



**CITY OF MARSHALL, TEXAS
REGULAR CITY COMMISSION MEETING
COMMISSION CHAMBERS, CITY HALL, 401 SOUTH ALAMO
THURSDAY, JUNE 25, 2020, 12:00 P.M.**

This meeting will be conducted utilizing a video and audio conferencing tool, as well as, a standard conference call. Instructions and direct links to view the meeting or speak during Citizen Comment can be found at www.marshalltexas.net.

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

1. **CALL TO ORDER AND ROLL CALL**
Page 1

2. **INVOCATION AND PLEDGES**
Page 2

3. **CITIZEN COMMENTS**

House Bill 2840 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on an agenda the opportunity to do so before or during the body's consideration of the item. The “Citizens Comments” portion of the meeting meets the requirements of this law and is the public’s opportunity to speak on any item on the agenda. Those who wish to speak will have three minutes to do so unless additional time has been requested.

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4. **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**
Page 4

5. **CONSENT AGENDA**

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

A. Consider approval of the minutes from the June 11, 2020 Regular meeting.

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B. Monthly financial report. (Finance Director)

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C. Consider appointments to the Planning & Zoning Commission to fill expired terms. (Director of Community & Economic Development)

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6. **SECOND READING OF ORDINANCES**

A. Consider an Ordinance amending the official zoning map regarding a 3.00 acre tract of land in the Henry Teal Survey A-704, from R-3 (Single Family Detached) and A&E (Agriculture and Estate) to C-3 (General Business). The subject property is generally located on the South side of Holmes Road and on the east side of East End Blvd. North (U. S. Highway 59), more commonly known as 2810 East End Blvd. North. (Director of Community & Economic Development)

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B. Consider an Ordinance amending the official zoning map regarding a .984 acre tract of land in the ASA Langford Survey A-400, from PD (Planned Development) to R-6 (Duplex, Triplex, Quadraplex). The subject property is generally located on the south side of Murphy Drive and on the west side of South Garrett Street, more commonly known as 316 Murphy Drive. (Director of Community & Economic Development)

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7. **RESOLUTION**

A. Consider a Resolution authorizing the approval of a Design/Build Contract for the development, design, and construction of a new animal adoption center. (City Manager)

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

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9. **EXECUTIVE SESSION**

- A. An Executive Session pursuant to the Open Meetings Act, Chapter 551 of the Texas Government Code under Section 551.074 Personnel Matters: Discussion and consideration of results of annual evaluation of City Secretary/Finance Director.

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10. **ADJOURNMENT**

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Posted: June 22, 2020
11:00 a.m.
Y. Graham

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

ITEM 1

CALL TO ORDER AND ROLL CALL

ITEM 2

INVOCATION AND PLEDGES

ITEM 3

CITIZEN COMMENTS

ITEM 4

ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA

ITEM 5A

CONSENT AGENDA

**APPROVAL OF THE MINUTES FROM
THE JUNE 11, 2020 REGULAR
MEETING**

MINUTES OF THE REGULAR MEETING OF THE
CITY COMMISSION OF THE CITY OF MARSHALL
THURSDAY, JUNE 11, 2020
12:00 PM

Mayor Terri Brown called the Regular meeting to order in the Commission Chambers, City Hall at 12:00 p.m.

PRESENT:

MAYOR: Terri Brown, District 3

COMMISSIONERS:

Marvin Bonner, District 1
Amy Ware, District 4
Larry Hurta, District 6

Leo Morris, District 2
Vernia Calhoun, District 5
Doug Lewis, District 7

ADMINISTRATIVE STAFF PRESENT:

Mark Rohr, City Manager
Scott Rectenwald, Acting City Attorney
Randy Pritchard, Support Services Superintendent
Elaine Altman, City Secretary/Finance Director
Eric Powell, Public Works Director
Stormy Nickerson, Management Analysis/Communications Coordinator

Cliff Carruth, Police Chief

INVOCATION & PLEDGE: Commissioner Bonner & Mayor Brown

130. **CITIZEN COMMENTS**

There were no citizen comments.

131. **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**

Item C was withdrawn from the Consent Agenda.

132. **CONSENT AGENDA**

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

A. Consider approval of the minutes from the May 28, 2020 Regular meeting.

B. Consider approval of a one-year contract extension between the City of Marshall and Texas Bank and Trust.

D. Street Sweeping Activity Report.

E. Municipal Court Activity Report.

PUBLIC HEARINGS & ORDINANCES

133. **CONDUCT A PUBLIC HEARING AND CONSIDER AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP REGARDING A 3.00 ACRE TRACT OF LAND IN THE HENRY TEAL SURVEY A-704, FROM R-3 (SINGLE FAMILY DETACHED) AND A&E (AGRICULTURE AND ESTATE) TO C-3 (GENERAL BUSINESS).**

THE SUBJECT PROPERTY IS GENERALLY LOCATED ON THE SOUTH SIDE OF HOLMES ROAD AND ON THE EAST SIDE OF EAST END BLVD. NORTH (U. S. HIGHWAY 59), MORE COMMONLY KNOWN AS 2810 EAST END BLVD. NORTH.

Wes Morrison, Community & Economic Development Director, asked for the approval of an ordinance amending the official zoning map regarding a 3.00 acre tract of land in the Henry Teal Survey A-704, from R-3 (Single Family Detached) and A&E (Agriculture and Estate) to C-3 (General Business). He stated the Planning and Zoning Commission approved the change by a vote of 5:0.

Commissioners asked questions and discussed.

Mayor Brown opened the public hearing.

No one spoke regarding this item.

Mayor Brown closed the public hearing.

Commissioner Bonner made a motion to approve an ordinance amending the official zoning map regarding a 3.00 acre tract of land in the Henry Teal Survey A-704, from R-3 (Single Family Detached) and A&E (Agriculture and Estate) to C-3 (General Business). Mayor Brown seconded the motion, which passed with a vote of 6:0.

134. CONDUCT A PUBLIC HEARING AND CONSIDER AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP REGARDING A .984 ACRE TRACT OF LAND IN THE ASA LANGFORD SURVEY A-400, FROM PD (PLANNED DEVELOPMENT) TO R-6 (DUPLEX, TRIPLEX, QUADRAPLEX). THE SUBJECT PROPERTY IS GENERALLY LOCATED ON THE SOUTH SIDE OF MURPHY DRIVE AND ON THE WEST SIDE OF SOUTH GARRETT STREET, MORE COMMONLY KNOWN AS 316 MURPHY DRIVE.

Wes Morrison asked for approval of an ordinance amending the official zoning map regarding a .984 acre tract of land in the ASA Langford Survey A-400, from PD (Planned Development) to R-6 (Duplex, Triplex, Quadraplex). He received two responses in opposition of the request and the Planning and Zoning Commission approved the change by a vote of 5:0.

Commissioners asked questions and discussed.

Mayor Brown opened the public hearing.

Wayne Hunter, 308 Murphy Dr., spoke regarding the road condition and traffic issues this change could create.

Mayor Brown closed the public hearing.

Commissioner Hurta joined the meeting at this point.

Commissioner Calhoun made a motion to approve an ordinance amending the official zoning map regarding a .984 acre tract of land in the ASA Langford Survey A-400, from PD (Planned Development) to R-6 (Duplex, Triplex, Quadraplex). Commissioner Bonner seconded the motion, which passed with a vote of 7:0.

SECOND READING OF ORDINANCE

135. CONSIDER AN ORDINANCE FOR AN AMENDMENT TO THE OFFICIAL ZONING MAP REGARDING A 4-ACRE TRACT OF LAND IN THE THOMAS IDEN SURVEY A-354, FROM C-2 (RETAIL BUSINESS) TO PS (PUBLIC SERVICE). THE SUBJECT PROPERTY IS GENERALLY LOCATED ON THE SOUTH SIDE OF EAST TRAVIS STREET, MORE COMMONLY KNOWN AS 2502 EAST TRAVIS STREET.

Wes Morrison stated there was no new information regarding this item.

Commissioner Calhoun made a motion to approve an ordinance amending the official zoning map regarding a 4-acre tract of land on the Thomas Iden Survey A-354, from C-2 (Retail Business) to PS (Public Service). Commissioner Hurta seconded the motion, which passed with a vote of 7:0.

136. CONSIDER AN ORDINANCE AMENDING CHAPTER 24 ENTITLED "SIGNS AND BILLBOARDS REGULATIONS" SPECIFICALLY SECTION 24-9 ENTITLED "FREE STANDING SIGNS".

Wes Morrison stated there was no new information regarding this item.

Mayor Brown made a motion to approve an ordinance amending Chapter 24 entitled "Signs and Billboard Regulations" specifically Section 24-9 entitled "Free Standing Signs". Commissioner Ware seconded the motion, which passed with a vote of 7:0.

CITY MANAGER REPORTS AND REQUESTS FOR CITY COMMISSION CONSIDERATION

137. DISCUSSION OF AND CONSIDERATION OF POTENTIAL UPDATES TO THE GOVERNANCE POLICY.

Mark Rohr, City Manager, summarized changes to the Governance Policy.

Commissioner asked questions and discussed.

Commissioner Lewis made a motion to approve the updates to the Governance Policy. Mayor Brown seconded the motion, which passed with a vote of 7:0.

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

C. Consider approval of an extension to a contract with Brenntag Southwest, Inc. to provide Coagulant for use in the City of Marshall water treatment process.

Commissioners asked questions and discussed.

Eric Powell, Public Works Director, provided information regarding the provider of the Coagulant used by the City of Marshall.

Commissioner Lewis made a motion to approve Item C of the Consent Agenda. Commissioner Ware seconded the motion, which passed with a vote of 7:0.

139. **EXECUTIVE SESSION**

A. An Executive Session pursuant to the Open Meetings Act, Chapter 551 of the Texas Government Code under Section 551.074 Personnel Matters: Annual evaluation of City Secretary/Finance Director.

Commissioner Ware made a motion to convene into Executive Session. Commissioner Calhoun seconded the motion, which passed with a vote of 7:0. The time was 12:39 p.m.

The Commission reconvened from Executive Session. The time was 2:46 p.m.

140. **ADJOURNMENT**

Commissioner Calhoun made a motion for adjournment. Commissioner Ware seconded the motion, which passed with a vote of 7:0.

APPROVED:

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

ATTEST:

City Secretary

**Ordinances: O-20-16
O-20-17
O-20-18
O-20-19**

ITEM 5B

CONSENT AGENDA

MONTHLY FINANCIAL REPORT

MEMORANDUM

To: Mark Rohr, City Manager

From: Elaine Altman, Finance Director

Date: June 16, 2020

Subject: May Revenue and Expense Report Summaries – General Fund and
Water and Sewer Enterprise Fund

Attached is the Revenue and Expense Report Summaries for May. This report provides current month, year to date, and budgeted amounts for major revenue categories and expenditures by department. The report also provides a percent of current budget. On average, a department will expend approximately 8.33% of its budget on a monthly basis and this can be used as a benchmark when reviewing this report.

CITY OF MARSHALL
REV/EXP/BUD - SHORT REPORT - NEW
PERIOD ENDING: MAY 2020

GENERAL FUND	CURRENT MONTH	CURRENT YTD	PRIOR YTD	REVISED ADOPTED BUDGET	ADOPTED BUDGET	5/12 OF ADOPTED BUDGET	PERCENT OF ADOPTED (5 month norm=42%)	REMAINING BUDGET
REVENUES:								
TAXES	796,782	5,690,039	5,488,210	12,467,306	12,467,306	5,194,711	45.6	6,777,267
LICENSES & PERMITS	18,581	63,327	74,782	178,000	178,000	74,167	35.6	114,673
INTERGOVERNMENTAL REVENUE	28,570	106,922	56,230	161,235	161,235	67,181	66.3	54,313
FEES	350,791	2,007,866	1,860,272	5,200,894	5,200,894	2,167,039	38.6	3,193,028
FINES & FORFEITURES	13,394	118,587	311,114	484,332	484,332	201,805	24.5	365,745
MISCELLANEOUS REVENUE	9,934	973,258	1,274,478	2,573,331	2,573,331	1,072,221	37.8	1,600,073
TOTAL GENERAL FUND REVENUE	1,218,051	8,959,999	9,065,088	21,065,098	21,065,098	8,777,124	42.5	12,105,099
EXPENSES:								
GENERAL GOVERNMENT	64,161	230,248	183,099	555,300	555,300	231,375	41.5	325,052
FINANCE	54,959	202,076	235,338	522,314	522,314	217,631	38.7	320,238
POLICE	515,337	1,899,360	2,524,814	5,153,135	5,153,135	2,147,140	36.9	3,253,775
FIRE	428,784	1,879,956	1,878,066	4,144,820	4,144,820	1,727,008	45.4	2,264,864
PUBLIC SERVICES	315,918	1,577,897	1,892,729	5,034,940	4,768,142	1,986,726	33.1	3,190,245
PLANNING	36,954	225,602	143,610	598,469	598,469	249,362	37.7	372,867
SUPPORT SERVICES	81,883	371,003	648,818	887,855	905,449	377,270	41.0	534,446
TOURISM & PROMOTIONS	85,070	452,803	169,411	1,206,297	1,206,297	502,624	37.5	753,494
PARKS & RECREATION	33,884	160,207	306,081	439,866	530,892	221,205	30.2	370,685
NON DEPARTMENTAL	187,663	922,276	934,736	2,226,990	2,045,370	852,238	45.1	1,123,094
APPRAISAL DISTRICT	0	46,654	46,744	97,910	97,910	40,796	47.7	51,256
INTERFUND TRANSFERS	0	0	0	537,000	537,000	223,750	0.0	537,000
CAPITAL OUTLAY	0	0	53,224	0	0	0	0.0	0
TOTAL GENERAL FUND EXPENSES	1,804,612	7,968,082	9,016,669	21,404,896	21,065,098	8,777,124	37.8	13,097,016
TOTAL GENERAL FUND	(586,560)	991,917	48,419	(339,798)	0	0		

**CITY OF MARSHALL
REV/EXP/BUD - SHORT REPORT - NEW
PERIOD ENDING: MAY 2020**

	CURRENT MONTH	CURRENT YTD	PRIOR YTD	REVISED ADOPTED BUDGET	ADOPTED BUDGET	5/12 OF ADOPTED BUDGET	PERCENT OF ADOPTED	REMAINING BUDGET
WATER & SEWER ENTERPRISE FUND						(5 month norm=42%)		
REVENUES:								
PERMITS & FEES		3,083	3,873	11,400	11,400	4,750	27.0	8,318
WATER & SEWER CHARGES	644,692	3,615,405	3,989,821	10,301,854	10,301,854	4,292,439	35.1	6,686,449
MISCELLANEOUS REVENUES	566	9,055	39,073	72,000	72,000	30,000	12.6	62,945
TOTAL W&S REVENUE	645,257	3,627,542	4,032,767	10,385,254	10,385,254	4,327,189	34.9	6,757,712
EXPENSES:								
ADMINISTRATION	38,845	150,899	105,453	371,424	398,310	165,963	37.9	247,411
WATER PRODUCTION	135,658	535,727	636,252	1,729,835	1,735,906	723,294	30.9	1,200,179
DISTRIBUTION/COLLECTION	138,749	599,046	520,194	2,485,866	2,483,027	1,034,595	24.1	1,883,981
WASTEWATER TREATMENT	121,960	536,554	612,291	1,711,986	1,718,056	715,857	31.2	1,181,502
WATER BILLING	47,204	193,105	204,121	512,884	512,884	213,702	37.7	319,779
ENGINEERING	3,291	14,386	25,451	31,576	31,576	13,157	45.6	17,190
NON DEPARTMENTAL	97,075	534,696	476,860	1,029,769	990,267	412,611	54.0	455,571
INTERFUND TRANSFERS	0	792,500	576,931	2,515,228	2,515,228	1,048,012	31.5	1,722,728
TOTAL W&S EXPENSES	582,784	3,356,914	3,157,552	10,388,568	10,385,254	4,327,189	32.3	7,028,340
TOTAL WATER & SEWER FUND	62,473	270,628	875,215	(3,314)	0	0		

ITEM 5C

CONSENT AGENDA

**CONSIDER APPOINTMENTS TO THE
PLANNING & ZONING COMMISSION**



Agenda Information Sheet

June 25, 2020

Agenda Item

Consider appointments to the Planning & Zoning Commission to fill expired terms. (Director of Community & Economic Development)

Background & Summary of Request:

There are two vacancies on Planning & Zoning Commission, attached are two board member interest forms that have been submitted to staff from citizens interested in the appointment.

Staff recommends the appointments.

City of Marshall
Application for Appointment to City Boards and Committees

Name of Board or Committee to which you are applying: _____

Name: _____
(Title) Fulbright (Last) Jacob (First) L (Middle)

Permanent Residence Address: 401 Pinewood Dr Marshall TX 75672
(Street) (City) (State) (Zip Code)

Preferred Mailing Address: _____
(If different from above) (Street) (City) (State) (Zip Code)

Preferred Phone and Fax: 903-407-5899
(Phone) (Fax)

Email Address: Jacfulb@gmail.com

Occupation: Regional Sales Manager

Employer: Techline Sports Lighting Title: Regional Sales Manager

Are you a registered voter in the City of Marshall? Yes No

Are you a resident of the City of Marshall? Yes No

Length of residence: 25 years In which Districts do you reside? _____

Do you, your spouse or your employer have any financial interest, direct or indirect in any contract with the City of Marshall?

Yes No

If Yes, please explain: _____

Do you, your spouse or your employer have any financial interest, directly or indirectly, in the sale to the City of any land, materials, supplies or service?

Yes No

If Yes, please explain: _____

Continued on Page 2

City of Marshall Application for Appointment to City Boards and Committees (Page 2)

Name: Jacob Fulbright

BACKGROUND

Education: Associates in Business

Professional: Professional Property Tax Appraisal

Volunteer Experience/Community Service: Wounded Warrior Foundation

Areas of interest: Outdoors

Please specify membership on any other governmental Board or Committee.
List all Boards, Commissions, Corporations, Non-Profit Entities, Agencies, or other Entities of which you are currently a member and/or officer and/or employed by, and give the title and dates of any position that you have held in such organization.

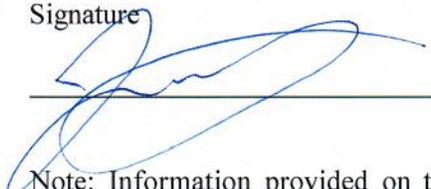
Organization: Texas State Bar Grievance Committee

Title: Public Member Dates: 6/15/2018-Current

Organization: _____

Title: _____ Dates: _____

I have read and understand the instructions and appointment process. The foregoing and any attached statements are true, accurate and complete; and I agree that any misrepresentation or omission of facts may result in my disqualification for appointment.

Signature  _____

Date 6-15-2020

Note: Information provided on this form is public and subject to the Texas Public Information Act (Government Code Chapter 552)

City of Marshall
Application for Appointment to City Boards and Committees

Name of Board or Committee to which you are applying: PLANNING & ZONING

Name: MRS KENNETH W
(Title) (Last) (First) (Middle)

Permanent Residence Address: 807 WOOD MARSHALL, TX 75670
(Street) (City) (State) (Zip Code)

Preferred Mailing Address: _____
(If different from above) (Street) (City) (State) (Zip Code)

Preferred Phone and Fax: 903 263-9219
(Phone) (Fax)

Email Address: KEN MOORE ATT. NET

Occupation: SELF EMPLOYED (RETAIL PROP OWNER)

Employer: _____ Title: _____

Are you a registered voter in the City of Marshall? Yes No

Are you a resident of the City of Marshall? Yes No

Length of residence: 18 YRS. In which Districts do you reside? 5 + 2

Do you, your spouse or your employer have any financial interest, direct or indirect in any contract with the City of Marshall?
 Yes No
If Yes, please explain: _____

Do you, your spouse or your employer have any financial interest, directly or indirectly, in the sale to the City of any land, materials, supplies or service?
 Yes No
If Yes, please explain: _____

City of Marshall Application for Appointment to City Boards and Committees (Page 2)

Name: KENNETH MOON

BACKGROUND

Education: COLLEGE EDUCATED

Professional: RETIRED EDUCATOR

Volunteer Experience/Community Service: VOTER REGISTRATION / CLEAN-UP PROJECTS

Areas of interest: CODE ENFORCEMENT
+ PROPERTY RIGHTS PROTECTION

Please specify membership on any other governmental Board or Committee. List all Boards, Commissions, Corporations, Non-Profit Entities, Agencies, or other Entities of which you are currently a member and/or officer and/or employed by, and give the title and dates of any position that you have held in such organization.

Organization: NEWTOWN ASSOCIATION

Title: SECRETARY Dates: PRESENTLY

Organization: N.A.A.C.P

Title: MEMBER Dates: PRESENTLY

I have read and understand the instructions and appointment process. The foregoing and any attached statements are true, accurate and complete; and I agree that any misrepresentation or omission of facts may result in my disqualification for appointment.

Signature Kenneth Moon Date 8-3-20

Note: Information provided on this form is public and subject to the Texas Public Information Act (Government Code Chapter 552)

ITEM 6A

SECOND READING OF ORDINANCES

ORDINANCE AMENDING THE OFFICIAL ZONING MAP REGARDING A 3.00 ACRE TRACT OF LAND, FROM R-3 (SINGLE FAMILY DETACHED) AND A&E (AGRICULTURE AND ESTATE) TO C-3 (GENERAL BUSINESS). THE SUBJECT PROPERTY IS MORE COMMONLY KNOWN AS 2810 EAST END BLVD. NORTH.



