemented to include the following agreement of the parties:

8.7.4 *Limitation of ENGINEER's Liability*

1. *ENGINEER's Liability Limited to the Amount of $1,000,000.00.* Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate of ENGINEER and ENGINEER's officers, directors, employees, agents, and ENGINEER's Consultants, and any of them to OWNER and anyone claiming by, through, or under OWNER for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of ENGINEER or ENGINEER's officers, directors, partners, employees, agents, or ENGINEER's Consultants, or any of them shall not exceed the total amount of $1,000,000.00.

2. *Agreement not to Claim for Cost of Certain Change Orders.* OWNER recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specification, and other design documentation furnished by ENGINEER or in the other professional services performed or furnished by ENGINEER under this Agreement ("Covered Change Orders"). Accordingly, OWNER agrees not to sue and otherwise to make no claim directly or indirectly against ENGINEER on the basis of professional negligence, breach of contract, or otherwise with respect of the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed 5% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of ENGINEER for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that OWNER would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of ENGINEER related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, ENGINEER is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term ENGINEER includes ENGINEER's officers, directors, partners, employees, agents, and ENGINEER's Consultants.

3. *Contingency Fund.* The OWNER and the ENGINEER acknowledge that changes may be required because of unforseen construction conditions and/or possible omissions, ambiguities or inconsistencies in the plans and specifications and therefore, that the costs of the project may exceed the construction contract amount. The OWNER agrees to establish a budget in the amount of seven percent (7%) of the construction contract amount as a contingency to be used, as required, to pay for any such increased project costs. The OWNER further agrees to make no claim by way of direct or third-party action against the ENGINEER or the ENGINEER's subconsultants with respect to any payments within the limit of the contingency made to the construction contractors because of such changes or because of any claims made by the construction contractors relating to such changes

4. *Limitation of ENGINEER's liability on a Comparative Negligence Basis.* To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through or under OWNER for any claim, 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 principles. OWNER further agrees to hold harmless ENGINEER from and against any such claim, cost, loss or damages but only to the extent of the percentage share that OWNER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals determined on the basis of comparative negligence principles.

5. *Betterment.* If, due to the ENGINEER's error, any required item or component of the project is omitted from the ENGINEER's construction documents, the ENGINEER shall provide at no additional cost the construction documents for the omitted item or component, but the ENGINEER shall not be responsible for paying the construction cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will the ENGINEER be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.

6. *Consequential Damages.* Not withstanding any other provision of the agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the OWNER or the ENGINEER, their employees, agents, subconsultants or contractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

7. *Extension of Protection.* The OWNER agrees to extend any and all liability limitations and indemnifications provided by the OWNER to the ENGINEER to those individuals and entities the ENGINEER retains for performance of the service under this agreement, including but not limited to the ENGINEER's officers and employees and their heirs and assigns, as well as the ENGINEER's subconsultants and their officers, employees, heirs and assigns.

COUNCIL COMMUNICATION

Department: Public Works Ordinance No._____ First Reading April 27, 2009
Case/Project No.: FY10-18 Resolution No._____
Applicant: Ron Neal, P. E., City Engineer

SUBJECT/TITLE

Consideration of a resolution authorizing the Mayor to execute an agreement with Fox Engineering for engineering services for the Wastewater Treatment Plant Digester Complex Upgrade. Project #FY10-18.

BACKGROUND/DISCUSSION

- The City of Council Bluffs Water Pollution Control Plant (WPCP) was placed into operation in 1973. Over the past 3 decades several additions and upgrades have been undertaken to maintain the treatment process.
- The sludge digestion complex has been in service for 36 years. The covers for digesters 1 and 2 require repair. The heater control center and the sludge heaters require replacement.
- The equipment in the sludge digestion complex has substained corrosion problems and cannot be serviced because repair parts are not longer available.
- The corroded and unserviceable equipment pose a safety hazard and a failure could result in the inability to provide continuous/compliant sludge digestion and methane gas management.
- The estimated cost for design and construction is $1.5 M. The City has applied for and was selected for a SRF design loan in the amount of $225,000. The city is in the process of applying for construction funds from SRF.
- In accordance with SRF guidelines the project must be designed this year and will be under construction February, 2010, contingent on funding.
- The tentative project schedule is:

Set Public Hearing	October 26, 2009
Hold Public Hearing	November 9, 2009
Bid Letting	December 10, 2009
Award	January 11, 2010
Construction	2010