Agenda Information Sheet

June 25, 2020

Agenda Item Z-20-03:

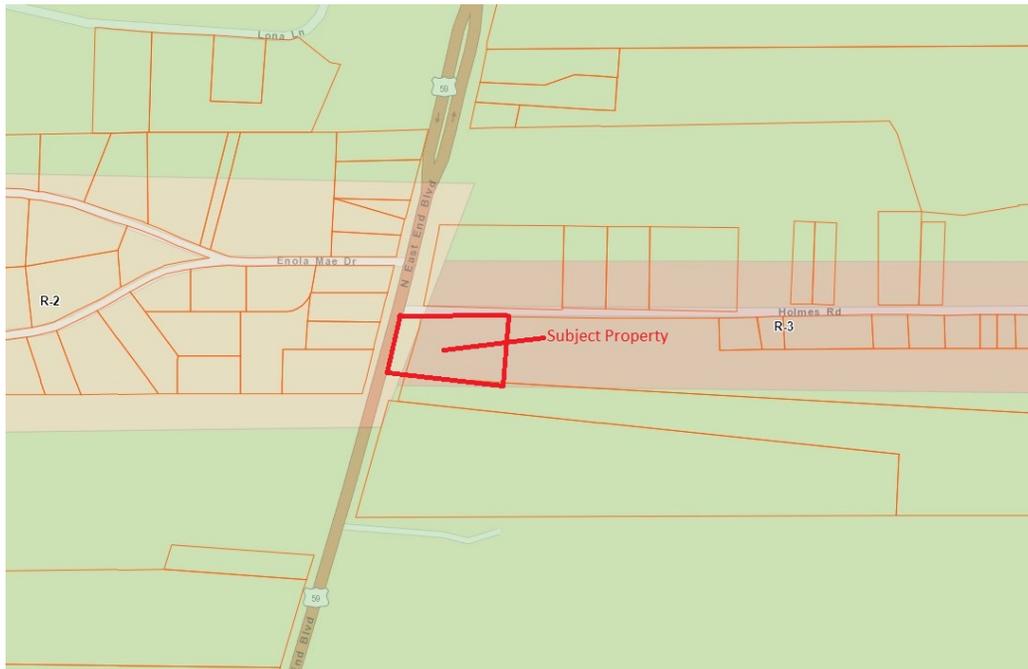
Consider an Ordinance amending the official zoning map regarding a 3.00 acre tract of land in the Henry Teal Survey A-704, from R-3 (Single Family Detached) and A&E (Agriculture and Estate) to C-3 (General Business). The subject property is generally located on the South side of Holmes Road and on the east side of East End Blvd. North (U. S. Highway 59), more commonly known as 2810 East End Blvd. North.

The Planning & Zoning Commission recommended approval by a vote of 5-0-0.

The City Commission approved the first reading by a vote of 6-0-0.

Applicant:	Bobby Pierce 1279 Alice Calloway Road Marshall Texas 75672
Property Owner	Bobby Pierce 1279 Alice Calloway Road Marshall Texas 75672
Surrounding Property Notices	8 Notices Sent within 200 ft. of the Site 0 Responses back

Location Map:



Background & Summary of Request:

The original request was to change the zoning from R-3 (Single –Family Residential) and A-E (Agricultural – Estate) to I-1 (Light Industry). During the public hearing additional information was shared regarding the proposed business and staff asked the Commission to table action and allow staff time to work with the applicant.

After consulting with the applicant, the request has been modified to rezone the property to C-3 (General Business). The use being proposed is a building materials/contractor office with screening which is allowed by right in the C-3 zoning district.

Picture of the Site:



Existing Conditions:

The property has been utilized as agriculture and is zoned R-3 (Single-Family Detached) and A&E (Agriculture and Estate) and is sparsely wooded.

The table below outlines the surrounding zoning and land uses:

	Zoning Classification	Land Use
North of the Property	R-3 (Single-family Residential)	Single Family Residence
East of the Property	R-3 (Single-family Residential) A&E Agriculture and Estate	Vacant
South of the Property	A&E Agriculture and Estate	Single Family Residence
West of the Property	R-2 (Single-family Residential)/C-3(General Business)	Single Family Residence/ Multi-family

Water service is provided to the site by an existing 6” water main along the south side of Holmes Road and an 8” sewer main along the north side of Holmes Road.

Zoning Classification Analysis:

The applicant is requesting a zoning change to C-3 (General Business) zoning district. The Zoning Ordinance defines General Business as a district “*established to provide for the development of business and commercial establishments which would generally be considered non-offensive and to provide for appropriate locations for development.*”

The zoning ordinance goes on to define the General Business zoning district “*as to promote the most desirable uses of land and the direction of building development in accordance with the Comprehensive Plan, and the stability of commercial development to strengthen the economic base of the city.* In addition, outdoor storage without screening is prohibited.

Screening within the C-3 district must consist of sight barring shrubs or fencing with a minimum height of six (6) feet and shall be developed in a manner that screens any storage of material or equipment from public view.

Comprehensive Plan and Future Land Use Map Analysis:

The Future Land Use identifies this property as Commercial/Office/Service. The Comprehensive Plan outlines the various types of commercial areas within the city. The Plan states the importance of creating commercial areas in the outlying areas of the city to serve auto-oriented uses and stand-alone commercial uses.

The following questions should be answered when determining if a zoning change is appropriate:

1. Will the proposed change be in compliance with the goals of the Comprehensive Plan?
The request of a General Business zoning district does comply with the Future Land Use designation of Commercial/Office/Service.
2. Will there be an adverse impact on surrounding property if the request is approved? In evaluating this question, consideration should be given to all permitted uses in the proposed new zoning and the impact it could have on surrounding property.
The surrounding property is primarily developed with large acreage single-family homes and agricultural uses which would probably not be immediately affected by a General Business zoning classification or the proposed use. However, it is important to look toward the future and what could be developed around the property and what other uses are allowed in the General Business zoning district.
3. Is the property suitable for use as it is currently zoned or does the zoning need to be changed to allow the property to be put to use in a way that is in keeping with the surrounding activities.
As already stated, the property is currently surrounded by large acreage single-family and agricultural uses so keeping the zoning the same would be a consistent land uses. That being said, as growth occurs and the area transitions to more commercial development it will be inevitable that the zoning will change.

4. What is the relationship of the proposed change to the health, safety and welfare of the general community? In other words, will the change make the community better or is it merely for the convenience of the owner? Will surrounding property owners suffer or lose any enjoyment in the area of their property as a result of this change? Does the proposed change seem to be a logical extension of similar types of development?

Based on existing conditions the proposed change/use is not believed to have an immediate negative effect on the community.

Suggested Motions:

1. Motion to approve case number Z-20-03 as requested.
2. Motion to deny of case number Z-20-03.

Attachments:

1. Aerial of Site
2. Pictures of the Site
3. 200 Foot Notification Map
4. Ordinance

Z-20-03
Aerial Photograph



Please note, areas depicted on the above map just for representation purposes only and do not identify the exact boundaries of the property in question.

Z-20-03
Site Pictures



Subject Property



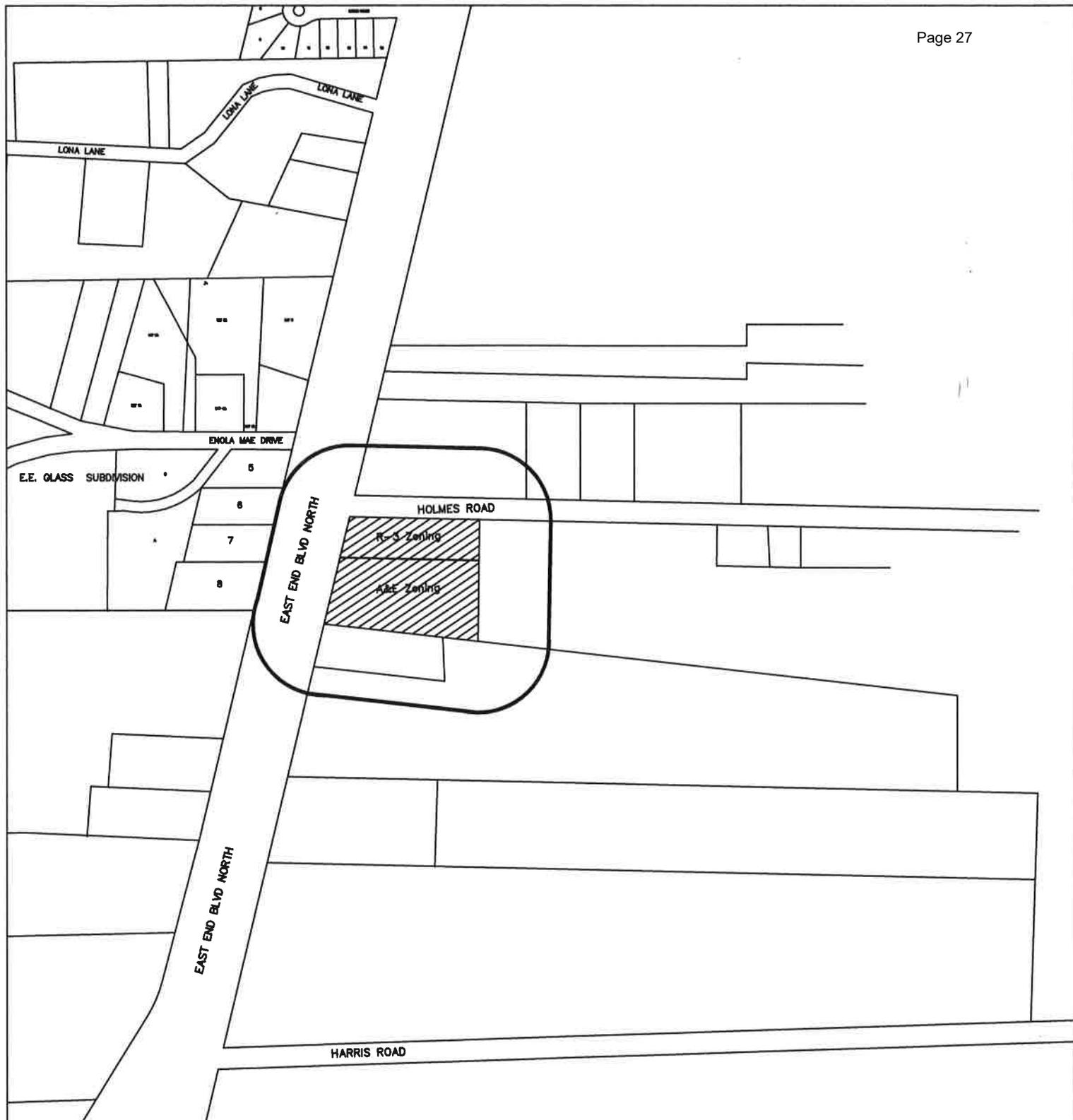
Vacant to the east



Single-Family Residential to the North



Single-Family Residential and Multi-family to the
West



Case No. Z-20-03

Scale: 1"=400'

Date: 05-11-2020

PLANNING DEPARTMENT
CITY OF MARSHALL, TEXAS

Remarks: a request to rezone
3.00 acres of land in the Henry Teal
Survey A-704 from A&E (agriculture and
Estate) and R-3 (Single Family Detached)
C-3 (General Business)



Location: 2810 East End Blvd. N.
Applicant: Bobby Pierce

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 0-87-13 TO REZONE A 3.00-ACRE TRACT OF LAND IN THE HENRY TEAL SURVEY A-704, FROM R-3 (SINGLE FAMILY DETACHED) AND A&E (AGRICULTURE AND ESTATE) TO C-3 (GENERAL BUSINESS). THE SUBJECT PROPERTY IS GENERALLY LOCATED ON THE SOUTH SIDE OF HOLMES ROAD AND ON THE EAST SIDE OF EAST END BLVD. NORTH (U. S. HIGHWAY 59), MORE COMMONLY KNOWN AS 2810 EAST END BLVD. NORTH IN THE CITY OF MARSHALL, TEXAS.

WHEREAS, the City of Marshall enacted zoning on December 13, 1951 and amended said ordinance on July 7, 1963 and on March 26, 1987 repealed and replaced all ordinance with Ordinance No. 0-87-13 amending the Code of Ordinances of the City of Marshall to add Chapter 32 regarding Zoning; and

WHEREAS, a Zoning District Map was adopted as a part of Ordinance No. 0-87-13; and

WHEREAS, Chapter 32, Section 14 of the Code of Ordinances established a procedure for a property owner, his agent, or the City to request zoning district map amendments; and

WHEREAS, the Planning & Zoning Commission, after due and proper notice in the manner and for the length of time required by law, held a public hearing for the purpose of considering proposed changes to the Zoning District Map; and

WHEREAS, after the close of said public hearing and pursuant thereto, the Planning & Zoning Commission filed a written report with the City Commission, recommending changes in the Zoning District Map; and

WHEREAS, pursuant to said report and after notice in the manner and for the length of time required by law, the City Commission held a public hearing in Marshall, Texas at City Hall on the 11th day of June, 2020, at 6:00pm for the purpose of considering the requested Zoning Map change, and at which hearing all property owners, interested parties, and interested citizens had an opportunity to be heard; and

WHEREAS, the City Commission, after considering the proposed changes and after hearing all parties and citizens desiring to be heard, deems that the following changes are necessary and for the best interest of the general welfare of the citizens of the City of Marshall, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS THAT:

Section 1. The facts and opinions in the preamble of this ordinance are true and correct.

Section 2. Rezone a 3.00-acre tract of land in the Henry Teal Survey A-704, from R-3 (Single Family Detached) and A&E (Agriculture and Estate) to C-3 (General Business). The subject property is generally located on the South side of Holmes Road and on the east side of East End Blvd. North (U. S. Highway 59), more commonly known as 2810 East End Blvd. North in the City of Marshall, Texas.

Section 3. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed to the extent of the conflict only.

PASSED on first reading the 11th day of June, 2020.

AYES: __
NOES: __
ABSTAINED: __

PASSED on second reading the 25th day of June, 2020.

AYES: ____
NOES: ____
ABSTAINED: ____

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

ATTEST:

CITY SECRETARY

ITEM 6B

SECOND READING OF ORDINANCES

**ORDINANCE AMENDING THE
OFFICIAL ZONING MAP REGARDING
A .984 ACRE TRACT OF LAND, FROM
PD (PLANNED DEVELOPMENT) TO
R-6 (DUPLEX, TRIPLEX,
QUADRAPLEX). THE SUBJECT
PROPERTY IS MORE COMMONLY
KNOWN AS 316 MURPHY DRIVE**



Agenda Information Sheet

June 25, 2020

Agenda Item Z-20-05:

Consider an Ordinance amending the official zoning map regarding a .984 acre tract of land in the ASA Langford Survey A-400, from PD (Planned Development) to R-6 (Duplex, Triplex, Quadraplex). The subject property is generally located on the south side of Murphey Drive and on the west side of South Garrett Street, more commonly known as 316 Murphey Drive.

**The Planning & Zoning Commission recommended approval by a vote of 5-0-0.
The City Commission approved the first reading by a vote of 6-0-0.**

Applicant:	Rhett Skinner 315-B Murphey Drive Marshall Texas 75672
Property Owner	Rhett Skinner 315-B Murphey Drive Marshall Texas 75672
Surrounding Property Notices	7 Notices Sent within 200 ft. of the Site 2 Responses back in Opposition

Location Map:



Background & Summary of Request:

The owner is requesting the zoning be changed from PD (Planned Development) to R-6 (Duplex, Triplex, Quadraplex). Previous owners of this property had it rezoned to PD (Planned Development) in November 1982. This was done prior to the City of Marshall’s current zoning ordinance which was adopted in March 1987. The existing Planned Development ordinance permitted a single family residential development similar to the current R-2 (Single Family Detached) zoning district. A copy of the original Planned Development is included for review.

Picture of the Site:



Existing Conditions:

The property is undeveloped and has recently been cleared. The property owner is utilizing the dirt from this site for another project.

The table below outlines the surrounding zoning and land uses:

	Zoning Classification	Land Use
North of the Property	MF(Multi –Family)	Apartment and Duplexes
East of the Property	R-1(Single Family)	Vacant
South of the Property	R-1(Single Family)	Single Family Residence
West of the Property	PD (Planned Development)	Single Family Residence

Water service is provided to the site by an existing 6” water main along the south side of Murphey Drive, and along the west side of South Garrett Street. A 6” sewer main in Murphey Drive will need to be extended approximately 40 feet to serve the property.

Zoning Classification Analysis:

The R-6 Duplex, Triplex, Quadraplex is established to manage the density of population and to provide adequate space and site diversification for medium density residential development where adequate streets and other community facilities are available for present and future needs.

Comprehensive Plan and Future Land Use Map Analysis:

The subject property is designated as “Low Density Residential” on the Future Land Use Map with the abutting property to the north designated as “Moderate Density Residential”. Moderate Density Residential Objective 3d of the Comprehensive Plan states the “*Infill development should respond to existing development with compatible patterns, and design standards.*”

The following questions should be answered when determining if a zoning change is appropriate:

1. Will the proposed change be in compliance with the goals of the Comprehensive Plan?
Taking into consideration that the property is located immediately adjacent to a Moderate Density Residential designated area and the existing buffer yard requirements will create a 10 foot buffer yard between the proposed moderate density property; the request meets the goals of the comprehensive plan stating that new development must be sensitive to the surrounding and natural context in scale and form to the existing neighborhoods.
2. Will there be an adverse impact on surrounding property if the request is approved? In evaluating this question, consideration should be given to all permitted uses in the proposed new zoning and the impact it could have on surrounding property. *The surrounding property is primarily single family residential and multi-family to the north and would not be immediately affected by an R-6 (Duplex, Triplex Quadraplex) zoning classification based on requirements of the zoning ordinance.*
3. Is the property suitable for use as it is currently zoned or does the zoning need to be changed to allow the property to be put to use in a way that is in keeping with the surrounding activities. *The property is currently zoned for residential. However, under the R-6 zoning district as requested the property would lend itself to keeping with the development to the north because of its lot size and location.*
4. What is the relationship of the proposed change to the health, safety and welfare of the general community? In other words, will the change make the community better or is it merely for the convenience of the owner? Will surrounding property owners suffer or lose any enjoyment in the area of their property as a result of this change? Does the proposed change seem to be a logical extension of similar types of development?
The requested zoning change to R-6 seems to be a logical extension of similar type of developments directly to the north of the subject property.

Suggested Motions:

1. Motion to approve case number Z-20-05 as requested.
2. Motion to deny case number Z-20-05.

Attachments:

1. Aerial of Site
2. Pictures of the Site
3. 200 Foot Notification Map
4. Copy of original Planned Development Ordinance O-82-89.
5. Ordinance

Z-20-05 Aerial Photograph



Please note, areas depicted on the above map just for representation purposes only and do not identify the exact boundaries of the property in question.

Z-20-05
Site Pictures



Property to the south



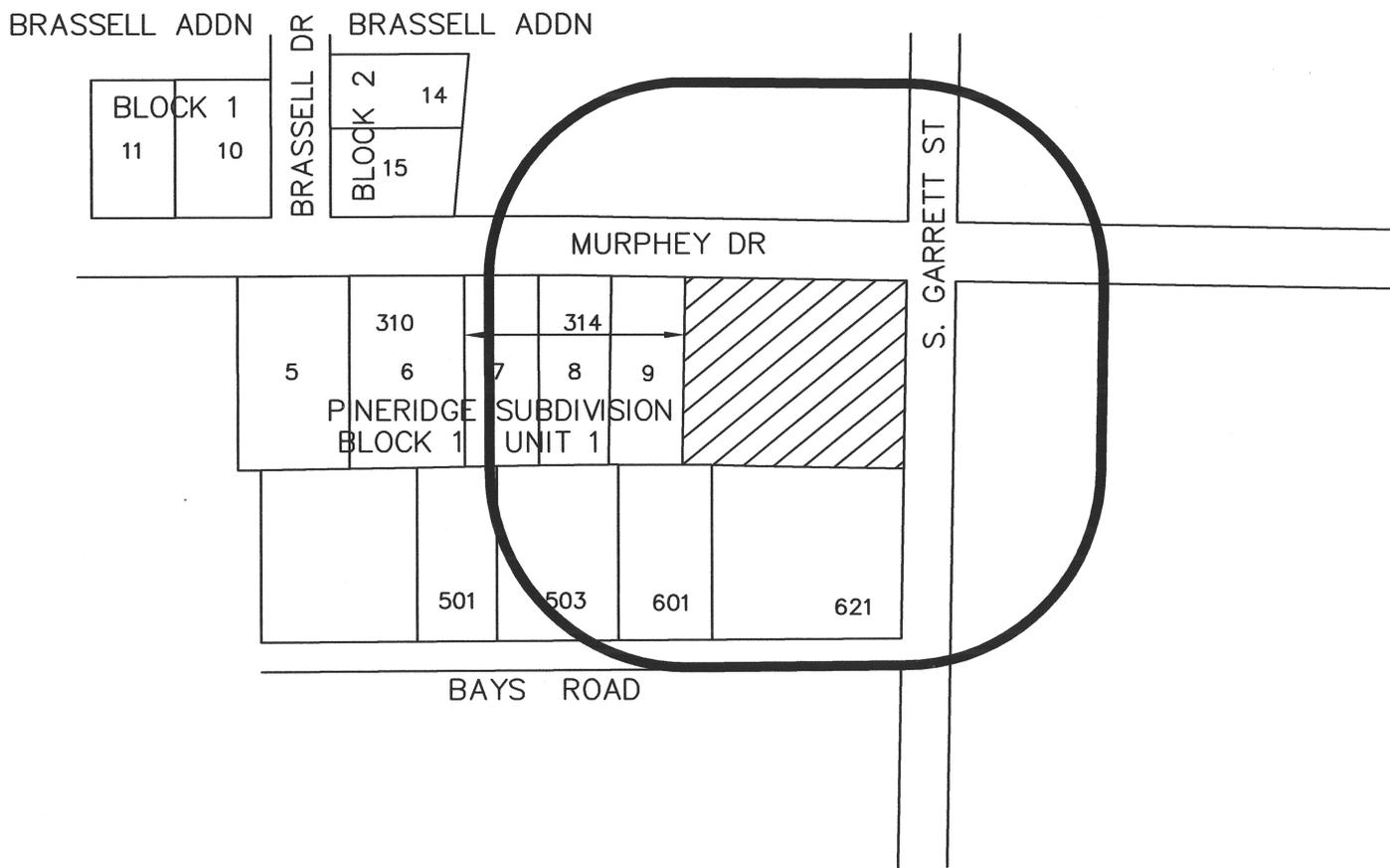
Property to west



Property to the east



Property to north



Case No. Z-20-05
 Scale: 1"=200'
 Date: 05-11-2020

PLANNING DEPARTMENT
 CITY OF MARSHALL, TEXAS

Remarks: a request to rezone 0.99 acres of land in the Asa Langford Survey A-400. From PD(Planned Development) to R-6(Duplex, Triplex, Quadraplex)

Applicant: Rhett Skinner
 Location: 316 Murphey Drive

O-82- 89

AN ORDINANCE AMENDING THE ZONING
ORDINANCE OF THE CITY OF MARSHALL
AND HEREBY CHANGING THE CLASSIFI-
CATION OF CERTAIN PROPERTIES WITHIN
SAID CITY.

WHEREAS, the Planning and Zoning Commission, after due and proper notice in the manner and for the length of time required by law, held a public hearing for the purpose of considering proposed changes in classification and extension of the boundaries of various properties within the City of Marshall; and

WHEREAS, after the close of said public hearing and pursuant thereto, the Planning and Zoning Commission filed a written report with the City Commission, recommending changes in classification and extension of the boundaries of various properties; and

WHEREAS, pursuant to said report and after notice in the manner and for the length of time required by law, the City Commission held a public hearing at the City Hall in the Commission Chamber on November 10, 1982, at 6:30 p.m. for the purpose of considering requested changes, and at which hearing all property owners, parties and interested citizens had an opportunity to be heard; and

WHEREAS, the City Commission, after considering the proposed changes and after hearing all parties and citizens desiring to be heard, deems that the following changes are necessary and for the best interest of the general welfare of the citizens of the City of Marshall; now, therefore,

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

1.

The classification is hereby changed from "R-1" Single Family Dwelling District to "PD" Planned Development for a single family housing, being more commonly known as Murphy Drive and South Garrett Street, and being more fully described in the Attached Exhibit "A".

At the request of the Chairman of the City Commission, this Ordinance is passed under the emergency clause of the City Charter.

PASSED, APPROVED AND ADOPTED this 10 day of Nov, 1982.

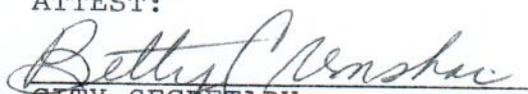
AYES: 5

NOES: 0

ABSTAINED: _____


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

ATTEST:


CITY SECRETARY

BEING 6.15 acres of land located in the Asa Langford Survey, Harrison County, Texas, said 6.15 acres being all of a called 5.0 acre conveyed to E. B. Murphy by deed dated December 5, 1928, recorded in Vol. 159, Page 31, Deed Records of Harrison County, Texas, and being all of a called 1.776 acre tract, said called 1.776 acre tract being a part of that certain 32 acre tract described in Deed to Roy P. Cox, dated April 19, 1950, recorded in Vol. 354, Page 310, Deed Records of Harrison County, Texas, said called 5.0 acre tract and called 1.776 acre tract being more particularly described in two tracts as follows:

TRACT ONE: BEGINNING at the Northwest corner of the above mentioned called 5.0 acre tract, said corner being on the South ROW of Murphy Drive;
 THENCE along said South ROW of Murphy Drive N 89 Deg. 00' E, 1002 feet more or less to a point for corner, said point being in the West ROW line of South Garrett Street;
 THENCE along said West ROW of South Garrett Street S 01 Deg. 00' E, 190 feet more or less to a point for corner;
 THENCE S 89 Deg. 35' W, 292 feet more or less; S 88 Deg. 05' W, 621 feet more or less; N 89 Deg. 10' W, 105 feet more or less to a point for corner;
 THENCE N 03 Deg. 30' E, 196 feet more or less to the PLACE OF BEGINNING;
 TRACT TWO: BEGINNING at the Northwest corner of the above mentioned called 1.776 acre tract, said corner being on the South ROW of Murphy Drive;
 THENCE along said South ROW of Murphy Drive N 89 Deg. 55' E, 242.37 feet more or less to a point for corner;
 THENCE S 03 Deg. 30' W, 193 feet more or less to a point for corner;
 THENCE S 88 Deg. 25' W, 49 meet more or less to a point for corner;
 THENCE S 00 Deg. 15' W, 184 feet more or less to a point for corner;
 THENCE N 87 Deg. 30' W, 175 feet more or less to a point for corner, said point being on the East ROW line of South Garrett Street;
 THENCE along said East ROW line of South Garrett Street N 01 Deg. 00' W, 362 feet more or less to the PLACE OF BEGINNING;
 Tracts One and Two combined and containing 6.15 acres of land.

EXHIBIT "A"

EXHIBIT A TO THE

PLAT OF PINERIDGE SUBDIVISION, AS DEVELOPED BY G. A. FUGLER, JR.

1. No lot shall be used for other than residential purposes and no soil or trees shall be removed for any commercial use.
2. No building shall be erected on any lot other than one, one-family dwelling. All carports and garages must be attached. The floor area of the main structure, exclusive of porches, garage, storage rooms and basement, shall not be less than 1,100 square feet. The maximum height of any building shall be one and one-half story.
3. The lot shall be kept clean and free of trash, garbage and debris at all times. The lots in this Addition must be mowed at least twice yearly. All advertising signs are prohibited except such signs as the Addition deems necessary for the orderly development of the Addition.
4. No noxious, unlawful, or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the addition in which said lot is located.
5. Notwithstanding anything to the contrary contained in this instrument covering restrictions, covenants and conditions affecting the use of any property in this Addition, the management of this Addition hereby reserves for itself and its designated agent or agents the unrestricted right to place a sign or signs on any unsold lot in this Addition.
6. No improvements shall be erected or constructed on any lot in any Addition nearer than thirty (30) feet to the front property line, nor nearer than five (5) feet to the side property line, except that in the case of corner lots, no improvements shall be erected or constructed within ten (10) feet of side property adjacent to the streets.
7. No building or structure shall be occupied or used until the exterior thereof is completely finished and any structure or part thereof constructed of any materials other than brick, the surfaces thereof shall be covered with good quality paints of sufficient thickness and in a manner so that such building will present a good and pleasing appearance in accordance with practices usually and generally used on structures in municipal areas of East Texas.
8. No outside toilets shall be installed or maintained on any premises and all plumbing shall be connected with a sanitary sewer or septic tank acceptable to state and local health authorities. No removal of trees or excavations other than for landscaping, construction of buildings, driveways and other structures will be permitted without the written permission of Grantors, their assignees or designees.
9. All single family housing will consist of three-bedroom houses, except that on three of five lots consisting of Lots 8 through 12, in Block 1, a two-bedroom, one-bath house may be built. All three-bedroom houses will be plumbed for two baths.
10. The exterior finish of each house shall be at least Seventy Percent (70.0%) brick veneer.
11. Central heat and air conditioning shall be installed in all houses.
12. No antenna in the subdivision may exceed thirty (30) feet from ground level.
13. All driveways are to be of hard surface.

14. No hogs, poultry, horses, goats, sheep or animals of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

15. All lots are subject to easements and restrictions of record and are subject to any applicable zoning rules and regulations of the City of Marshall, Harrison County, Texas, for R-2, Single Family Dwellings, except as specifically stated herein or as shown on the Plat of this Subdivision.

16. No recreational vehicles, trailers, boats or water craft of any kind shall be parked and left standing for excessive periods of time on any of the streets or roadways in this Addition.

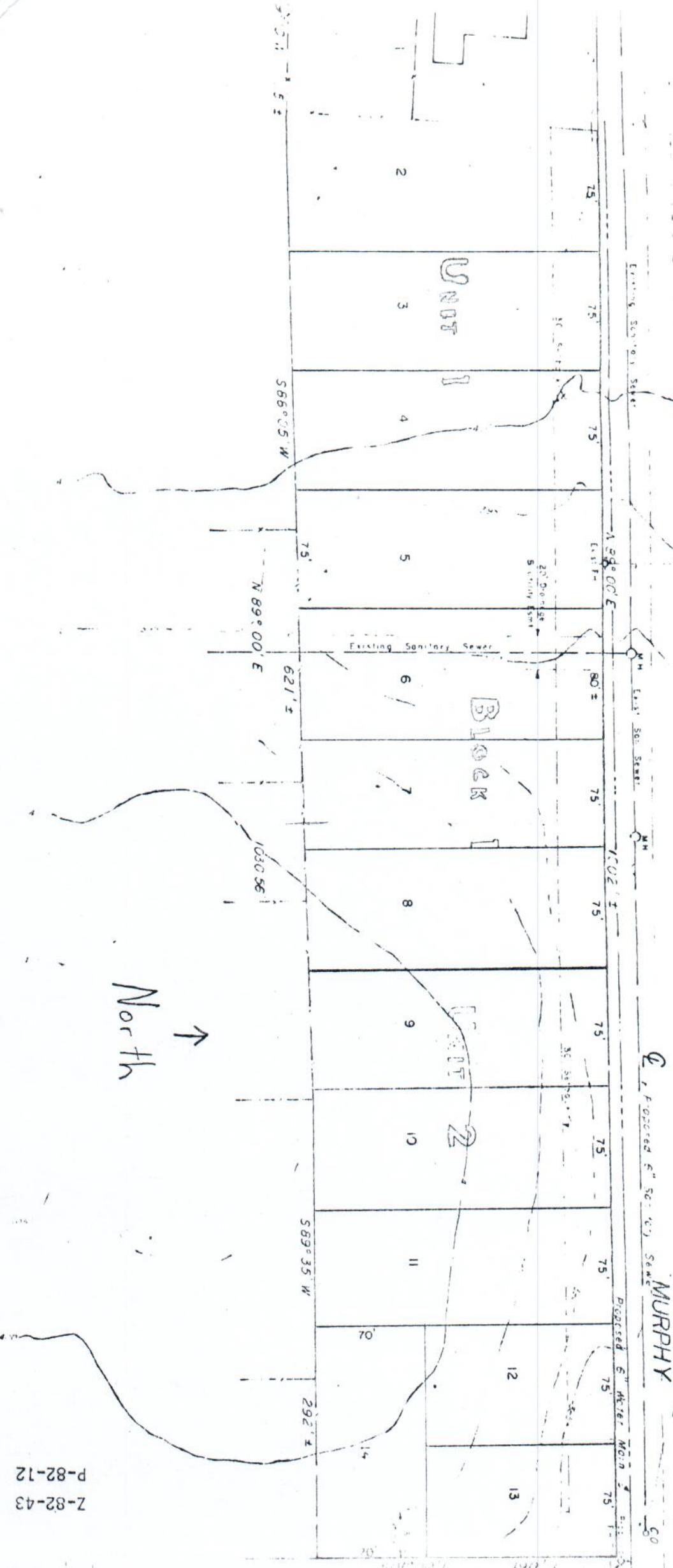
17. No more than one outbuilding, such as a barn or storage building, shall be erected in addition to the dwelling, and such building must be detached.

18. No fence shall be constructed of any material other than brick, stone, wood, or chain link fencing.

~~19. These restrictions, covenants and conditions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date of such restrictions, covenants and conditions being first impressed upon said property and Addition, after which time said restrictions, covenants and conditions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the lot owners in said Addition has been recorded, agreeing to a change in said restrictions, covenants and conditions, in whole, or in part.~~

19. If any portion of these restrictions, covenants and conditions shall be declared invalid by judgment of court order, it shall not affect the validity of any other provision or portion thereof.

E STREET



Z-82-43
P-82-12

SOUTH GARRETT ST

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 0-87-13 TO REZONE A .984 ACRE TRACT OF LAND IN THE ASA LANGFORD SURVEY A-400, FROM PD (PLANNED DEVELOPMENT) TO R-6 (DUPLEX, TRIPLEX, QUADRAPLEX). THE SUBJECT PROPERTY IS GENERALLY LOCATED ON THE SOUTH SIDE OF MURPHY DRIVE AND ON THE WEST SIDE OF SOUTH GARRETT STREET, MORE COMMONLY KNOWN AS 316 MURPHY DRIVE IN THE CITY OF MARSHALL, TEXAS.

WHEREAS, the City of Marshall enacted zoning on December 13, 1951 and amended said ordinance on July 7, 1963 and on March 26, 1987 repealed and replaced all ordinance with Ordinance No. 0-87-13 amending the Code of Ordinances of the City of Marshall to add Chapter 32 regarding Zoning; and

WHEREAS, a Zoning District Map was adopted as a part of Ordinance No. 0-87-13; and

WHEREAS, Chapter 32, Section 14 of the Code of Ordinances established a procedure for a property owner, his agent, or the City to request zoning district map amendments; and

WHEREAS, the Planning & Zoning Commission, after due and proper notice in the manner and for the length of time required by law, held a public hearing for the purpose of considering proposed changes to the Zoning District Map; and

WHEREAS, after the close of said public hearing and pursuant thereto, the Planning & Zoning Commission filed a written report with the City Commission, recommending changes in the Zoning District Map; and

WHEREAS, pursuant to said report and after notice in the manner and for the length of time required by law, the City Commission held a public hearing in Marshall, Texas at City Hall on the 11th day of June, 2020, at 6:00pm for the purpose of considering the requested Zoning Map change, and at which hearing all property owners, interested parties, and interested citizens had an opportunity to be heard; and

WHEREAS, the City Commission, after considering the proposed changes and after hearing all parties and citizens desiring to be heard, deems that the following changes are necessary and for the best interest of the general welfare of the citizens of the City of Marshall, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS THAT:

Section 1. The facts and opinions in the preamble of this ordinance are true and correct.

Section 2. Rezone a .984 acre tract of land in the ASA Langford Survey A-400, from PD (Planned Development) to R-6 (Duplex, Triplex, Quadraplex). The subject property is generally located on the south side of Murphy Drive and on the west side of South Garrett Street, more commonly known as 316 Murphy Drive in the City of Marshall, Texas.

Section 3. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed to the extent of the conflict only.

PASSED on first reading the 11th day of June, 2020.

AYES: __

NOES: __

ABSTAINED: __

PASSED on second reading the 25th day of June, 2020.

AYES: ____

NOES: ____

ABSTAINED: ____

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

ATTEST:

CITY SECRETARY

ITEM 7A

RESOLUTION

**APPROVAL A RESOLUTION
AUTHORIZING THE APPROVAL OF A
DESIGN/BUILD CONTRACT FOR THE
DEVELOPMENT, DESIGN, AND
CONSTRUCTION OF A NEW ANIMAL
ADOPTION CENTER**

MEMORANDUM

To: Members of the City Commission

From: Mark Rohr, City Manager

Date: June 15, 2020

Subject: Consider a Resolution authorizing the approval of a Design/Build Contract for the development, design, and construction of a new animal adoption center

The attached Resolution authorizes the approval of a Design/Build Contract for the development, design, and construction of a new animal adoption center.

Three respondents were selected by the Adoption Center Advisory Committee to submit proposals as part of Step 2 of the RFQ/RFP Design/Build process. After thorough evaluation by the Adoption Center Advisory Committee, Berry and Clay Construction of Rusk, TX was determined as the highest ranked respondent and selected as the firm submitting a proposal offering the best value for the City.

City staff and the City Attorney have negotiated and prepared the attached contract for Design/Build services for the construction of an animal adoption center and requests the approval of the Commission by Resolution to enter into the contract. The guaranteed maximum price (GMP) will be determined after the design drawings are completed as an amendment to the contract.



"Shelter Planners of America"

CONTRACTOR REFERENCE FORM

PROJECT:

City of Marshall is requesting contractor reference information for the project noted below.
The contractor has given your name as a reference for their company's work:

Name of Contractor: Berry & Clay
 Referenced Project Name: Remodels, road additions, Press Bay, Bond
 Referenced Project Completion Date: By beginning of school year.
 Referenced Project Construction Costs: 3 million
 Referenced Contact Name & Company: Morris Lyon - Hawkins ISD
 Referenced Contact Tel. No.: 003-769-2181

Evaluation Scale - Poor-1 Fair-3 Average-5 Good-7 Very Good-9 Excellent-10 Score

SCORE

1	Did the Contractor work well as a team with the Owner and Architect? Comment: <u>Worked around different schedules.</u>	10
2	Did the Contractor promptly make repairs or replace the work that did not meet specifications? Comment: <u>a few issues were fixed immediately, good communication</u>	10
3	Did the Contractor promptly complete punch list items to the satisfaction of the Owner? Comment: <u>Very impressed, I</u>	10
4	Did the Contractor promptly respond to and make warranty repairs to the satisfaction of the Owner? Comment: <u>Fixed light module + very responsive</u>	10
5	Did the contractor keep and maintain a clean and safe jobsite? Comment: <u>Put up barriers & walk to protect kids in school</u>	10
6	Was the contractor's Project Superintendent knowledgeable and experienced? Comment: Superintendent's Name: <u>Greg Murray</u>	10
7	Did the contractor provide a knowledgeable and competent Project Manager? Comment: Project Manager's Name: <u>Steven Berry</u>	10
8	Did the Contractor complete the work within the budget? Comment: <u>Came in under budget so could do extra work.</u>	10
9	Did the Contractor complete the work on time or before the contract time? Comment:	10
10	Was the project manned adequately to maintain appropriate progress? Comment:	10
11	Did Contractor work well with the Owner on Change Orders - scrutinizing them prior to submitting? Comment:	10
12	Describe the quality of the work from this Contractor. Comment: <u>Outstanding. Out of 5 kind issues they have been the best.</u>	10
13	Did the Contractor pay his bills and subcontractors promptly? Any financial concerns arise? Comment:	10
14	Would you recommend this contractor to be used again on another of your projects? Comment: <u>Will use on future projects.</u>	10
Total Score		140



CONTRACTOR REFERENCE FORM

PROJECT:

City of Marshall is requesting contractor reference information for the project noted below.
The contractor has given your name as a reference for their company's work:

Name of Contractor: Berry and Clay
 Referenced Project Name: Caledonia - school
 Referenced Project Completion Date: August 2018
 Referenced Project Construction Costs: 2.5 million
 Referenced Contact Name & Company: Don Hamilton - Groveton ISD
 Referenced Contact Tel. No.: 936-465-6031

Evaluation Scale - Poor-1 Fair-3 Average-5 Good-7 Very Good-9 Excellent-10 Score

SCORE

1	Did the Contractor work well as a team with the Owner and Architect? Comment:	10
2	Did the Contractor promptly make repairs or replace the work that did not meet specifications? Comment:	10
3	Did the Contractor promptly complete punch list items to the satisfaction of the Owner? Comment:	10
4	Did the Contractor promptly respond to and make warranty repairs to the satisfaction of the Owner? Comment:	10
5	Did the contractor keep and maintain a clean and safe jobsite? Comment:	10
6	Was the contractor's Project Superintendent knowledgeable and experienced? Comment: <u>Swapped near beginning due to illness.</u> Superintendent's Name: <u>John Gowan</u>	10
7	Did the contractor provide a knowledgeable and competent Project Manager? Comment: Project Manager's Name: <u>Steven Berry</u>	10
8	Did the Contractor complete the work within the budget? Comment: <u>under budget, able to do extra things.</u>	10
9	Did the Contractor complete the work on time or before the contract time? Comment: <u>Even with bad weather they finished on time. Held up by weather.</u>	10
10	Was the project manned adequately to maintain appropriate progress? Comment:	10
11	Did Contractor work well with the Owner on Change Orders - scrutinizing them prior to submitting? Comment:	10
12	Describe the quality of the work from this Contractor. Comment: <u>Excellent, no complaints, would recommend, easy to work with.</u>	10
13	Did the Contractor pay his bills and subcontractors promptly? Any financial concerns arise? Comment:	10
14	Would you recommend this contractor to be used again on another of your projects? Comment:	10
Total Score		



CONTRACTOR REFERENCE FORM

PROJECT:

City of Marshall is requesting contractor reference information for the project noted below.
 The contractor has given your name as a reference for their company's work:

Name of Contractor: Berry and Clay
 Referenced Project Name: secondary school, track, athletic facility
 Referenced Project Completion Date: May 2021
 Referenced Project Construction Costs: 16 million
 Referenced Contact Name & Company: Mark Brunant - Kerens ISD
 Referenced Contact Tel. No.: 903-396-2424

Evaluation Scale - Poor-1 Fair-3 Average-5 Good-7 Very Good-9 Excellent-10 Score

SCORE

1	Did the Contractor work well as a team with the Owner and Architect? Comment:	10
2	Did the Contractor promptly make repairs or replace the work that did not meet specifications? Comment:	10
3	Did the Contractor promptly complete punch list items to the satisfaction of the Owner? Comment:	10
4	Did the Contractor promptly respond to and make warranty repairs to the satisfaction of the Owner? Comment: <u>still working but if called they come repair it.</u>	9
5	Did the contractor keep and maintain a clean and safe jobsite? Comment: <u>subcontractors dirty site. wish they would do better job.</u>	6
6	Was the contractor's Project Superintendent knowledgeable and experienced? Comment: Superintendent's Name: <u>Greg Lovelady</u>	10
7	Did the contractor provide a knowledgeable and competent Project Manager? Comment: Project Manager's Name: <u>Steven Berry</u>	10
8	Did the Contractor complete the work within the budget? Comment: <u>so far</u>	10
9	Did the Contractor complete the work on time or before the contract time? Comment: <u>a little bit behind due to weather.</u>	8
10	Was the project manned adequately to maintain appropriate progress? Comment:	9
11	Did Contractor work well with the Owner on Change Orders - scrutinizing them prior to submitting? Comment:	10
12	Describe the quality of the work from this Contractor. Comment: <u>Great job. All finished products wonderful</u>	10
13	Did the Contractor pay his bills and subcontractors promptly? Any financial concerns arise? Comment:	10
14	Would you recommend this contractor to be used again on another of your projects? Comment: <u>They always answer the phone.</u>	10
Total Score		132



CONTRACTOR REFERENCE FORM

PROJECT:

City of Marshall is requesting contractor reference information for the project noted below.
The contractor has given your name as a reference for their company's work:

Name of Contractor: Berry and Clay Construction

Referenced Project Name: High School + Gym

Referenced Project Completion Date: 2016

Referenced Project Construction Costs: 7 million

Referenced Contact Name & Company: Cliff Lasiter - Sloum ISD

Referenced Contact Tel. No.: 903-478-3624

Evaluation Scale - Poor-1 Fair-3 Average-5 Good-7 Very Good-9 Excellent-10 Score

SCORE

	SCORE
1 Did the Contractor work well as a team with the Owner and Architect? Comment:	10
2 Did the Contractor promptly make repairs or replace the work that did not meet specifications? Comment:	10
3 Did the Contractor promptly complete punch list items to the satisfaction of the Owner? Comment:	10 9
4 Did the Contractor promptly respond to and make warranty repairs to the satisfaction of the Owner? Comment: <u>even after warranty</u>	10
5 Did the contractor keep and maintain a clean and safe jobsite? Comment: <u>very well kept</u>	10
6 Was the contractor's Project Superintendent knowledgeable and experienced? Comment: Superintendent's Name: <u>Larry Phifer</u>	10
7 Did the contractor provide a knowledgeable and competent Project Manager? Comment: Project Manager's Name: <u>Danny Berry</u>	10
8 Did the Contractor complete the work within the budget? Comment: <u>little under</u>	10
9 Did the Contractor complete the work on time or before the contract time? Comment: <u>right on time -</u>	10
10 Was the project managed adequately to maintain appropriate progress? Comment:	10
11 Did Contractor work well with the Owner on Change Orders - scrutinizing them prior to submitting? Comment:	10
12 Describe the quality of the work from this Contractor. Comment: <u>Great work. Amazing quality. Also were doing Renovation project at same time.</u>	10
13 Did the Contractor pay his bills and subcontractors promptly? Any financial concerns arise? Comment:	10
14 Would you recommend this contractor to be used again on another of your projects? Comment: <u>"I wouldn't use anyone else"</u>	10
Total Score	
	139



CONTRACTOR REFERENCE FORM

PROJECT:

City of Marshall is requesting contractor reference information for the project noted below.
The contractor has given your name as a reference for their company's work:

Name of Contractor: Berry and Gray
 Referenced Project Name: High school, junior high, Athletic complex.
 Referenced Project Completion Date: On going
 Referenced Project Construction Costs: 14 million - 18 million
 Referenced Contact Name & Company: Jeremy Glean
 Referenced Contact Tel. No.: 817-408-4000

Evaluation Scale - Poor-1 Fair-3 Average-5 Good-7 Very Good-9 Excellent-10 Score

SCORE

1	Did the Contractor work well as a team with the Owner and Architect? Comment: <u>Contractor was architect</u>	10
2	Did the Contractor promptly make repairs or replace the work that did not meet specifications? Comment: <u>Only one issue had was fixed w/o issue</u>	10
3	Did the Contractor promptly complete punch list items to the satisfaction of the Owner? Comment:	10
4	Did the Contractor promptly respond to and make warranty repairs to the satisfaction of the Owner? Comment: <u>Offered extended warranties w/o extra cost.</u>	10
5	Did the contractor keep and maintain a clean and safe jobsite? Comment:	10
6	Was the contractor's Project Superintendent knowledgeable and experienced? Comment: <u>Tried to find a good fit for each project.</u> Superintendent's Name:	10
7	Did the contractor provide a knowledgeable and competent Project Manager? Comment: <u>Very hands on. Small company feel</u> Project Manager's Name: <u>Steven Berry</u>	10
8	Did the Contractor complete the work within the budget? Comment: <u>a little under budget, used for extra purposes</u>	10
9	Did the Contractor complete the work on time or before the contract time? Comment: <u>Ahead of schedule</u>	10
10	Was the project manned adequately to maintain appropriate progress? Comment: <u>lots of resources</u>	10
11	Did Contractor work well with the Owner on Change Orders - scrutinizing them prior to submitting? Comment: <u>NO change orders</u>	10
12	Describe the quality of the work from this Contractor. Comment: <u>Outstanding. Berry found better options for same prices.</u>	10
13	Did the Contractor pay his bills and subcontractors promptly? Any financial concerns arise? Comment: <u>very strict regulations</u>	10
14	Would you recommend this contractor to be used again on another of your projects? Comment: <u>absolutely</u>	10
Total Score		140



CONTRACTOR REFERENCE FORM

PROJECT:

City of Marshall is requesting contractor reference information for the project noted below.
The contractor has given your name as a reference for their company's work:

Name of Contractor: Berry and Clay
 Referenced Project Name: Darling Ingredients Dog Food Plant
 Referenced Project Completion Date: Feb 19
 Referenced Project Construction Costs: 16 million
 Referenced Contact Name & Company: Mike Hudlow 478 841-9319
 Referenced Contact Tel. No.: Darling Ingredients

Evaluation Scale - Poor-1 Fair-3 Average-5 Good-7 Very Good-9 Excellent-10 Score

SCORE

1	Did the Contractor work well as a team with the Owner and Architect? Comment:	10
2	Did the Contractor promptly make repairs or replace the work that did not meet specifications? Comment:	8
3	Did the Contractor promptly complete punch list items to the satisfaction of the Owner? Comment:	9
4	Did the Contractor promptly respond to and make warranty repairs to the satisfaction of the Owner? Comment:	9
5	Did the contractor keep and maintain a clean and safe jobsite? Comment:	10
6	Was the contractor's Project Superintendent knowledgeable and experienced? Comment: <u>very good</u> Superintendent's Name: <u>CL:AS</u>	10
7	Did the contractor provide a knowledgeable and competent Project Manager? Comment: Project Manager's Name:	10
8	Did the Contractor complete the work within the budget? Comment:	10
9	Did the Contractor complete the work on time or before the contract time? Comment:	9
10	Was the project manned adequately to maintain appropriate progress? Comment:	9
11	Did Contractor work well with the Owner on Change Orders - scrutinizing them prior to submitting? Comment:	10
12	Describe the quality of the work from this Contractor. Comment:	9
13	Did the Contractor pay his bills and subcontractors promptly? Any financial concerns arise? Comment:	10
14	Would you recommend this contractor to be used again on another of your projects? Comment:	10
Total Score		

DESIGN - BUILDER SELECTION

SCORING SUMMARY SHEET



Project: The City of Marshall, Texas New Animal Adoption Center
 Location: Marshall, TX

		Respondent Berry & Clay	Respondent Transet Co.	Respondent Casey Slone Construction
1	Demostrated competence and qualifications (20)	18	18	18
2	Safety and durability (20)	18	16	12
3	Feasibility of implementing (20)	17	13	10
4	Ability to meet schedule (20)	18	15	12
5	Costing methodology (20)	17	18	16
		88	80	68

The Adoption Center Advisory Committee met on June 4, 2020 to discuss the rankings of the final three contractors submitting proposals for the D/B construction of the Marshall Adoption Center. This is the second time the committee met to discuss the scoring and rankings of the final three contractors that remained from the RFQ/RFP process. This meeting was called in response to some concerns a committee member had with respect to the process utilized in the first review. The committee discussed a number of issues and concerns that had arisen with respect to the contractor that had been ranked the highest from the previous review process. After a thorough discussion of those concerns, the group decided to collectively score the three proposals, which resulted in the tally sheet listed above.

AIA[®] Document A141[™] – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the Twenty Fifth day of June in the year Two Thousand Twenty
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

The City of Marshall, Texas, a political subdivision.
401 S. Alamo.
Marshall, Texas 75670.

and the Design-Builder:
(Name, legal status, address and other information)

Berry and Clay Construction.
190 W 1st Street.
Rusk, Texas 75785.

for the following Project:
(Name, location and detailed description)

The City of Marshall Animal Shelter and Adoption Center located on Lot 1, Hilltop
Subdivision of the City of Marshall, Texas as described in that plat recorded under
instrument no. 2020-000006169 Official Public Records of Harrison County, having a
Municipal address of 2520 Travis St., Marshall, Texas being a 7,285 sq. ft (more or less)
facility as further described here in. -

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

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

The Owner and Design-Builder agree as follows.

Init.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.) See Exhibit 1 (the Design Criteria Package), and Exhibit 2 (the Design criteria drawings) which are incorporated into this section by reference.

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

As set forth in Exhibit 1 (the Design Criteria Package), and Exhibit 2 (the Design criteria drawings) which are incorporated into this section by reference.

Init.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

As set forth in Exhibit 1 (the Design Criteria Package), and Exhibit 2 (the Design criteria drawings) which are incorporated into this section by reference.

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

As set forth in Exhibit 1 (the Design Criteria Package), and Exhibit 2 (the Design criteria drawings), and Exhibit 3 (the Geotechnical Report dated January 28, 2020 from E TTL Engineers and Consultants, Inc.) which are incorporated into this section by reference.

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as ~~Sustainability~~ Sustainable Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

Most sustainable materials and equipment within the budgetary limitations, but no LEED certification is required.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

None

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

The Owner's budget for both design and construction costs is One Million Four Hundred and Thirty Thousand Dollars (\$1,430,000.00)

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

Architectural and Engineering June 26th, 2020 through August 27th, 2020.

.2 Submission of Design-Builder Proposal:

Bidding period August 28th, 2020 through September 11th, 2020.
Guaranteed Maximum Price Amendment week of September 14th, 2020.

.3 Phased completion dates:

.4 Substantial Completion date:

Init.

April 30, 2021.

.5 Other milestone dates:

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

Goodwin-Lasiter-Strong
1609 S. Chestnut STE 202
Lufkin, TX 75901

.2 Consultants

N/A

.3 Contractors

N/A

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

None

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

Mark Rohr and Eric Powell, 401 S. Alamo, Marshall, Texas 75670

Init.

§ 1.2.2 The persons or entities, in addition to the Owner’s representative, who are required to review the Design-Builder’s Submittals are as follows:
(List name, address and other information.)

Michael Barnard, AIA, Shelter Planners of America, 1106 West Randol Mill Rd., STE 300, Arlington, TX 76012.

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

Bud McCracken or his corporate designee, will perform site preparation to within plus or minus 3" inches of floor elevation and construction of the stormwater retention area described in Exhibit 2 (Design Criteria Drawings)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Eric Clay
Berry and Clay Construction
190 W. 1st Street
Rusk, Texas 75785

Owner shall have the right to rely on all communications of such representative without any further inquiry or investigation by Owner.

§ 1.2.5 Neither the Owner’s nor the Design-Builder’s representative shall be changed without ten days’ written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the “Agreement”); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

Init.

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

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

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any ~~Sustainability~~ Sustainable Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

Seventy Eight Thousand Six Hundred and Fifty Dollars (\$78,650). If for any reason the city cancels the project midway through design, that amount would be prorated based on the amount of work done. 100% would be due at completion and the drawings would be the property of the City of Marshall.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate
------------------------	------

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder’s Architect, Consultants, and Contractors, as follows:

- ~~.1 Transportation and authorized out of town travel and subsistence;~~
- ~~.2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- ~~.7 Renderings, physical models, mock ups, professional photography, and presentation materials requested by the Owner;~~
- ~~.8 All taxes levied on professional services and on reimbursable expenses; and~~
- ~~.9 Other Project related expenditures, if authorized in advance by the Owner.~~

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors incurred, ~~plus an administrative fee of percent (—%) of the expenses incurred with no markup.~~

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder’s invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

1 % One Percent per annum or the interest rate determined in accordance with the Texas Prompt Payment Act, Chapter 2251, et seq. Texas Government Code, whichever is lower.

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

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§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of ~~the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.~~ See the Contract Addendum, Exhibit 4.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;

Init.

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User Notes:

(3B9ADA30)

- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

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

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in ~~Exhibit B~~ Contract Addendum, Exhibit 4.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;

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- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques,

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sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

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

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

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

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

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

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors**§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate

contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

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

§ 6.2 Change Orders

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

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

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

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

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

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

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

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ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

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

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

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

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design

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services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

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

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other

remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

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

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

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

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

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

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

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

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover

the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

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

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

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and

expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

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- 3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- 4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- 1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- 2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- 3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- 4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- 5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

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

- 1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- 2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

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

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work ~~not executed~~ executed up to the date of termination.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

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

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

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

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

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

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

§ 14.4.4 Consolidation or Joinder

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

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- ~~.3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds~~
- ~~.4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed~~
- ~~.5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:~~
- .6 Other:

EXHIBIT 1 - Design Criteria Package dated February 20, 2020 Revised 6-4-20, 2 pages.

EXHIBIT 2 - Design Criteria Drawings with various dates , 7 pages.

EXHIBIT 3 - Geotechnical Report dated January 28, 2020, 49 pages.

EXHIBIT 4 - ADDENDUM TO AIA DOCUMENT A141 BETWEEN THE CITY OF MARSHALL, TEXAS ("Owner") and Berry and Clay Construction ("Design Builder") dated June 25-2020, 7 pages.

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

OWNER (Signature)

DESIGN-BUILDER(Signature)

(Printed name and title)

(Printed name and title)

Init.

Certification of Document's Authenticity **AIA® Document D401™ – 2003**

I, Michael Barnard, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification 13:16:15 ET on 06/16/2020 under Order No. 1550602230 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ - 2014, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

EXHIBIT 1
DESIGN CRITERIA PACKAGE
February 20, 2020
Revised 6-4-20

Project Scope

The total budget for the project is approximately One Million Four Hundred and Thirty Thousand Dollars (\$1,430,000). Please note that the site work for this project will be donated by a local contractor.

Description:

New Animal Adoption Center and associated site work as generally illustrated on the attached drawings, EXHIBIT 2.

All design and specifications documents shall be submitted to the City for approval at the 50% and 100% design completion. Construction shall not begin until the City has approved all Construction Drawings and Specification documents. Design-Builder shall comply with all the City requirements, including providing an Architectural and Engineer's Seal and submission(s), as required.

As part of the planning process the Design-Build Firm, in coordination with the City staff, shall:

1. Achieve the objectives of the City;
2. Develop cost-effective alternatives;
3. Evaluate constructability;
4. Foster a high-level quality in design;
5. Assist in the resolution of issues;
6. Identify critical design issues related to the site and to the City goal;
7. Work with the City's independent Architect, Shelter Planners of America.

Project Responsibilities

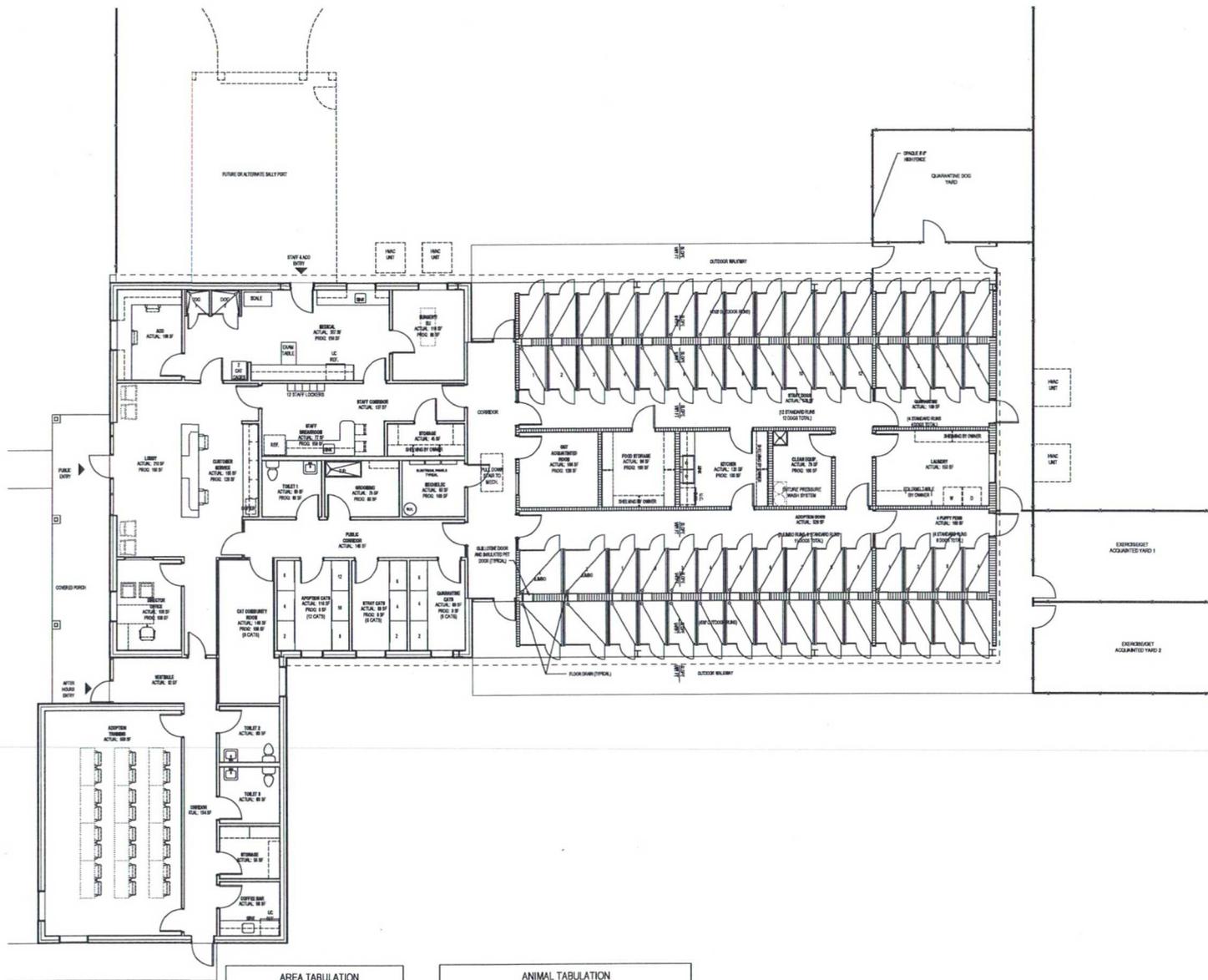
1. Design-Builder must design and construct the facility in compliance with minimum standards as required by the City.
2. Contractor must be equipped, experienced and certified to design, manage and install this type of project to meet any certifications by governing associations.
3. Prior to submitting project cost, Design-Builder must visit the site and become familiar with existing conditions.
4. Provide for regular, on-site monitoring by the construction manager.
5. Require payment and performance bonds approved by the City that are adequate and appropriate for the proposed contract.
6. Provide for assumption of liability by the Design-Builder for all claims arising from the services performed under the contract by the Design-Builder and to protect the City from actions by a third party against the Design-Builder, its officers, employees and agents as a result of the contract.

7. Design-Builder must install project in accordance to applicable codes, requirements and standards, plus pay all fees and permits as may be required by authoritative agencies.
8. Design-Builder will furnish all materials, labor, equipment, tools, architecture and engineering as may be required.
9. Design-Builder must have sufficient personnel available to meet a schedule of achievement of Substantial Completion by approximately April 23, 2021.
10. Design-Builder must furnish and maintain all required barricades, safety measures, and toilets for this type of project. Design-Builder will at all times maintain a clean and safe project site.
11. Following selection of a Design-Build firm, that firm's Architect and Engineers will complete the design, submitting all design elements for review and determination of scope compliance to City representatives before construction.
12. The following items should be considered:
 - a. Construction Materials: Materials in the animal areas and other areas subject to wash down shall be non-permeable and durable.
 - b. Floor and Wall Finishes: Finishes are vital to maintaining a clean heathy environment. Finishes shall be waterproof, durable and chemical resistant.
 - c. Lighting: Shall be located and provide sufficient light to facilitate viewing in the adoption process, and maintain a safe environment.
 - d. Plumbing: Drainage of kennels and other areas that are subject to wash-down shall be incorporated in the design. Drainage design must prevent waste from one kennel from contaminating another. Each kennel shall be equipped with a separate screened 4" floor drain in the center of the floor. Piping system shall be designed such that building drain piping is 6" minimum and sloped to provide sufficient movement of solids through the system. Multiple clean-outs shall be provided for easy stoppage removal. Building drain shall be fitted with a hair trap or other "easy to clean" device as it exits the building, in compliance with City requirements.
 - e. HVAC: Kennel and other animal areas shall be provided with sufficient ventilation air to control odors and maintain a healthy environment.
 - f. Landscaping: Incorporate a low-maintenance landscape design.
 - g. Foundation: The foundation shall be designed to accommodate the soil found at the Site as illustrated in the attached Geotechnical Study prepared by E TTL Engineers & Consultants Inc., dated January 28, 2020, with report no. G 5345-195, attached as EXHIBIT 3.
13. Refer to attached 3D color rendering of the exterior

EXHIBIT 2
DESIGN CRITERIA DRAWINGS

Index

SPA Floor Plan, dated 02-06-20	1 page
SPA Site Plan – Option 1, dated 02-20-20	1 page
Marshall, TX Site Plan – Preliminary, dated 04/2020	1 page
Signed Survey of Site from MTX Surveying, dated 2-26-2020	1 page
Unsigned Survey of Site with Topography from MTX Surveying, dated 2-2-2020	1 page
SPA 3D Color Rendering of Marshall Animal Adoption Center dated, February 21, 2020	1 page



AREA TABULATION	
	ACTUAL AREA
FULLY ENCLOSED AC SPACE	8,225 SF
NON - AC SPACE	1,060 SF
TOTAL	7,285 SF

ANIMAL TABULATION			
DOGS		CATS	
ACTUAL		ACTUAL	
ADOPTION DOGS	13 DOGS	ADOPTION CATS	12 CATS
STRAY DOGS	12 DOGS	CAT COMMUNITY	8 CATS
QUARANTINE DOGS	4 DOGS	STRAY CATS	8 CATS
PUPPIES (2 PER PEN)	8 DOGS	QUARANTINE CATS	8 CATS
TOTAL DOGS	37 DOGS	TOTAL CATS	32 CATS

FLOOR PLAN



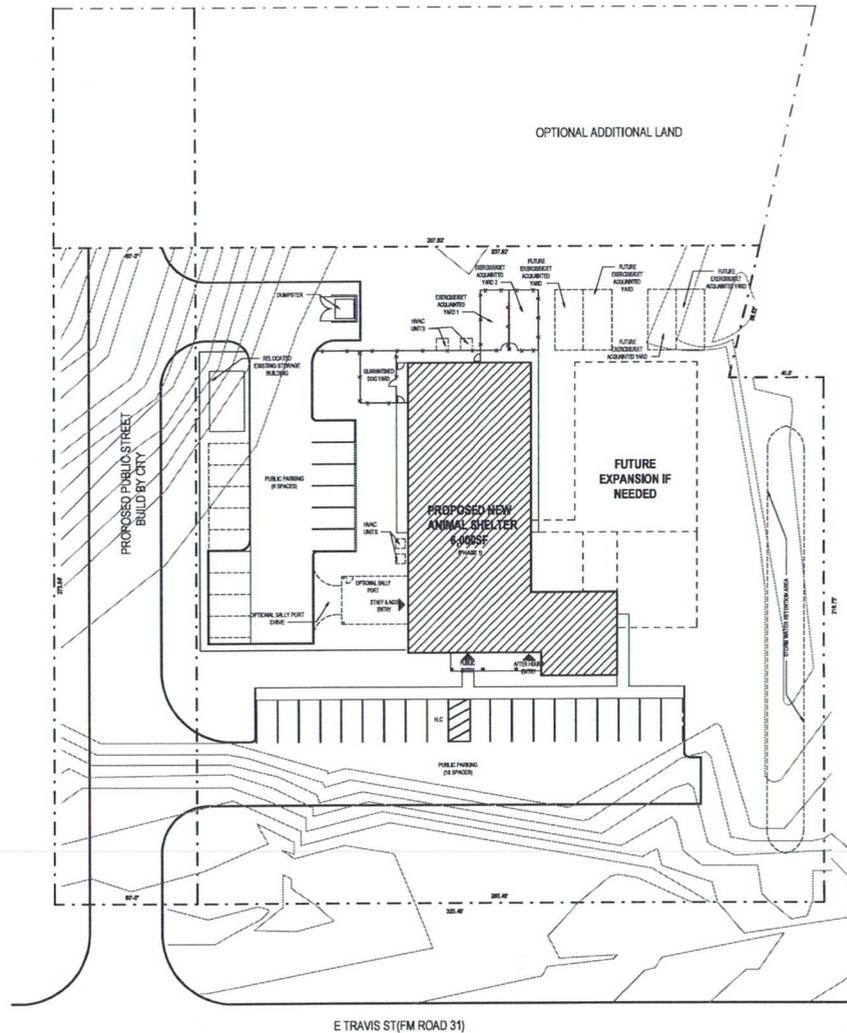
NOT FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION

CONCEPTUAL DESIGN
CITY OF MARSHALL, TX

DATE: 02-06-20



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1106 W. RANDOL MILL RD. SUITE 300, ARLINGTON, TX 76012 - PHONE (817) 265-8522
TEXAS LICENCE NO. 9701 / FIRM NO. 8172658522



E TRAVIS ST (FM ROAD 31)

PARKING TABULATION			
	PHASE 1	PHASE 2	TOTAL
CODE REQUIRED PARKING	4	8	12
RECOMMENDED PARKING	20	18	38
PARKING PROVIDED BY THIS DRAWING	21	12	33

SITE PLAN - OPTION 1
 SCALE: 1" = 40'
 0' 20' 40'

NOT FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION.