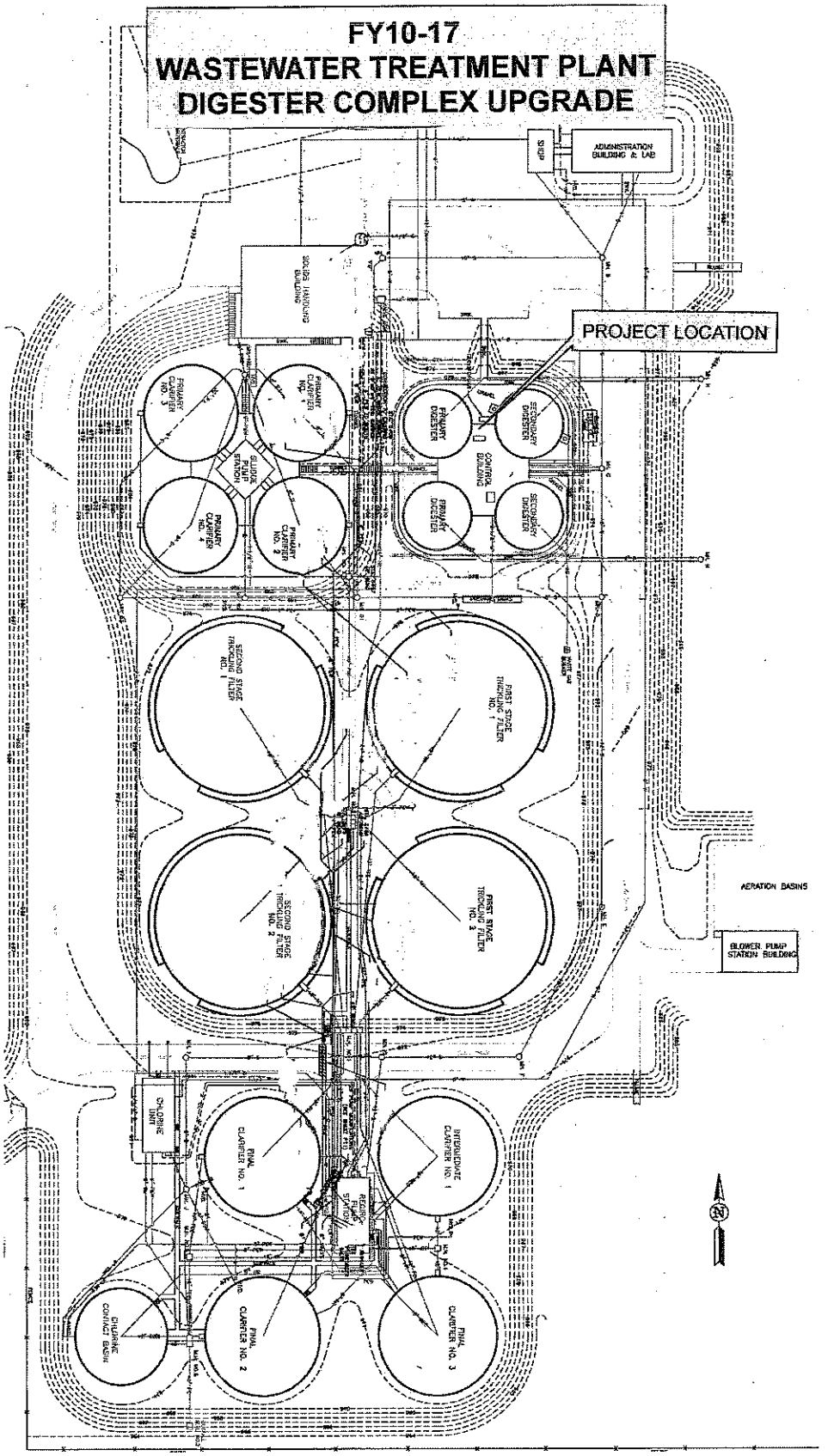
- This project is added to the CIP as FY10-18 and is funded by sales tax & SRF loans.