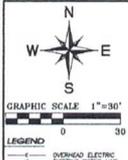
CONCEPTUAL DESIGN
 CITY OF MARSHALL, TX

DATE: 02-20-20



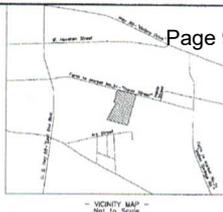
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 TEXAS LICENCE NO. 6701 / FIRM NO. 8172658522

THOMAS IDEN SURVEY,
A - 354



LEGEND
OVERHEAD ELECTRIC
EXISTING WATER LINE

BOUNDARY CORNERS table with columns for station number, coordinates, and description of corner markers.



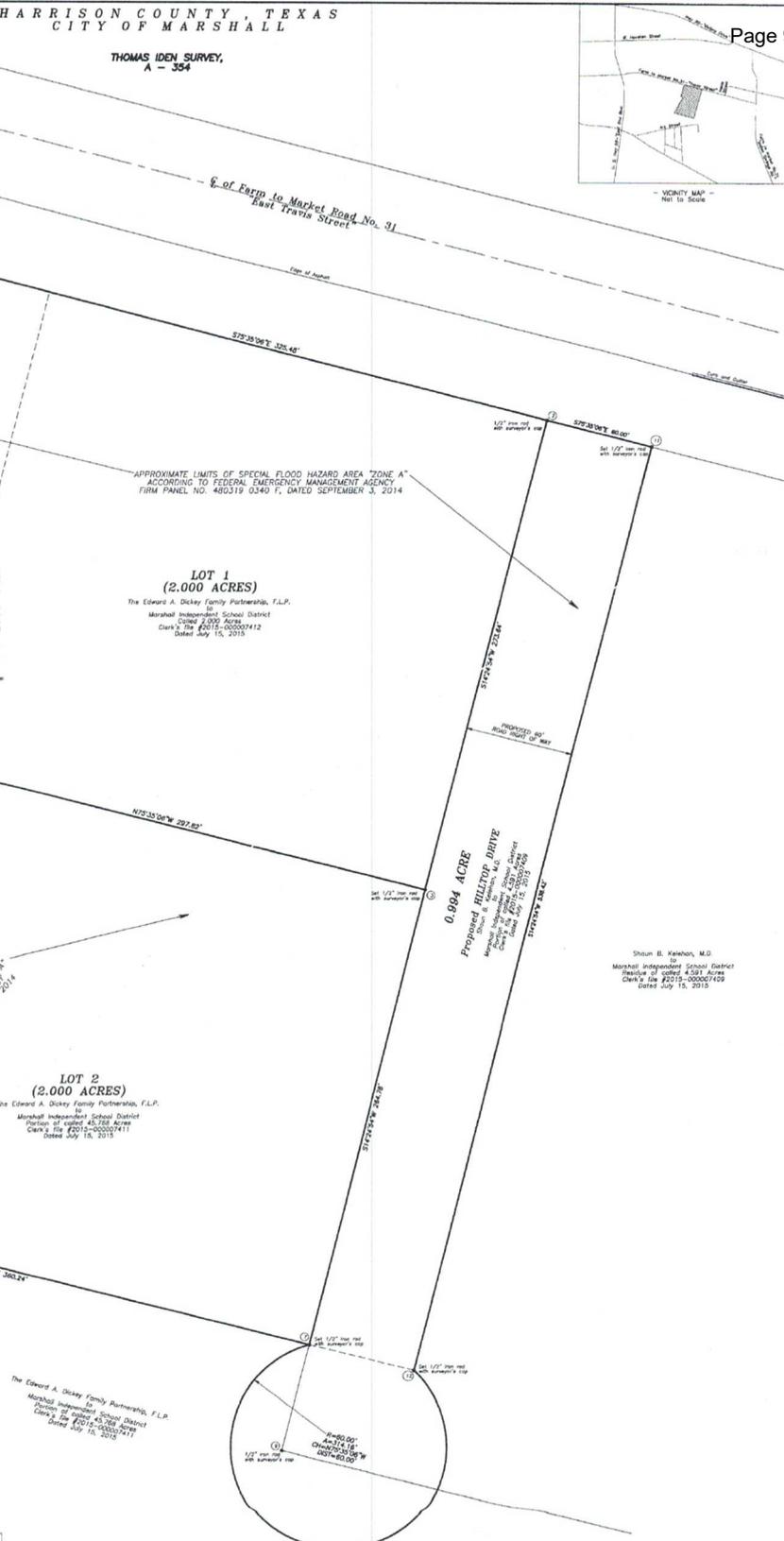
Betty Emery
Richard N. Cole
Clark's File #2014-00006630
June 14, 2014

Richard N. Cole and Blake H. Cole
The Commissioners' Court of Harrison County, Texas
Clark's File #2009-00001002
Dated November 13, 2009

OWNERS' ACKNOWLEDGMENT
STATE OF TEXAS
COUNTY OF HARRISON

STATE OF TEXAS
COUNTY OF HARRISON
Before me, the undersigned authority, on this day personally appeared City of Marshall, Authorized Agent...

LEGAL DESCRIPTION
All that certain lot, tract or parcel of land situated in the corporate limits of Marshall, Harrison County, Texas...



CITY OF MARSHALL, TEXAS
I, Mark H. Pickett, Registered Professional Land Surveyor of the State of Texas...

PLAT SHOWING
FINAL PLAT
OF HILLTOP SUBDIVISION
A SUBDIVISION OF 4.994 ACRES
LOCATED IN THE
THOMAS IDEN SURVEY, A - 354
CITY OF MARSHALL, HARRISON
COUNTY, TEXAS

MTX SURVEYING logo and contact information including address, phone, and website.



LEGEND
--- OPENING ELECTRIC
--- EXISTING WATER LINE

NOTE:
1. ALL LINES SHOWN, WHETHER USED OR NOT, ARE BASED ON THE STATE PLANE COORDINATE SYSTEM AND SHALL BE USED FOR THE PURPOSES OF THIS SURVEY ONLY.

BOUNDARY CORNER

1	8804362.32	3248183.34	found 1/2" iron rod
2	8804376.22	3248151.57	found 1/2" iron rod with surveyor's cap
3	8804334.50	3248442.45	set 1/2" iron rod with surveyor's cap
4	8804362.32	3248151.57	found 1/2" iron rod with surveyor's cap
5	8804362.32	3248151.57	found 1/2" iron rod with surveyor's cap
6	8804362.32	3248151.57	found 1/2" iron rod with surveyor's cap
7	8804362.32	3248151.57	found 1/2" iron rod with surveyor's cap
8	8804362.32	3248151.57	found 1/2" iron rod with surveyor's cap
9	8804362.32	3248151.57	found 1/2" iron rod with surveyor's cap
10	8804362.32	3248151.57	found 1/2" iron rod with surveyor's cap
11	8804362.32	3248151.57	found 1/2" iron rod with surveyor's cap
12	8804362.32	3248151.57	found 1/2" iron rod with surveyor's cap

Billy Emery
Richard H. Cole
Clerk's File #2011-0006630
June 14, 2014

APPROXIMATE LIMITS OF SPECIAL FLOOD HAZARD AREA ZONE A
ACCORDING TO FEDERAL EMERGENCY MANAGEMENT AGENCY
FIRM PANEL NO. 480319 0340 F, DATED SEPTEMBER 3, 2014

LOT 1
(2.000 ACRES)
The Edward A. Disley Family Partnership, F.L.P.
Marshall Independent School District
Clerk's File #2011-00007412
Dated July 15, 2015

Richard H. Cole and Babe H. Cole
The Commissioners' Court of Harrison County, Texas
Clerk's File #2009-00007392
Dated November 13, 2009

LOT 2
(2.000 ACRES)
The Edward A. Disley Family Partnership, F.L.P.
Marshall Independent School District
Clerk's File #2011-00007411
Dated July 15, 2015

Shoun B. Kallahon, M.D.
Marshall Independent School District
Clerk's File #2011-00007408
Dated July 15, 2015

OWNER'S ACKNOWLEDGMENT
I, the undersigned, the agent of the land shown on this plat, do hereby certify that I am the owner of the land shown on this plat, and that the information contained herein is true and correct.

CITY OF MARSHALL, AUTHORIZED AGENT
Before me, the undersigned authority on this day, personally appeared the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein stated.

The Edward A. Disley Family Partnership, F.L.P.
Marshall Independent School District
Clerk's File #2011-00007411
Dated July 15, 2015

LEGAL DESCRIPTION
All that certain lot, tract, or parcel of land situated in the corporate limits of Marshall, Harrison County, Texas, about 1/2 mile southwest of the Courthouse in the City of Marshall, being 4.984 acres of land, a part of the THOMAS IDEN SURVEY, A-354, being all of that certain 2,000 acre tract, described in deed from the Edward A. Disley Family Partnership, F.L.P. to Marshall Independent School District, dated July 15, 2015 and recorded in Clerk's File #2011-00007412 in the Harrison County Official Public Records, 8th partition, containing 4,588 acre lots, described in deed from the Edward A. Disley Family Partnership, F.L.P. to Marshall Independent School District, dated July 15, 2015 and recorded in Clerk's File #2011-00007411 in the Harrison County Official Public Records and a portion of that certain 4,581 acre tract described in deed from Shoun B. Kallahon, M.D. to Marshall Independent School District, dated July 15, 2015 and recorded in Clerk's File #2011-00007408 of the Harrison County Official Public Records said 4.984 acres being more particularly described as follows:
Beginning at a 1/2" iron rod found for corner at the Northwest corner of the said 2,000 acre tract, the Northeast corner of that certain 1,007 acre tract, described in deed to Richard H. Cole, dated June 14, 2014 and recorded in Clerk's File #2011-0006630, Harrison County Official Public Records and the lying on the South margin of Farm to Market Road 353.1, also known as Travis Street;
Thence South 75°30'00" East, with a North line of the said 2,000 acre tract and the South margin of said road, passing a 1/2" iron rod with surveyor's cap found for corner at 325.48 feet, some being a Northeast corner of the said 2,000 acre tract and the Northwest corner of the said 4,581 acre tract and continuing a total distance of 325.48 feet to a 1/2" iron rod with surveyor's cap marked "W1 SURVEYING" set for corner, some being the Northeast corner of the said 4,581 acre tract;
Thence South 14°24'54" West, over and across the said 4,581 acre tract, 538.42 feet to a 1/2" iron rod with surveyor's cap marked "W2 SURVEYING" set for corner, some being the beginning of a curve to the right;
Thence over and across the said 4,581 acre tract, using a curve to the right having a radius of 80.00 feet, an arc length of 314.18 feet, in a bearing of North 75°30'00" West and a distance of 80.00 feet to a 1/2" iron rod with surveyor's cap marked "W3 SURVEYING" set for corner, some being on the West line of the said 4,581 acre tract and the East line of the said 45,788 acre tract;
Thence North 72°30'00" West, over and across the said 45,788 acre tract, 300.24 feet to a 1/2" iron rod with surveyor's cap marked "W4 SURVEYING" set for corner, some being the Southeast corner of the said 4,581 acre tract and the Northwest corner of the said 1,007 acre tract;
Thence North 72°30'00" West, with a South line of the said 2,000 acre tract and the North line of the said 12,843 acre tract, 800.00 feet to a 1/2" iron rod with surveyor's cap found for corner, some being on the West line of the said 45,788 acre tract and the Northeast corner of the said 12,843 acre tract;
Thence North 75°48'20" West, with a South line of the said 2,000 acre tract and the North line of the said 12,843 acre tract, 800.00 feet to a 1/2" iron rod with surveyor's cap found for corner, some being on the West line of the said 45,788 acre tract and the Southeast corner of the said 1,007 acre tract;
Thence North 14°24'54" East, with a West line of the said 2,000 acre tract and the East line of the said 4,581 acre tract, 218.75 feet to the place of beginning and containing 4.984 acres of land.

CITY OF MARSHALL, TEXAS
Approved this _____ day of _____, 2014, by the City Planning Commission of the City of Marshall, Texas.
City Clerk
Secretary

SURVEYOR'S CERTIFICATE
I, Mark H. Pethold, Registered Professional Land Surveyor of the State of Texas, do hereby certify that this plat was first and foremost prepared and represents the result of a survey and subdivision of 4.984 acres tract, said tract being a part of the THOMAS IDEN SURVEY, A-354 and being all of that certain 2,000 acre tract described in deed dated July 15, 2015 from the Edward A. Disley Family Partnership, F.L.P. to Marshall Independent School District, and a portion of that certain 4,581 acre tract, described in deed from Shoun B. Kallahon, M.D. to Marshall Independent School District, dated July 15, 2015 from the Edward A. Disley Family Partnership, F.L.P. to Marshall Independent School District, as reported in Clerk's File #2011-00007411, Harrison County Official Public Records and a part of that certain 4,581 acre tract, described in deed from Shoun B. Kallahon, M.D. to Marshall Independent School District, dated July 15, 2015 and recorded in Clerk's File #2011-00007408 of the Harrison County Official Public Records. All of said information is true and correct to the best of my knowledge and belief.

PLAT SHOWING
FINAL PLAT
OF HILTOP SUBDIVISION
A SUBDIVISION OF 4.984 ACRES
LOCATED IN THE
THOMAS IDEN SURVEY, A - 354
CITY OF MARSHALL, HARRISON
COUNTY, TEXAS
PREPARED FOR
CITY OF MARSHALL
DRAWN FOR
MTX
4601 F CW Hwy,
Marshall, TX 75670
636-4125
www.mtxsurvey.com
File No. 1014434
Date: 2/26/2020 Scale: 1" = 30'
Drawn By: ALS Surveyed By: CT
Job No.: 20142 File No.: 354-18L680

Mark H. Pethold, Registered Professional Land Surveyor, #4028

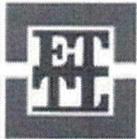


CITY OF MARSHALL ANIMAL ADOPTION CENTER

FEBRUARY 21, 2020



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1106 W. RANDOL MILL RD. SUITE 300, ARLINGTON, TX 76012 - PHONE (817) 265-8522



ETTL Engineers & Consultants Inc.

GEOTECHNICAL * MATERIALS * ENVIRONMENTAL * DRILLING * LANDFILLS

January 28, 2020

Eric Powell, P.E.
City of Marshall
605 East End Blvd South
Marshall, Texas 75671

EXHIBIT 3

SUBJECT: New Animal Shelter
Marshall, Texas
Geotechnical Investigation
ETTL Job No. G 5345-195

Dear Mr. Powell:

Submitted herein is the report summarizing the results of a geotechnical investigation conducted at the site of the above-referenced project.

If you have any questions concerning this report, or if we can be of further assistance during construction, please contact us. We are available to perform any construction materials testing and inspection services that you may require. Thank you for the opportunity to be of service.

Sincerely,
ETTL Engineers & Consultants Inc.
Texas Registered Engineering Firm #F3208

Owen Sanderson, P.E.
Senior Engineer



01/28/2020

Distribution: (PDF) City of Marshall

Main Office 1717 East Erwin Street Tyler, Texas 75702

Phone: 903-595-4421

Fax: 903-595-6613

Longview, TX *

Arlington, TX *

Austin, TX *

Texarkana, AR

WWW.ETTLINC.COM

Geotechnical Investigation

New Animal Shelter

Marshall, Texas

Submitted to

Eric Powell, P.E.
City of Marshall
Marshall, Texas

Prepared by

ETTL Engineers & Consultants Inc.
Tyler, Texas

January 2020

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APPENDIX A

Plate I: Plan of Borings
 Log of Borings with Laboratory Test Data
 Key to Soil Classification & Symbols

APPENDIX B

Laboratory Test Reports

APPENDIX C

Seismic Design Parameters

APPENDIX D

Drilled Shaft Capacity Curves



1.0 INTRODUCTION

This study was performed at the request and authorization to proceed granted by Eric Powell, P.E., Director of Public Works for the City of Marshall, Texas in accordance with our proposal dated December 12, 2019. Field operations were conducted on January 7, 2020.

The purpose of this investigation was to define and evaluate the general subsurface conditions of the undeveloped tract of land located south of East Travis St., 0.4 miles east of Hwy 59 in Marshall, Texas. A site map depicting the location is included in **Appendix A**. Specifically, the study was planned to provide recommendations regarding the following:

- Subsurface stratigraphy within the limits of exploratory borings;
- Classification, strength, expansive properties, and compressibility characteristics of the foundation soils;
- Suitable foundation types and allowable loading;
- Construction related problems that may be anticipated by the investigation, and
- General Pavement Recommendations.

This investigation was carried out in three phases: 1) field exploration, sampling, and testing; 2) laboratory testing; and 3) engineering evaluation of data and reporting. The details of which are set forth in the following sections.

A variety of tests were performed on selected soil samples to provide the data used to form the basis for the conclusions and recommendations of this study. The conclusions and recommendations that follow are based on limited information regarding site grading. Using a handheld GPS unit, E TTL located the borings on the ground based on preliminary site map provided by the client. E TTL did not confirm by survey that the locations indicated on the Plan of Borings or the elevations stated herein, accurately reflect the locations on the ground. This information should be verified prior to design. Should any portion of it prove incorrect, this firm should be notified in order to assess the need for revisions to this report.

2.0 PROJECT DESCRIPTION

The project consists of constructing a 6,000 SF single-story metal frame structure with a metal and/or brick veneer. Final grade is expected at to near existing grade.

3.0 SITE DESCRIPTION

The proposed project site is currently open and relatively flat with trees located at the boundaries. The site was previously prepared/leveled sometime in the past.



3.1 Site History

Historical satellite images indicate that the site was once heavily wooded with a low drainage area traversing the site from south to the northeast. Prior to 2005 adjacent sites were cleared and building sites graded. Sometime prior to 2011 the subject site was cleared and fill was used to level the site and raise the grade. Later images indicated that the site held water in an area south of the proposed building site. Our borings indicated that fill up to 8 feet thick could have been placed in the area of the proposed building.

4.0 FIELD OPERATIONS

Subsurface conditions were defined by two (2) sample core borings drilled to a depth of 30 feet. The original scope was to drill the borings to a depth of 20' however, loose wet sands were encountered at the proposed termination depth. The client elected to extend the borings an additional 10 feet in hope to encountered a more stable stratum. The field boring logs were prepared as drilling and sampling progressed. The final boring logs are also included in **Appendix A**. Descriptive terms and symbols used on the logs are in accordance with the Unified Soil Classification System (ASTM D 2487). A reference key is provided on the final page of this report.

A truck-mounted drill rig utilizing dry auger drilling procedures was used to advance the borings. Soils were sampled by means of a 1 3/8-inch I.D. by 24-inch long split-spoon sampler driven into the bottom of the borehole in accordance with ASTM D 1586 procedures. In conjunction with this sampling technique, the Standard Penetration Test was conducted by recording the N-value, which is the number of blows required by a 140-pound manual weight falling 30 inches to drive a split-spoon sampler 1 foot into the ground. For very dense strata, the number of blows is limited to a maximum of 50 blows within a 6-inch increment. Where possible, the sampler is "seated" six inches before the N-value is determined. The N-value obtained from the Standard Penetration Test provides an approximate measure of the relative density that correlates with the shear strength of soil. The disturbed samples were removed from the sampler, logged, packaged, and transported to the laboratory for further identification and classification.

All boreholes were backfilled with cuttings after collecting final groundwater readings. Samples obtained during our most recent field studies and not consumed by laboratory testing procedures will be retained in our Tyler branch free of charge for a period of 60 days. To arrange storage beyond this point in time, please contact the Tyler branch.

Table 4.0 – Boring Identification

Boring ¹	Phase 3 addition	Boring Depth (ft.)	Boring Elev. (ft.)	Groundwater Depth(ft.) ¹
B-1	SW corner	30	Not given	10.0
B-2	NE corner	30	Not given	10.0

Notes:



- 1) Groundwater readings take during and sometime following the completion of the drilling activities

5.0 LABORATORY TESTING

Upon return to the laboratory, a geotechnical engineer visually examined all samples and multiple specimens were selected for representative identification of the substrata. By determining the Atterberg liquid and plastic limits (ASTM D 4318) and the percentage of fines passing the No. 200 sieve (ASTM D 1140), field classification of the various strata was verified. Also conducted were natural moisture content tests (ASTM D 2216). Laboratory tests were conducted on samples recovered from the borings to evaluate physical and engineering properties of the different materials encountered. The number and type of tests performed for this study are listed in the table below. Summaries of the results are presented on the individual log of boring in **APPENDIX A**. Lab report detailing the test results are also included in **APPENDIX B**.

Laboratory Test	Test Method	Number of Tests
Dry Sieve Analysis (% Passing No. 4)	ASTM D 6913	9
Dry Sieve Analysis (% Passing No. 40)	ASTM D 6913	9
Washed Sieve Analysis (% Passing No. 200)	ASTM D 1140	9
Atterberg Limits (Liquid & Plastic Limits)	ASTM D 4318	7
Moisture Content by Dry Weight	ASTM D 2216	9

The above laboratory tests were performed in general accordance with applicable ASTM, U.S. Army Corps of Engineers, TxDOT procedures, and/or generally accepted practice. It should be noted that reference to ASTM or other standard procedures does not imply that all cross-referenced procedures in ASTM or other standards have been used, or that all ASTM or other procedures used have been followed exactly. Only those ASTM or other standard procedures and/or portions of procedures, which, in the professional judgment of the geotechnical engineer of record for this report, are applicable, appropriate, and necessary for this particular project, have been used or followed. Details regarding these tests are included on the logs (**APPENDIX A**) and in the Laboratory Test Reports of **APPENDIX B**.

6.0 FOUNDATION SOIL STRATIGRAPHY AND PROPERTIES

6.1 Site Geology

According to the Bureau of Economic Geology at the University of Texas at Austin, Geologic Atlas of Texas, Tyler Sheet, the proposed site is located near the contact of three geologic formations, the Wilcox (Ewi), the Carrizo Sand (Ec) and the Reklaw formation (Er), with the majority of the site falling within the Carrizo sand formation.



The upper part is classified as very fine sand with, silt, clayey silt, and silty clay deposits throughout. It is described as medium to dark gray, carbonaceous and weathers moderate yellowish brown to dark reddish brown. Indurated ledges of dark brownish-gray ironstone are common. The lower part is classified as quartz sand, fine to medium-grained. It is described as light brownish gray, weakly cohesive, massive, locally cross-bedded and weathers light -gray to various shades of red. The formation thickness is 20 to 100 feet. The formation overlies the Wilcox Group, undivided, and underlies Reklaw Formation. Age is Eocene.

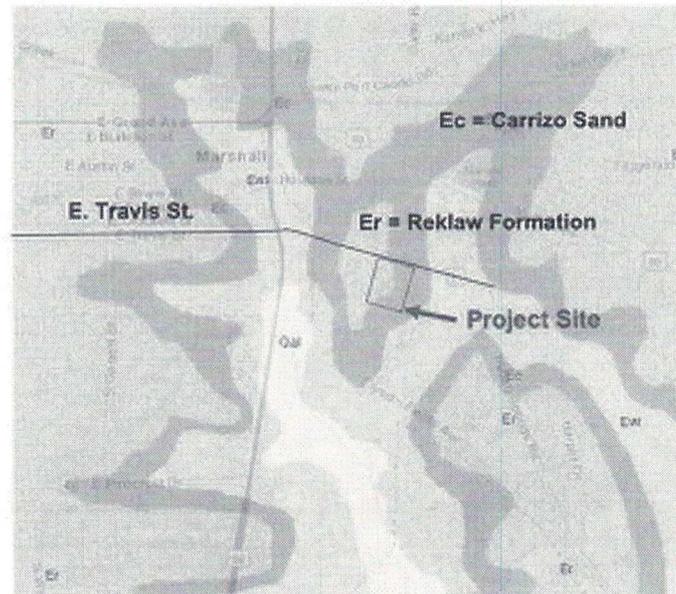


Figure 1: Geology Map

For more information please refer to the National Geologic Map Database and the Geologic Atlas of Texas:

<https://txpub.usgs.gov/DSS/texasgeology/>

6.2 Site Stratigraphy

The soils at the site generally consist of strata as described below. The classifications are based on weathering, depositional environment, mineralogy, color change, lithology, and structure. Detailed on the boring logs in **Appendix A** are the specific types and depths of the various soil strata encountered. The logs show defined boundaries between various soil types, but in reality, the transition between types is generally gradual.

- **Stratum 1 (0 – 8')**
 - Brown, gray and reddish brown soft sandy lean clay, (CL) interlayered with silty sand, undocumented fill
- **Stratum 2 (8' – 10')**



- Dk. Brown and gray, very soft sandy silty clay (CL-ML), potentially original grade
- **Stratum 3 (10' – 23')**
 - Reddish brown with lt. gray, very soft to stiff sandy lean clay, (CL)
- **Stratum 4**
 - Dk. Brown and dk. gray, very stiff sandy lean clay, (CL)

Layering and elevations described above should be considered general based on soil profiles within the structure footprint and could vary within the footprint in some areas. Readers should refer to the closest adjacent boring log (and soil profile) located in **Appendix A** when determining soils properties.

6.2.1 Undocumented Fill

Undocumented fill was placed on-site to leveling the site, see **Section 3.1**, above. The process of placement is unknown and no records exist (to E TTL's knowledge) as to whether or not the placement was monitored. The fill has been in place for some time and has most likely settled under its own weight. Additional loads will induce additional settlement not only in the fill but the loose/soft soils that lie below. The only practical way to verify the adequacy of fill (whether it is placed under or outside the building footprint) is through observation and testing during placement. Since placement occurred prior to and was outside the scope of, our involvement, it should be understood that our recommendations are based solely on the information obtained in our borings and do not address the possible impact on foundation performance of uncontrolled fill left in place. The only method to eliminate this risk is to remove the fill and replace it with properly compacted select fill as described in **Section 11.2** below.

A determination of the actual thickness variation of undocumented fill beneath the structure footprints was outside the scope of this investigation. However, the presence of this fill should be identified during earthwork operations in order to verify that such fill has been removed if deep foundations are not utilized to support the structure.

6.2.2 Predicted Soil Properties

6.2.2.1 Determining Representative Properties

Due to the non-homogeneous nature of the soil and the necessarily limited data, the issue of assigning quantitative design parameters for the various characteristics of a soil mass is a matter of interpretation. In assessing shear strength along a failure surface that passes through a large mass, it is reasonable to expect that strength variations will be encountered along any potential surface. Where data are sufficient, we believe that it is overly conservative to take the lowest test data values as representative of the characteristics of a soil mass. On the other hand, using average values could be unconservative. How we select the appropriate values to use is explained below.

There is insufficient data (i.e. less than 30 data points for a given parameter for a given soil layer) to warrant a rigorous statistical analysis. Experience has also shown that the average (i.e. best



fit to the scattered data) can be unconservative for soils that are not homogeneous (e.g. randomly variable degrees of sand content). We have adopted what we call a P25/P75 approach (as originally promulgated by George Sowers) as an appropriate means for dealing with random variation in soil masses. The average of all applicable test results averaged with the lowest value is termed the "P25" value. The average of all applicable test results with the highest applicable value is termed the "P75" value. Rather than use the worst-case situation when sufficient data are available, we have used either the P25 value (when a low result would be conservative) or the P75 value (when a high result would be conservative) to predict parameters that are used to quantify the behavior of the soil mass. This procedure is only used when the variation in the data is spatially random. If there is a discernible pattern to the variation of the data (e.g. shear strength tends to be softer in low areas) then the data are grouped in accordance with the pattern prior to applying the method stated above (i.e. data are only averaged within groups).

Listed in the Table below are the soil strata with the predicted P25 and the P75 (as appropriate) properties applicable throughout the project. Note that properties in isolated situations may be adjusted more favorably when considering the specifics of the situation (contact E TTL for further information, if desired). These properties are derived from our testing of the soils as well as our experience with the soils in question together with published correlations.

Stratum No.	Moist / Buoyant Unit Wt. (pcf) ¹	Drained/Undrained Shear Strength Parameters ⁵		L-Pile Analysis Parameters ⁴		Settlement Parameters M _v ²	Soil Class
		Φ' / Φ	c' / c(s _u) (psf) ³	Soil Type	e ₅₀		
Select Fill (Sand) ⁶	120	32 / 32	0 / 0	Sand (Reese)	--	120	SC
1 Undocumented FILL	120	27 / 0	100 / 800	Stiff Clay w/o Free Water (Reese)	--	80	Sandy CL
2	115	25 / 0	0 / 400	Soft Clay (Reese)	--	50	CL-ML
3	120	25 / 0	0 / 500	Soft Clay (Reese)	--	60	Sandy CL
4	125	27 / 0	200 / 2,500	Stiff Clay (Reese)	--	150	Sandy CL

Notes:

- 1) Use buoyant unit weight indicated where applicable below the groundwater table
- 2) Drained confined tangent modulus (ksf) predicted to be conservative for anticipated materials.
- 3) Peak Unconsolidated-Undrained shear strength, c or s_u (psf), estimated from SPT blow counts
- 4) Use default L-Pile values for k and e₅₀ where not indicated otherwise
- 5) Peak drained strength parameters (Φ', c') estimated from tests on similar soils and published correlations. Undrained strength see NOTE 3



- 6) Values indicated are predicted to be conservative for anticipated materials

6.3 Expansive Soils

Expansive soils can be any of the following soil types: Clayey Sand (SC), Lean Clay (CL) or Fat Clay (CH), which exhibit the ability to change volume (shrink or swell) with the addition or subtraction of moisture. Expansive soils such as are found at various depths throughout the soil profile swell when they absorb moisture and shrink as they dry. Structures placed on these soils move up and down with such volume changes of the soil. When expansive soils are covered by an impermeable surface such as a structure or pavement, seasonal moisture fluctuation at the interior of the covered area tends to be reduced or eliminated due to the lack of exposure to natural wetting and drying conditions (i.e., wind, rain, sun, vegetative, etc.). At the perimeter of the structure, however, infiltration into the foundation soils from surface drainage could lead to local swelling of the clays (if they were dry at the start of construction) resulting in tilt or distortion of the foundation. Where areas immediately adjacent to the structure are paved both the risk of swelling due to excess moisture absorption and shrinkage due to moisture loss are reduced significantly.

At the time of exploration, the moisture content of the surficial 10' active zone of clay soils encountered was relatively sandy, of lower plasticity and moist based on a comparison with the plastic limit moisture content. The potential for swelling based on conditions at the time of drilling is considered to be moderate to low. The potential for shrinkage is predicted to be to moderate. As the moisture content of the soil changes from what it was in our samples, the potential for swelling and shrinkage will change accordingly. For example, the expansive soils on-site would exhibit a greater swell potential if allowed to dry prior to or during construction.

6.3.1 Vertical heave Predictions

The assessment of the impact of expansive soils given below is predicated on soil moisture change that is a result of normal climatological fluctuation. Factors such as poor drainage, ponding water, plumbing leakage, excavation and foundation details (e.g. permeable backfill in trenches or beneath structures), vegetation and unusual climatic conditions (e.g. excessive drought) can result in moisture changes (and consequent swelling or shrinkage) outside the ranges predicted herein and consequent higher risk of structure distress than what is described herein.

6.3.1.1 Potential Vertical Rise (PVR)

One commonly used method for quantifying the potential for subgrade movement at any given location is to calculate the Potential Vertical Rise (PVR) (TxDOT method -Tex 124 E modified). This calculation considers the inter-relationship between depth, Atterberg Limits (LL & PI) and fluctuations in soil moisture. The maximum potential shrink/swell, PVR, is predicted to be 1.0 inch for the dry condition. These calculations are based on an estimated seasonal moisture fluctuation zone of approximately 10 feet.



6.4 Seismic Site Classification

IBC 2015 requires density/shear modulus information extending to a depth of 100 feet for seismic site classification. The current scope does not include the required 100-foot soil profile with borings that are drilled to a maximum of 30 feet below the existing grade. Consequently, we have assumed that the density (blow count) of the soil/rock encountered at the terminal depth is representative of the profile to a depth of 100 feet. If the seismic site class definition is critical to the design, this assumption should be confirmed by further detailed testing.

Based on the IBC 2015, the seismic site class definition is **Class E "Soft Soil" and the Risk Category is II**. California's Office of Statewide Health Planning and Development (OSHPD) provides an online tool that calculates the seismic design values based on the overall project and site information listed above. A print out of this report is provided in **Appendix C**. E TTL does not warrant the accuracy of this report and it is presented to the client for information purposes only.

For more information in regards to the program please visit:

<https://seismicmaps.org/>

7.0 GROUNDWATER OBSERVATIONS

Seepage and groundwater depths were monitored during drilling sometime after the completion of the drilling activities. Based on these observations the groundwater is predicted to be near 10 feet below the existing ground. The groundwater encountered was found within a very loose/soft zone of clay and sand located below the assumed undocumented fill. In some cases, loose fill placed above grade allows for surface water to penetrate the fill thus becoming perched on a less permeable layer below.

Data regarding the groundwater level was obtained by observations in open boreholes. At best this provides only an approximation of the phreatic surface at the time of drilling. *The phreatic surface that should be considered for the design of this project may vary significantly from that which was observed in the borings due to the following factors:*

- The characteristics of the soil profile may have prevented the water level in the boring from rising to the phreatic level during the time period of observation
- A given boring may not intercept groundwater bearing zones (i.e. the groundwater is perched or travels in seams or fissures that are not continuous over the entire site)
- Groundwater may only be perched in pockets above local aquacludes, but the distribution of borings is not generally adequate to confirm this with a high level of certainty
- Groundwater level varies seasonally and with rainfall
- Rotary wash drilling methods introduce fluid into the boring that often makes it impossible to distinguish between groundwater and drilling fluid



If the designer believes that the level of groundwater could significantly impact the project, then E TTL should be contacted to develop a plan for piezometer installation and monitoring to more accurately assess the groundwater levels at the site.

8.0 FOUNDATION DESIGN RECOMMENDATIONS

Two independent design criteria must be satisfied in the selection of the type of foundation to support the proposed structure. First, the ultimate bearing capacity, reduced by an appropriate factor of safety (usually taken as 3 for DL plus sustained LL and which varies depending on the loading case) (or resistance factor if LRFD analysis), should not be exceeded by the bearing pressure (factored for LRFD analysis) transferred to the foundation soils. Second, predicted total and differential vertical movements due to consolidation and/or expansion of the underlying soils during the operating life of the structure(s) should be within tolerable limits. Settlement limitations of isolated foundation elements, if any, were unknown at the time of report preparation. For most similar-type structures, 1 inch of predicted total settlement or heave is widely considered an acceptable target for design. It should be noted, however, that if the differential settlement or heaving of this magnitude were actually to occur, distress including cracks in walls, door frame distortion, etc. can be expected at least in some circumstances.

8.1 General Foundation Considerations

Due to the thickness of undocumented fill and very loose saturated soils below an isolated or monolithic flat slab placed on prepared subgrade with structural footings supported on deep foundation penetrating below the fill is recommended. Provided the above-noted risk of leaving the fill in place is tolerable. Deep foundation can be omitted where a significant amount of the uncontrolled fill is removed and replaced with compacted select fill.

Some conditions that may affect foundation and slab performance (e.g. plumbing leaks, poor drainage conditions, deep-seated heave, etc.) are difficult to account for in standard slab and foundation design procedures and are not considered elsewhere in this report. Such sources of moisture change could cause significant shrink/swell movements of the expansive clay that will remain beneath the building and lead to significant distress. If it is desired to virtually eliminate the risk of damage from vertical movement due to these conditions, an option incorporating deep foundations with a suspended slab is recommended.

With ground supported foundation/floor systems, it is essential that measures be taken to help assure subgrade moisture stability (see **Section 11.3**) in order to enhance the chances of satisfactory structure performance. Proper site design that prevents the inordinate drying or wetting of the subgrade soils around the structures is essential to reduce the potential for excessive movement caused by shrinkage and/or swelling of the foundation soils.

8.2 Shallow Spread Footings

Shallow spread footings should be considered if the uncontrolled fill is removed and replaced to a depth that would limit settlement with the target range of 1.0-inch total, See **Section 10.0**.



8.2.1 Bearing Capacity

Footings should be designed to bear in properly compacted select fill at a minimum depth of 2.0 feet below the finished subgrade or adjacent exterior grade (whichever is deeper). Isolated footings should have a minimum width of 2 feet and strip footings should be at least 12 inches wide. Footings should be proportioned for allowable gross bearing pressures of 2,000 psf for individual (isolated) and 1,500 psf for continuous (strip) shallow footings. These allowable pressures incorporate a safety factor relative to shear failure of the soil of at least 3 and may be increased up to 33% for intermittent loads such as wind.

8.2.2 Predicted Settlement of Shallow Footings

The predicted immediate settlement due to dead plus sustained live load pressure (assumed to be 2,000 psf) for footing widths less than 5 feet is less than 1.0 inch (total) and 0.5 inch (differential). Detailed testing for the prediction of long-term settlement due to load for these footings is beyond the scope of this investigation, but the magnitude of settlement is not anticipated to be significantly more than the immediate settlement.

8.3 Drilled Piers

Drilled shafts have the advantage of being single elements that can provide both large vertical and large lateral capacity. Drilled shafts will consist of cylindrical excavations that are filled with high slump concrete that is reinforced with a steel cage. Steel should be adequate to resist uplift loads and bending moments and shears from lateral loads. The reinforcing cage should be fitted with heavy-duty spacers (e.g. "ShaftSpacer" by Foundation Technologies - light plastic wheels are unacceptable) to maintain clearance between the steel cage and the side of the hole. Steel spacers are also unacceptable due to corrosion potential increase. Only straight shafts are considered since under-reaming in hard clays, may prove problematic.

Sizes for which static vertical load design information is provided herein include 18" to 36", which are believed sufficient to adequately cover the anticipated loading ranges). Contact E TTL for design curves for additional shaft sizes, if needed. In general, the loads suggested as "allowable" can be increased by 33% for transient loads such as wind and seismic (except for cases where these loadings result in a net uplift on a given shaft). The information provided in this report is based on that found in Drilled Shafts: Construction Procedures and LRFD Design Methods – FHWA GEC 010 - Federal Highway Administration, 2010.

In general, shafts which are smaller in diameter and deeper are more economical than those which are larger in diameter and shallower due to the fact that the volume of concrete is less for the former and capacity in the deeper soils is much greater than in the shallower soils.

8.3.1 Vertical Capacity

Drilled piers mobilize both skin friction and end bearing to distribute the loads from the proposed structures to the subsoil. The amount of movement it takes to develop full ultimate skin friction is generally less than 0.5 inch, whereas the amount of movement necessary to develop ultimate end bearing is on the order of 3% to 5% of the tip diameter (in sands capacity is even available



at tip movements in excess of 5%). In order to limit the settlement of the shaft to a generally accepted magnitude, the amount of end bearing that can be mobilized is limited (more so for larger shafts than for smaller ones). That is, a calculation of the "effective" ultimate capacity or the mobilized ultimate capacity at a limited settlement, involves adding the full ultimate skin friction capacity to a reduced (in some circumstance) ultimate end bearing.

Because of the myriad possible combinations of sizes, loading conditions and the unknown constrictions at any given location, capacity curves are provided which can be used to select size and embedment at all locations. They are titled "**DRILLED SHAFT CAPACITIES**" contained in **Appendix D**. There are two curves on each of the charts. One curve is the total allowable vertical capacity (Side Resistance + End Bearing) and the other is only allowable Side Resistance. They are based on the soil properties that are predicted to conservatively represent the soil profile.

The vertical capacity read from the applicable curve represents the "effective ultimate" (i.e. total ultimate reduced to limit predicted settlement at ultimate load to 0.5 inches or less) divided by a safety factor of 3. It should be noted that this capacity represents the geotechnical capacity of the shaft only. The designer needs to check whether other issues such as concrete strength may limit the capacity to something less than the geotechnical capacity. If design tip elevations are significantly greater than the limit of exploration, additional exploration should be conducted to confirm the capacities assumed on the curves for those depth intervals.

Note that the embedment from the start of the curve represents the ground elevation (i.e. 420') which is predicted to be near the finished grade for most of the structure. Where fill will be placed above the existing grade at a given shaft location, add the thickness of the fill to the embedment elevation determined from the procedure set forth herein to determine the preliminary required embedment elevation below-finished grade (This is a conservative approach, especially where the fill thickness is not significant and it is often the case that the embedment from the curve can be used as the depth below finished grade). The elevation below the finished ground surface read from the appropriate design curve can be conservatively used as the required embedment length below the base of any pier cap. Alternatively, the capacity of a given pier can be determined by subtracting from the capacity of the shaft as determined by the procedure set out in this section (below), the capacity from the skin friction curve at the depth of the pier cap.

Where a shaft is subject to significant lateral load, the skin friction capacity of that portion of the top of the shaft that deflects laterally more than 1% of shaft diameter should be neglected (may be the case especially for smaller diameter shafts with significant lateral load). Information regarding the depth to be ignored can be readily obtained from the lateral analysis curves derived from an LPile analysis (not a part of this study). The appropriate **DRILLED SHAFT CAPACITIES** curve should be examined to determine the skin friction capacity at the depth where deflection determined in the LPile analysis is equal to 1% of shaft diameter and this value should be subtracted from the capacity at the embedment depth to determine the design capacity for the shaft.