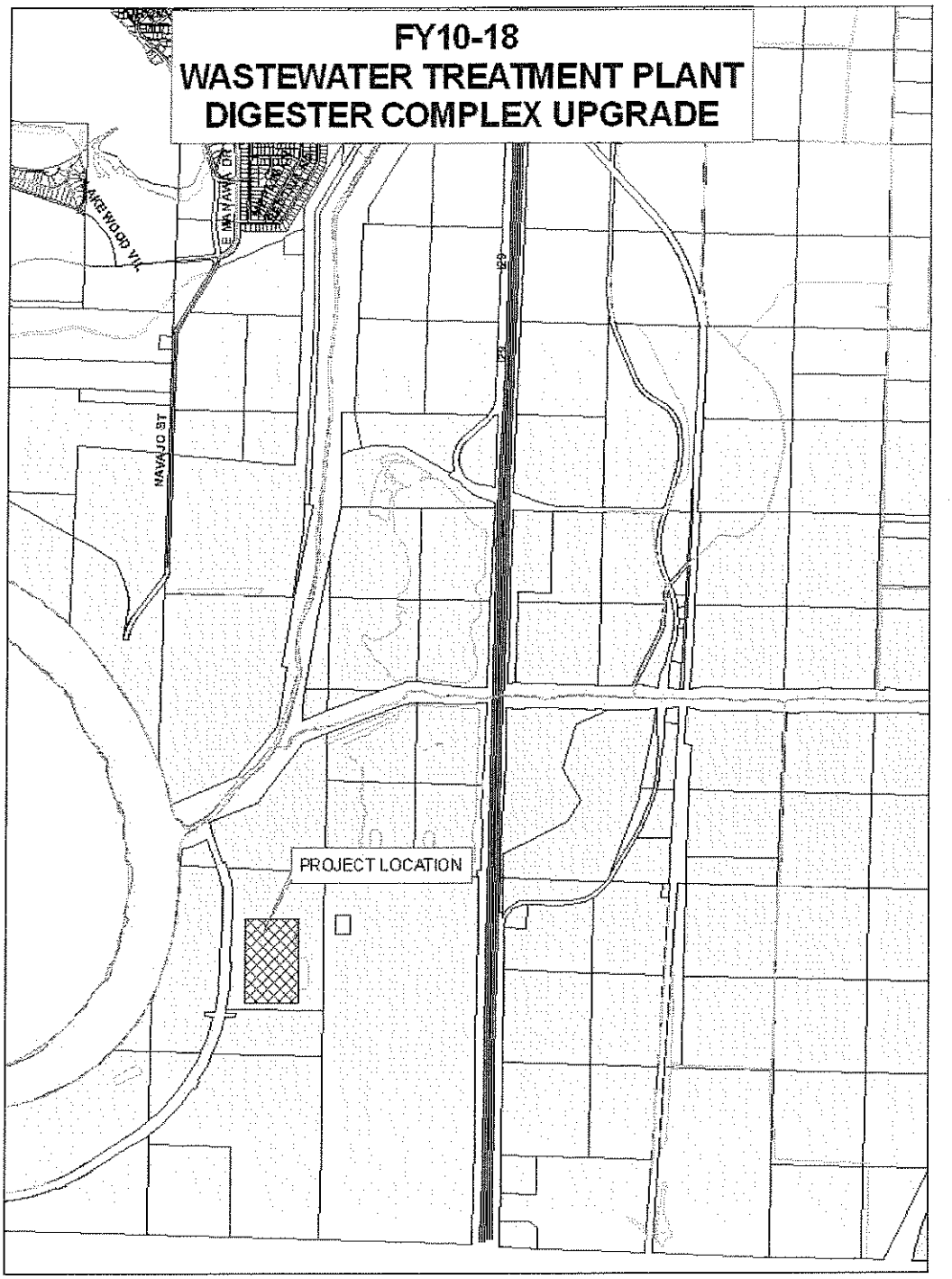
RECOMMENDATION

Approval of this resolution.

Greg Reeder, Public Works Director

FY10-17
WASTEWATER TREATMENT PLANT
DIGESTER COMPLEX UPGRADE




FY10-18
WASTEWATER TREATMENT PLANT
DIGESTER COMPLEX UPGRADE
NAVAJO ST
PROJECT LOCATION

RESOLUTION
NO 09-116

RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH FOX ENGINEERING FOR ENGINEERING SERVICES IN CONNECTION WITH THE WASTEWATER TREATMENT PLANT DIGESTER COMPLEX UPGRADE FY10-18

WHEREAS, the city wishes to make improvements known as the Wastewater Treatment Plant Digester Complex Upgrade, within the city, as therein described; and

WHEREAS, Fox Engineering has submitted an agreement to provide engineering services for the work necessary for said improvements; and

WHEREAS, the city council deems approval of said agreement to be in the best interest of the City of Council Bluffs.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Clerk are hereby authorized and directed to execute an agreement with Fox Engineering for engineering services relative to the Wastewater Treatment Plant Digester Complex Upgrade.

ADOPTED
AND
APPROVED_____, 2009

_____
Thomas P. Hanafan, Mayor

ATTEST: _____
Judith Ridgeley, City Clerk