These results are for individual piers and will need to be modified for group action of shafts as indicated in **Section 8.3.2**, below.

Limiting working loads to the level indicated by the curves should limit settlement of isolated piers at working load (not the settlement at ultimate load) to something in the neighborhood of 0.5" or less. However, the settlement considered by the design curves is the tip settlement of the isolated pier, not the head. You will need to check the elastic compression on the pier (use say 67% of its actual length for "L" in the $(P \cdot L)/(A \cdot E)$ formula for an approximate computation of elastic compression to see if it is a significant amount). As a rule of thumb, it should only be significant for very slender piers. Settlement of pier groups can be significantly greater than the settlement predicted for an isolated pier.

8.3.2 Groups Effects

8.3.2.1 Cohesionless and Mixed Soil Profiles

US Army Corps of Engineers recommendations specify a reduction in allowable pier capacity for piers in sandy soils and mixed soil profiles (such as is the case for this site) when center-to-center spacing is less than 6 pier diameters (EI 02C097 Chapter 5 Section 3a (1)). The capacity modification factor varies linearly from a value of 1.0 for spacing of 6 diameters to a value of 0.7 for spacing equal to or less than 3 diameters. For spacing less than 2.5 diameters, we recommend the use of a factor equal to 0.65. This factor should be applied in addition to the safety factor and applies to both the allowable compression and tension loads as derived elsewhere in this report.

8.3.2.2 Settlement

Settlement of a group can be significantly more than what would be anticipated for an isolated shaft. E TTL can assist in this evaluation if provided with specifics regarding configurations and loads.

8.3.3 Uplift

In this instance, a value of 70% is recommended to calculate the capacity of an individual shaft in uplift as a percentage of downward skin friction capacity. Read the skin friction curve from the chart at the embedment depth (which is allowable skin friction (Ultimate/(SF noted))). Multiply this value by 0.7. The resistance value calculated using this skin friction value is compared to the uplift load applied to the top of the shaft minus the shaft weight and, as long as the resistance is greater, the predicted factor of safety against uplift failure is equal to the safety factor noted on the curve combined with any factors by which the load has been modified.

The allowable uplift resistance of a pier group should be determined in accordance with AASHTO (1996) Section 4.13.3.3.6b which states that the group uplift capacity should be determined as the lesser of:

1. The design allowable uplift capacity of a single pier (as specified above) times the modification factor for pile spacing (**Section 8.1.2**) times the number of piers in the group.



The modification for spacing applies only to cohesionless and mixed soil profiles, such as are present at both sites.

2. Two-thirds of the effective (use buoyant weight for the portion below the groundwater level) weight of the group and soil contained within a block defined by the perimeter of the pier group and the embedded length of the piers.
3. One half of the effective (use buoyant weight as noted above) weight of the pier group and soil contained within a block defined by the perimeter of the pier group and the embedded pier length plus one half of the total soil shear resistance on the peripheral surface of the pier group. To compute the average shear resistance on the peripheral surface of the group, take the uplift value computed above for the individual pier (*not* modified for group effects) and divide it by the surface area of the pier (perimeter of the pier times the embedment depth). For purely cohesive soil profiles only, multiply this value times 1.8 to convert pier side shear to group side shear.

8.3.4 Lateral Load

A lateral load analysis depends on soil properties as well as stiffness of the drilled shaft being analyzed and, so, entails a cooperative process involving both the structural engineer and the geotechnical engineer. Because of the myriad possible combinations of sizes and loading conditions and the unknown constrictions at any given location the LPile analysis has not been performed at this time. E TTL can assist with lateral load analysis once details regarding shaft diameter, reinforcing, head fixity and lateral load have been preliminarily determined and if such conditions are deemed to warrant more detailed analysis.

Programs such as the LPile program by Ensoft calculate the stiffness of drilled shafts accounting for reinforcement as well as cracking (i.e. stiffness reduction) for each combination of loads. Soil parameter values that should be used in a lateral load analysis are listed in **Table 6.2.2, Predicted Soil Engineering Properties**, above. For piers embedded in fat clay (if any) that is exposed to drying action (e.g. piers at the edges of pier caps), we recommend that the portion of the shaft that is 5' or shallower below the finished ground surface adjacent to the cap be neglected for lateral support in order to help account for possible shrinkage of the clay away from the sides of the shaft in the upper zone.

Analyses of both the fixed head and free head conditions can be made. The analysis also depends on the percentage of steel reinforcement, as well as the magnitude of the vertical load to use in conjunction with the maximum horizontal load. The critical combination of loads yielding the maximum horizontal deflection consists of the maximum horizontal load together with the minimum vertical load. This combination results in the severest moment and least effective moment of inertia (due to cracking of the section). The LPile program considers the soil stiffness as well as the shaft stiffness under whatever combination of vertical load, lateral load and moment the user specifies.

E TTL can assist with lateral load analysis once details regarding shaft diameter, reinforcing, head fixity and lateral load have been preliminarily determined and if such conditions are deemed to warrant more detailed analysis.



8.3.4.1 Group Action of Laterally loaded Piers

A group of piles or piers loaded laterally will generally have a total lateral capacity (for a given lateral deflection of the pile heads) less than the sum of the individual lateral capacities. This is true when the group consists of more than one row of piers/piles and/or the direction of the lateral load is not perpendicular to a line connecting the piles in the row.

We recommend that the analysis of pier/pile groups for lateral load be performed in accordance with the recommendations of *GEC No. 8 – DESIGN AND CONSTRUCTION OF CONTINUOUS FLIGHT AUGER PILES* – FHWA 2007, Section 5.6.3.

8.3.5 Lateral Load on Pier Caps

Resistance to lateral loads can be developed via a combination of passive earth pressure acting against the face of footings and pile/pier caps and lateral resistance developed by deep foundations. The resistance of piers to lateral loads is discussed elsewhere in this report. A portion of ultimate passive earth pressure can be applied to the face(s) of footings and pier caps to resist lateral loads. **Caution:** *Lateral resistance against the vertical face of pier caps or spread footings should only be assumed where construction can be controlled to assure that the footing is cast against undisturbed earth, or backfill between the excavation face (which needs to be nearly vertical and extended to bottom of cap elevation) and the footing edge is placed under density-controlled conditions (backfill should be placed to 100% ASTM D698).*

In determining the total resistance to lateral loads, the degree of lateral movement that can be tolerated must be considered. This is related to the fact that there is a direct relationship between lateral load and horizontal deflection for piers and there is also a direct relationship between lateral movement and degree of passive resistance that can be mobilized. The magnitude of lateral movement needs to be consistent for each contributing element in computing total allowable resistance. Lateral support to the cap afforded by a floor slab placed in contact with the cap should also be considered.

Ultimate passive resistance can be approximated as a triangular pressure distribution utilizing an equivalent fluid weight of 200 pounds per cubic foot. For a lateral deflection limitation of about 0.5" the amount of passive resistance that can be mobilized for pile cap or footing thicknesses in the range of 3' to 10' can be taken as 45% of the ultimate resistance. If the deflection of the supporting piles is less than 0.5" the mobilized passive pressure must be reduced accordingly. (This relationship is rather complex and E TTL can provide further assistance when provided with specifics of a given situation). To determine the total allowable lateral load for the given lateral deflection limitation, the mobilized passive pressure should be added to the resistance from the individual piles (modified for group effects as detailed elsewhere in the report) and the sum reduced by an appropriate safety factor (typically 1.5).

Passive resistance should only be counted upon provided that there will be no excavation within a distance from the edge of the footing or pile cap equal to 1.6 times the depth of the base of the footing. Such excavation would disturb the strength of the passive wedge. If the lateral loads are



primarily due to intermittent loads such as wind or seismic, then excavation adjacent to the footing might be allowed (based on the ability of the piles to carry any lateral load at the time of the excavation) provided that any soil removed would be replaced at a minimum density of 100% of ASTM D698. *Also, the temporary excavation face needs to be nearly vertical and extended to the bottom of cap elevation.*

8.3.6 Drilled Prier Testing Program

The information provided herein for the design of piers is based on a factor of safety of 3. If a design based on a lower factor of safety (e.g. 2) is to be considered, a load test program is recommended to more accurately assess capacity. Unless the project entails a large number of piers, this approach would not generally be economical. E TTL can assist you in planning a test program should you desire to pursue this further.

8.3.7 Drilled Prier Construction Issues

Construction of all drilled piers should be monitored by personnel familiar with their installation. As a minimum, it is recommended that a representative of this firm be present before and during drilled pier construction in order to monitor test piers and production pier installation procedures. Free water and/or loose material at the base of excavations should be removed, as appropriate, prior to placement of concrete.

Groundwater observations, as well as geologic conditions, indicate that dry auger drilling methods will not be suitable due to the soft soils and the groundwater encountered below 10 feet. The site will require temporary casing or slurry drilling methods to keep the hole from caving. Variations in the uncontrolled fill could cause loose saturated pockets to cave. Methods for dealing with this situation should be discussed with prospective contractors prior to bidding. Piers holes that encounter groundwater will need to be pumped dry prior to the placement of concrete.

Concrete should be designed and placed with a relatively high slump (7 to 9 inches) to provide solid contact of the shaft with the side of the hole. Close engineering supervision is essential during the installation of the foundation units in order to assure that construction is performed in accordance with the plans and specifications. Also, to help ensure proper construction of the drilled piers, close coordination between the drilling and concreting operations is considered to be of primary importance. Concrete should be placed at each drilled pier location *immediately* after the completion of drilling. Concrete placement in the shaft should be at a rate of at least 40' of shaft per hour. *In no case should a shaft remain open overnight.*

Construction documents must specify that all foundation units should be constructed in accordance with ACI 336.1 "Standard Specification for the Construction of Drilled Piers," latest edition. Only contractors familiar with and competent in the employment of these methods should be considered for the work. The actual capacity of the completed foundation is directly related to the degree of conformance to correct construction procedures.



8.4 Helical Piles

Helical piles can be an alternative option to concrete shafts. As recommended by the Helical Foundations and Tiebacks Committee of the Deep Foundation Institute (DFI) in their Model Specification for Helical Pile Foundations Compression Applications, provision of this type of deep foundation support system should be via a performance-based specification. Consequently, we recommend that the piles be designed and installed by a specialty design-build contractor. The DFI Spec covers all the bases related to design, testing and installation as well as field adjustments and verification of every pile placed on the job and is recommended for use on this project. In some cases, desired pile capacity exceeds what "off-the-shelf" piles can provide. For this reason, we recommend deleting the DFI Spec recommendation for ICC-ES pile evaluation. In addition, we recommend:

1. The top helix should be placed at an elevation of below the uncontrolled fill.
2. The number of piles most likely does not warrant specific load testing other than monitoring of installation torque for each pile.
3. The recommended factor of safety is 2.5 if no-load testing is conducted (2.0 if load testing is conducted).
4. Maximum tolerable axial deformation (elastic shortening plus settlement) of individual piles needs to be specified in keeping with characteristics of the structure to be supported.
5. Corrosion service life needs to be specified (usually 50 years per most codes (75 years for transportation structures)).
6. Minimum spacing of 3 times the diameter of the largest helix

9.0 FLOOR SYSTEMS

The floor system for use with a shallow spread footing system consists of an unstiffened or stiffened slab on grade that is either monolithic with or isolated from, shallow footings or footings supported on deep foundations. A stiffened slab will help to reduce differential movement experienced by the superstructure and, thus, the observed distress. Actual beam sizes and spacing, as well as reinforcing, will need to be determined by a structural engineer. Post-Tensioned stiffened slab systems are generally designed based on the Post-Tensioned Institute (PTI) design method. Conventionally reinforced stiffened slabs are often designed by Wire Reinforcing Institute (WRI) methodology. Stiffened (PTI or conventional) slab parameters can be provided upon request.

If the desire is to leave the undocumented fill in place and support the load bearing elements on deep foundations a ground supported slab is still applicable. A ground supported slab, which does not have heavy isolated loads, should settle within the target range of 1 inch unless there are unknown deficiencies in the fill, See **Section 6.2.1**. The only practical way of lowering this risk is to completely remove the fill and replace it with compacted select fill or to structurally suspend the slab over a void space.

9.1 Unstiffened Slab on Grade

Under normal circumstances, the subgrade beneath a slab on grade, which is not loaded significantly, should not settle significantly. However, a subgrade composed of under compacted



soils could be subject to settlement, which is not load-induced (e.g. collapse of voids, consolidation due to saturation from infiltration, subsurface drainage or a plumbing leak, etc.). A standard slab-on-grade should be sufficient to bridge small areas, which settle, but may not be adequate to span larger ones. The slab should be structurally stiff enough to span whatever size void is assumed. Provision should also be made to account for the fact that a heavily loaded foundation element, which is monolithic with an unloaded slab, may result in significant stress in the transition zone between the unloaded slab and the foundation element. Given these caveats, a slab-on-grade should prove adequate, especially if measures are taken to assure subgrade stability (see **Section 10.0**). These measures are essential to satisfactory structure performance.

10.0 SUBGRADE PREPARATION

In order to validate the design assumptions given above regarding allowable foundation loads, and, in order to provide a serviceable floor system (within the limitations stated above), it is imperative that the subgrade of the building be properly prepared. The following procedures are recommended as a minimum:

10.1 Unstiffened Slab with Shallow Footings

This option is the recommended subgrade preparation and reduces the predicted settlement to 1.0 inch or less by removing the undocumented fill and replacing it with compacted select fill.

- Remove the surficial vegetation and organic topsoil. Tree root zones should be undercut and completely removed. Areas disturbed by grubbing shall be backfill with select fill.
- Over-excavate 6 feet below existing grade and replace with compacted select fill to reduce potential movements to 1.0 inch or less. Limits of over-excavation should extend 5' beyond building and/or footing lines. The onsite soils removed can be considered for select with if they are clean of debris and pockets of expansive clay.
- After over-excavation is complete or prior to placing fill:
 - Scarify the exposed subgrade to a depth of 12 inches, adjust the moisture content to, and maintain it within a range of -3% optimum to optimum +3% and recompact to a minimum density of 95% of the maximum density defined by ASTM D 698 (Standard Proctor). *Maintain specified moisture content until subgrade is covered with fill or slab.*
 - Due to the shallow ground water and soft soils conditions dewatering may be required in order to facilitate compaction.
- Place select fill to finished slab subgrade, as needed. Specifications for the placement of select fill are covered in **Section 11.2** below.



10.2 Deep Foundations Supporting a Slab on Grade

- Remove surficial vegetation, organic topsoil, and tree roots zones. Any area disturbed by grubbing should be over-excavated and backfill with select fill. Specifications for the placement of fill are covered in **Sections 12.2** below.
- Cut to grade as needed.
- Perform a proof roll with a fully loaded dump truck under the supervision of Geotechnical Engineer of Record (GER). Any significant deflection noted should be investigated and potentially undercut and replaced with select fill.
- After completion of the proof roll or prior to placing fill:
 - Scarify the exposed subgrade to a depth of 12 inches, adjust the moisture content to, and maintain it within a range of -3% optimum to optimum +3% (and recompact to a minimum density of 98% of the maximum density defined by ASTM D 698 (Standard Proctor). *Maintain specified moisture content until subgrade is covered with fill or slab.*
- Place select fill to finished slab subgrade.
- Testing to verify these procedures is essential to the proper performance of the structure.

11.0 GENERAL CONSTRUCTION CONSIDERATIONS

11.1 Shallow Footings

All footing excavations should be inspected by qualified personnel to ensure that subgrade is composed of firm, undisturbed native soil or properly compacted select fill as recommended in this report. Water and/or loose material in footing excavations should be removed prior to final shaping of the footing excavation and placement of concrete.

11.2 Site Design

The following recommendations are derived from years of experience with structures founded on non-expansive soils and are considered essential to satisfactory structure performance:

- Sidewalks should be sloped away from the building and not tied to the structure.
- The ground surface around the building and the paved areas should be sloped away from the building on all sides so that water will drain away from the structure. Water should not be allowed to pond near the structure during or after rainfall events.
- Adequate drainage should be provided to minimize any increase in the moisture content of the foundation soils. Roof drainage should be conveyed by an appropriate means at



least 15 feet from the building or retaining walls before it is allowed to drain into the subgrade.

- Backfill for utility line ditches should be carefully controlled. It should be placed at a density similar to the surrounding soil. A density of 95 percent of ASTM D 698 (Standard Proctor) may be used as a rule of thumb. The top six inches under paving should be compacted to a density equal to that specified for the pavement subgrade.

11.3 Select Fill

Select fill shall consist of homogeneous soils (i.e. not sand with clay lumps) free of organic matter and rocks larger than 6 inches in diameter. Select fill should possess an Atterberg PI between 8 and 18, with a liquid limit of 40 or less and with a percentage passing the No. 200 sieve of 75% or less. If the material has a percentage passing the No. 200 sieve less than 25% and/or more than 40% is retained on the No. 40 sieve (excluding the percent retained on the No. 4 sieve (gravel)) the upper limit of PI can be increased to 25. Atterberg limits testing of the fill at a rate of 1 test per every 500 cubic yards of fill placed or as visual changes are observed. The material should be placed in the following manner:

- Prepare the subgrade in accordance with the recommendations discussed in a previous section of this report. Sites, which slope more than about 15% should be benched with 5' wide benches prior to placing fill.
- Place subsequent lifts of select fill in thin, loose layers not exceeding nine inches in thickness to the desired rough grade and compact to a minimum of 98% of the maximum density defined by ASTM D 698. Maintain moisture within a range of -3% optimum to optimum +3%. If fill thickness exceeds 8 the entire thickness should be compacted to 100% density.
- Conduct in-place field density tests at a rate of one test per 3,000 square feet for every lift with a minimum of 2 tests per lift.
- Prevent excessive loss of moisture during construction.
- For select fill placed above the existing ground line, extend the lateral limits of the fill at least 5 feet beyond the perimeter of the construction area, transitioning back to the existing ground line on a 3:1(horizontal/vertical) slope.

The in place undocumented fill can be considered for select fill if it is free of organics, debris and pockets of expansive clays. The fill should be stockpiled, blended and tested. Results should be submitted to the GER for approval.



11.4 Temporary Excavations

The Federal Register, Volume 54, No. 209 (Revised July 1992), the United States Department of Labor, Occupational Safety and Health Administration (OSHA) contain the "Construction Standards for Excavations, 29 CFR, part 1926, Subpart P". The contractor is solely responsible for designing and constructing stable, temporary excavations in accord with these standards and should shore, slope or bench the sides of the excavations as required to maintain the stability of both the excavation sides and bottom. E TTL has not performed stability analyses of any kind. The contractor's "responsible person", as defined in CFR Part 1926, should evaluate the soil exposed in the excavation as part of the contractor's safety procedure. In no case should the height, slope inclination, or excavation depth, including utility trench excavation depth, exceed those specified in local, state, and federal safety regulations. Contractors should review the boring logs in **Appendix A** to define the appropriate soil type per the aforementioned OSHA regulations.

11.5 Control of Groundwater

It is anticipated that excavations that extend 8 feet or below the existing ground elevation (perhaps somewhat higher) will encounter the groundwater table and prudent measures for managing or removing the water from the excavation should be taken. What measures are appropriate depends on the nature and extent of the groundwater and the permeability of the strata through which it flows.

Where the groundwater is "perched", an up-gradient trench around the perimeter of the work site may be effective in intercepting the flow. Intercepted flow may either be pumped from the trench or allowed to drain by gravity. Allowing time for pockets of limited volume to drain may completely eliminate the issue.

When the flow is not perched, a system of wells often proves to be the most effective way of dewatering excavations. A system of temporary wells would be sufficient in providing sufficient drawdown of the shallow groundwater to allow construction of the cutoff trench near the low point of the trench. However, the design of a system necessitates detailed knowledge of the quantity of groundwater flow and the permeability of surrounding soils. As this kind of data is beyond the scope of this investigation, an appropriate dewatering system cannot be designed at this time. E TTL Engineers & Consultants Inc. is available to assist you in a more detailed study of this problem should you deem necessary.

11.6 Subgrade Stability

During wet periods of the year especially, the native subgrade and areas where cuts into the native subgrade are required are likely to be unstable. This will necessitate specialized construction procedures to be able to achieve a subgrade that is sufficiently stable to serve as a base to adequately compact fill. The most appropriate method is best determined based on an evaluation of the conditions by the geotechnical engineer of record at the time of construction



12.0 PAVEMENT RECOMMENDATIONS

The following are general recommendations for the design of minimal pavement structures and are provided herein for your information. If requested, E TTL can review the civil drawings and specifications for compliance with our recommendations herein. NOTE: Minimal designs as included herein may not be adequate for significant heavy truck traffic. For such traffic, a specific design based on a numerical characterization of the traffic is recommended and was beyond the scope of this investigation.

These recommendations are based on surface soil characteristics inferred from the borings drilled for the building areas and may not entirely define the soils located in all the pavement areas. It is critical in areas where the grades are being cut that the final subgrade is inspected for possible material that does not meet the requirements stated herein. Both flexible and rigid pavement sections are presented. A summary of proposed designs is provided in **Tables 12.1, 12.2, and 12.3**, below.

12.1 Pavement Subgrade Preparation

As a minimum, strip the native subgrade to remove topsoil and other deleterious materials. Cut to the proposed subgrade elevation as required. After cutting to finished subgrade has been performed and before placing fill, the exposed soils should be examined and tested by a representative of E TTL to detect areas of expansive clay or other unsuitable soil conditions that will need to be cut out and replaced. Prior to placing fill, a proof roll should be conducted at the current grade in order to identify and repair any unstable conditions.

Verify that all stump holes, utility lines as well as areas disturbed by demolition activity, if any, are cut out and backfilled with properly compacted select fill. Positive surface drainage should be provided at all times during construction (especially in low areas) to maintain pavement subgrade in a dry and stable condition.

12.1.1 Unstable Subgrade Soils

Where the exposed *finished* subgrade is found to consist of soil with a $PI > 18$, cut out the plastic clay to an elevation equal to finished subgrade minus 18", or deeper if necessary, to expose stable ground (as determined by proof rolling as specified below). Scarify the exposed soil to a depth of 8", adjust the moisture content to within a range of optimum $\pm 3\%$ and recompact to a minimum density of 95% of ASTM D698 (standard proctor).

12.1.2 Suitable Subgrade Soil

Where exposed native soil at finished subgrade elevation consists of soil with a $PI \leq 18$ (note that silty sand (SM) soils are not suitable for full depth HMAC pavement surfaces), it should be proof rolled in accordance with TxDOT Item 216 (with the exception of roller size). The use of a fully-loaded dump truck is recommended. Areas, which prove unstable should be cut out and replaced as directed by a representative of this firm. Scarify the exposed soil to a depth of 8", adjust the moisture content to within a range of optimum $\pm 3\%$ and recompact to a minimum density of 95% of ASTM D698 (standard proctor).



12.1.3 Fill Construction

Fill to be placed which is below an elevation of finished subgrade minus 18" may consist of any soil and should be compacted to a minimum density of 95% ASTM D698 (standard proctor) at a moisture content within the range of optimum +/- 3%. The top 18" of finished subgrade in areas receiving fill should consist of a select material with the following properties: a PI \leq 18, a liquid limit \leq 40 and a percentage passing the #200 sieve <40% (note that silty sand (SM) soils are not suitable for full depth HMAC pavement surfaces). It should be noted these recommendations vary from those for the structure fill.

12.1.4 Stability of Finished Subgrade

The stability of the finished subgrade should be verified by proof rolling in accordance with the latest TxDOT Item 216 (with the exception of roller size – use fully loaded dump truck) prior to placing base material or surfacing. Unstable areas will need to be cut out and reworked.

12.2 Light-Duty Pavements

12.2.1 Flexible Pavement

The minimum pavement section (and a section commonly used) for light-duty driveways and parking areas consists of 6 inches of crushed stone base with 2 inches of hot mix asphaltic concrete (HMAC). The crushed stone base should comply with Type A, Grade 1/2, Item 247 of the *Texas Department of Transportation (TxDOT) 2014 Standard Specifications for Construction of Highways, Streets and Bridges*. Compaction of the stone base should be to a minimum of 95 percent ASTM D 1557 maximum density at optimum moisture \pm 3 percent. Asphaltic concrete surfacing should comply with the requirements of Type D, Item 340 of the TxDOT Specifications and should be compacted to a density of 92 to 94 percent of maximum theoretical density.

12.2.2 Full Depth Asphalt

Not recommended for subgrades comprised of silty sand (SM) due to potential installation difficulties.

12.2.3 Rigid Pavement

The performance of concrete pavement is dependent on many factors including weight and frequency of traffic, subgrade conditions, concrete quality (which itself is dependent on a host of factors), joint type and layout, jointing procedures, and numerous construction practices. A detailed discussion of all of these items is beyond the scope of this report. By way of general guidance, the following recommendations are offered:

- The minimum concrete compressive strength of 4,000 psi at 28 days placed with a maximum slump of 5 inches. The mix should contain 5% - 6% entrained air for durability.
- Minimum pavement thickness of 5 inches.
- Sawcut or preformed control joints at a maximum spacing of 12 feet each way. The layout of joints should form basically square panels. The timing of the cutting of joints



is critical to their performance and generally should be within 4 - 18 hours of concrete placement. *Sealing of joints and cracks and maintenance of the seal are critical for satisfactory performance.*

- Adequate site drainage to prevent ponding on or near the pavement.
- Cure concrete via the use of liquid membrane curing compound.
- Concrete quality should be controlled and jointing properly executed. Minimum reinforcement should consist of No. 3 at 18 inches each way assuming construction joints at a maximum spacing of 60'.
- All edges of pavement should be thickened to 7 inches (transitioning back to 5 inches over a minimum distance of 4 feet).
- Allow a minimum of 7 days (warm weather, longer in cold weather) curing time before permitting traffic on the pavement.

The reader is referred to the American Concrete Institute Publication No. ACI 330R, *Guide for Design and Construction of Concrete Parking Lots* for more detailed information.

12.2.4 Medium-Duty Pavements

12.2.5 Flexible Pavement

For areas that will be subject to trash or delivery truck parking and traffic, the minimum recommended flexible pavement section consists of 8 inches of crushed stone base and 3 inches of asphaltic concrete surfacing. The 3 inches of surfacing may be composed of fine-graded surface course (Type D) or coarse-graded surface course (Type C). Paving materials should be specified as discussed previously.

12.2.6 Rigid Pavement

Recommendations for medium-duty concrete paving are the same as for light-duty except that 6 inches of portland cement concrete should be considered the minimum pavement section and the edges should be thickened to 8 inches. Distributed steel should be #3 @ 16" as a minimum assuming construction joints at a maximum spacing of 60'.

12.3 Heavy-Duty Pavements

12.3.1 Flexible Pavement

For areas, which will be subject to heavy truck parking and traffic, the *minimum recommended* flexible pavement sections consist of 7 inches of crushed stone base and 4.5 inches of asphaltic concrete surfacing. The 4.5 inches of surfacing may be composed of 2 inches of fine-graded surface course (Type D) wearing surfacing overlaying 2.5 inches of coarse-graded surface course (Type C). Paving materials should be specified as discussed previously.



12.3.2 Rigid Pavement

Recommendations for heavy-duty concrete paving are the same as for light-duty except that 7 inches of portland cement concrete should be the minimum pavement section and the edges should be thickened to 9 inches. Distributed steel should be #3 @ 14" as a minimum assuming construction joints at a maximum spacing of 60'.

Table 12.1 - Pavement Options – Light Duty			
Type	Base/Surface Thickness		Subgrade Preparation
Flexible HMAC	2" Surface (Type D)	6" Crushed Stone Base	Notes 1 to 4
Concrete	5"	No Base Required ⁶	Notes 1 to 4

Table 12.2 - Pavement Options – Medium Duty			
Type	Base/Surface Thickness		Subgrade Preparation
Flexible HMAC	3" Surface (Type C or D)	8" Crushed Stone Base	Notes 1 to 4
Concrete	6"	No Base Required ⁶	Notes 1 to 4

Table 12.3 - Pavement Options – Heavy Duty			
Type	Base/Surface Thickness		Subgrade Preparation
Flexible HMAC	2" Surface (Type C or D)	2.5" HMAC Base & 7" Crushed Stone Base	Notes 1 to 4
Concrete	7"	No Base Required ⁶	Notes 1 to 4

Notes:

- 1) Cut out and remove all topsoil and organics. Cut to grade if required.
- 2) A visual inspection and proof roll of the exposed subgrade shall be made to determine areas to be undercut and replaced with select fill.
- 3) Recompact subgrade to a minimum density of 95% of ASTM D698 (Standard Proctor).
- 4) The stability of the finished subgrade should be verified by proof rolling in accordance with TxDOT.
- 5) Entry, exit, and trash receptacle areas should be a minimum of 7 inches of reinforced concrete, or per local city or county standards
- 6) Where the finished subgrade is sand (SP, SM, SP-SM, SC-SM), 4 inches of compacted Flex Base or 6" of cement stabilized subgrade will increase longevity by providing a non-erodible base. Especially desirable where the pavement is on a significant slope and/or where pavement is subject to heavy trucks.

13.0 LIMITATIONS

Geotechnical design work is characterized by the presence of a calculated risk that soil and groundwater conditions may not have been fully revealed by the exploratory borings. This risk derives from the practical necessity of basing interpretations and design conclusions on a limited sampling of the subsoil stratigraphy at the project site. The number of borings and spacing is chosen in such a manner as to decrease the possibility of undiscovered anomalies while considering the nature of loading, size, and cost of the project. The recommendations given in



this report are based upon the conditions that existed at the boring locations at the time they were drilled. The term "existing groundline" or "existing subgrade" refers to the ground elevations and soil conditions at the time of our field operations.

It is conceivable that soil conditions throughout the site may vary from those observed in the exploratory borings. If such discontinuities do exist, they may not become evident until construction begins or possibly much later. Consequently, careful observations by the geotechnical engineer must be made of the construction as it progresses to help detect significant and obvious deviations of actual conditions throughout the project area from those inferred from the exploratory borings. Should any conditions at variance with those noted in this report be encountered during construction, this office should be notified immediately so that further investigations and supplemental recommendations can be made.

Construction plans and specifications should be submitted to E TTL for review prior to issuance for construction to help verify that the recommendations of this report have been correctly understood and implemented.

This company is not responsible for the conclusions, opinions, or recommendations made by others based on the contents of this report. The recommendations made in this report are applicable only to the proposed scope of work as defined in **SECTION 2.0 PROJECT DESCRIPTION** and may not be used for any other work without the express written consent of E TTL Engineers. The purpose of this study is only as stated elsewhere herein and is not intended to comply with the requirements of 30 TAC 330 Subchapter T regarding testing to determine the presence of a landfill. Our professional services have been performed, our findings obtained, and our recommendations prepared in accordance with generally accepted geotechnical engineering principles and practices. No warranties are either expressed or implied.



Important Information about This Geotechnical-Engineering Report

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

The Geoprofessional Business Association (GBA) has prepared this advisory to help you – assumedly a client representative – interpret and apply this geotechnical-engineering report as effectively as possible. In that way, you can benefit from a lowered exposure to problems associated with subsurface conditions at project sites and development of them that, for decades, have been a principal cause of construction delays, cost overruns, claims, and disputes. If you have questions or want more information about any of the issues discussed herein, contact your GBA-member geotechnical engineer. Active engagement in GBA exposes geotechnical engineers to a wide array of risk-confrontation techniques that can be of genuine benefit for everyone involved with a construction project.

Understand the Geotechnical-Engineering Services Provided for this Report

Geotechnical-engineering services typically include the planning, collection, interpretation, and analysis of exploratory data from widely spaced borings and/or test pits. Field data are combined with results from laboratory tests of soil and rock samples obtained from field exploration (if applicable), observations made during site reconnaissance, and historical information to form one or more models of the expected subsurface conditions beneath the site. Local geology and alterations of the site surface and subsurface by previous and proposed construction are also important considerations. Geotechnical engineers apply their engineering training, experience, and judgment to adapt the requirements of the prospective project to the subsurface model(s). Estimates are made of the subsurface conditions that will likely be exposed during construction as well as the expected performance of foundations and other structures being planned and/or affected by construction activities.

The culmination of these geotechnical-engineering services is typically a geotechnical-engineering report providing the data obtained, a discussion of the subsurface model(s), the engineering and geologic engineering assessments and analyses made, and the recommendations developed to satisfy the given requirements of the project. These reports may be titled investigations, explorations, studies, assessments, or evaluations. Regardless of the title used, the geotechnical-engineering report is an engineering interpretation of the subsurface conditions within the context of the project and does not represent a close examination, systematic inquiry, or thorough investigation of all site and subsurface conditions.

Geotechnical-Engineering Services are Performed for Specific Purposes, Persons, and Projects, and At Specific Times

Geotechnical engineers structure their services to meet the specific needs, goals, and risk management preferences of their clients. A geotechnical-engineering study conducted for a given civil engineer

will *not* likely meet the needs of a civil-works constructor or even a different civil engineer. Because each geotechnical-engineering study is unique, each geotechnical-engineering report is unique, prepared *solely* for the client.

Likewise, geotechnical-engineering services are performed for a specific project and purpose. For example, it is unlikely that a geotechnical-engineering study for a refrigerated warehouse will be the same as one prepared for a parking garage; and a few borings drilled during a preliminary study to evaluate site feasibility will *not* be adequate to develop geotechnical design recommendations for the project.

Do not rely on this report if your geotechnical engineer prepared it:

- for a different client;
- for a different project or purpose;
- for a different site (that may or may not include all or a portion of the original site); or
- before important events occurred at the site or adjacent to it; e.g., man-made events like construction or environmental remediation, or natural events like floods, droughts, earthquakes, or groundwater fluctuations.

Note, too, the reliability of a geotechnical-engineering report can be affected by the passage of time, because of factors like changed subsurface conditions; new or modified codes, standards, or regulations; or new techniques or tools. *If you are the least bit uncertain* about the continued reliability of this report, contact your geotechnical engineer before applying the recommendations in it. A minor amount of additional testing or analysis after the passage of time – if any is required at all – could prevent major problems.

Read this Report in Full

Costly problems have occurred because those relying on a geotechnical-engineering report did not read the report in its entirety. *Do not* rely on an executive summary. *Do not* read selective elements only. *Read and refer to the report in full.*

You Need to Inform Your Geotechnical Engineer About Change

Your geotechnical engineer considered unique, project-specific factors when developing the scope of study behind this report and developing the confirmation-dependent recommendations the report conveys. Typical changes that could erode the reliability of this report include those that affect:

- the site's size or shape;
- the elevation, configuration, location, orientation, function or weight of the proposed structure and the desired performance criteria;
- the composition of the design team; or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project or site changes – even minor ones – and request an assessment of their impact. *The geotechnical engineer who prepared this report cannot accept*

responsibility or liability for problems that arise because the geotechnical engineer was not informed about developments the engineer otherwise would have considered.

Most of the "Findings" Related in This Report Are Professional Opinions

Before construction begins, geotechnical engineers explore a site's subsurface using various sampling and testing procedures. *Geotechnical engineers can observe actual subsurface conditions only at those specific locations where sampling and testing is performed.* The data derived from that sampling and testing were reviewed by your geotechnical engineer, who then applied professional judgement to form opinions about subsurface conditions throughout the site. Actual sitewide-subsurface conditions may differ – maybe significantly – from those indicated in this report. Confront that risk by retaining your geotechnical engineer to serve on the design team through project completion to obtain informed guidance quickly, whenever needed.

This Report's Recommendations Are Confirmation-Dependent

The recommendations included in this report – including any options or alternatives – are confirmation-dependent. In other words, they are *not* final, because the geotechnical engineer who developed them relied heavily on judgement and opinion to do so. Your geotechnical engineer can finalize the recommendations *only after observing actual subsurface conditions exposed during construction.* If through observation your geotechnical engineer confirms that the conditions assumed to exist actually do exist, the recommendations can be relied upon, assuming no other changes have occurred. *The geotechnical engineer who prepared this report cannot assume responsibility or liability for confirmation-dependent recommendations if you fail to retain that engineer to perform construction observation.*

This Report Could Be Misinterpreted

Other design professionals' misinterpretation of geotechnical-engineering reports has resulted in costly problems. Confront that risk by having your geotechnical engineer serve as a continuing member of the design team, to:

- confer with other design-team members;
- help develop specifications;
- review pertinent elements of other design professionals' plans and specifications; and
- be available whenever geotechnical-engineering guidance is needed.

You should also confront the risk of constructors misinterpreting this report. Do so by retaining your geotechnical engineer to participate in prebid and preconstruction conferences and to perform construction-phase observations.

Give Constructors a Complete Report and Guidance

Some owners and design professionals mistakenly believe they can shift unanticipated-subsurface-conditions liability to constructors by limiting the information they provide for bid preparation. To help prevent the costly, contentious problems this practice has caused, include the complete geotechnical-engineering report, along with any attachments or appendices, with your contract documents, *but be certain to note*

conspicuously that you've included the material for information purposes only. To avoid misunderstanding, you may also want to note that "informational purposes" means constructors have no right to rely on the interpretations, opinions, conclusions, or recommendations in the report. Be certain that constructors know they may learn about specific project requirements, including options selected from the report, *only from the design drawings and specifications.* Remind constructors that they may perform their own studies if they want to, and *be sure to allow enough time to permit them to do so.* Only then might you be in a position to give constructors the information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions. Conducting prebid and preconstruction conferences can also be valuable in this respect.

Read Responsibility Provisions Closely

Some client representatives, design professionals, and constructors do not realize that geotechnical engineering is far less exact than other engineering disciplines. This happens in part because soil and rock on project sites are typically heterogeneous and not manufactured materials with well-defined engineering properties like steel and concrete. That lack of understanding has nurtured unrealistic expectations that have resulted in disappointments, delays, cost overruns, claims, and disputes. To confront that risk, geotechnical engineers commonly include explanatory provisions in their reports. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Geoenvironmental Concerns Are Not Covered

The personnel, equipment, and techniques used to perform an environmental study – e.g., a "phase-one" or "phase-two" environmental site assessment – differ significantly from those used to perform a geotechnical-engineering study. For that reason, a geotechnical-engineering report does not usually provide environmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated subsurface environmental problems have led to project failures.* If you have not obtained your own environmental information about the project site, ask your geotechnical consultant for a recommendation on how to find environmental risk-management guidance.

Obtain Professional Assistance to Deal with Moisture Infiltration and Mold

While your geotechnical engineer may have addressed groundwater, water infiltration, or similar issues in this report, the engineer's services were not designed, conducted, or intended to prevent migration of moisture – including water vapor – from the soil through building slabs and walls and into the building interior, where it can cause mold growth and material-performance deficiencies. Accordingly, *proper implementation of the geotechnical engineer's recommendations will not of itself be sufficient to prevent moisture infiltration.* Confront the risk of moisture infiltration by including building-envelope or mold specialists on the design team. *Geotechnical engineers are not building-envelope or mold specialists.*

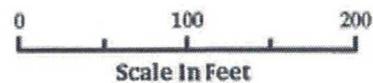
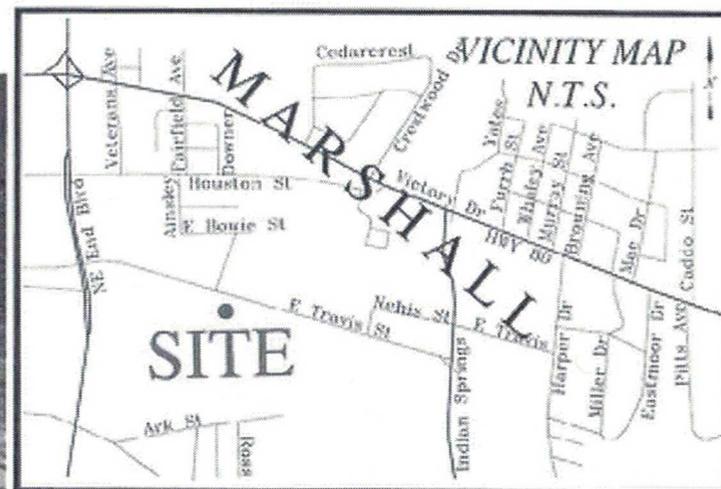
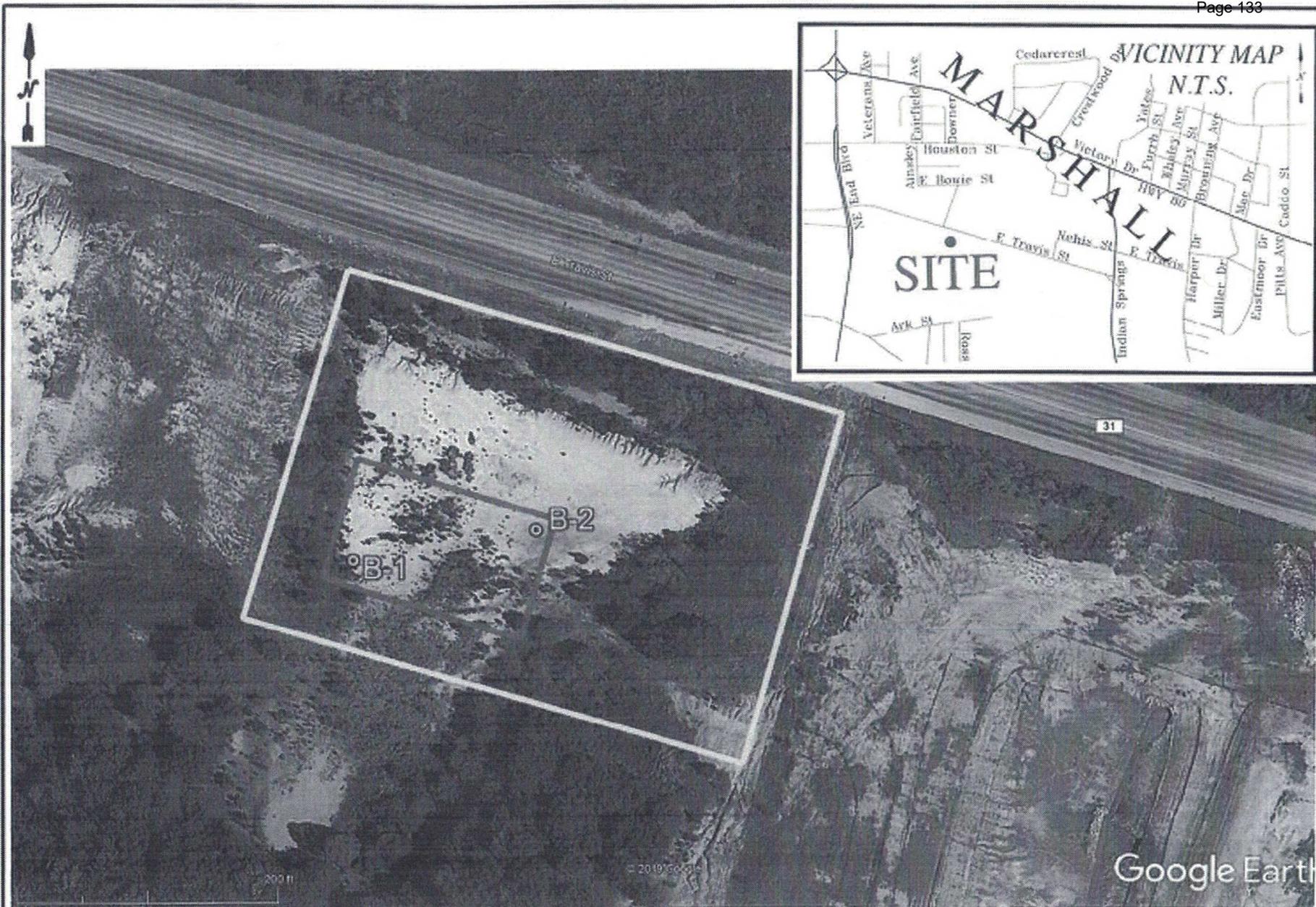


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APPENDIX A
Plan of Borings and Borings Logs

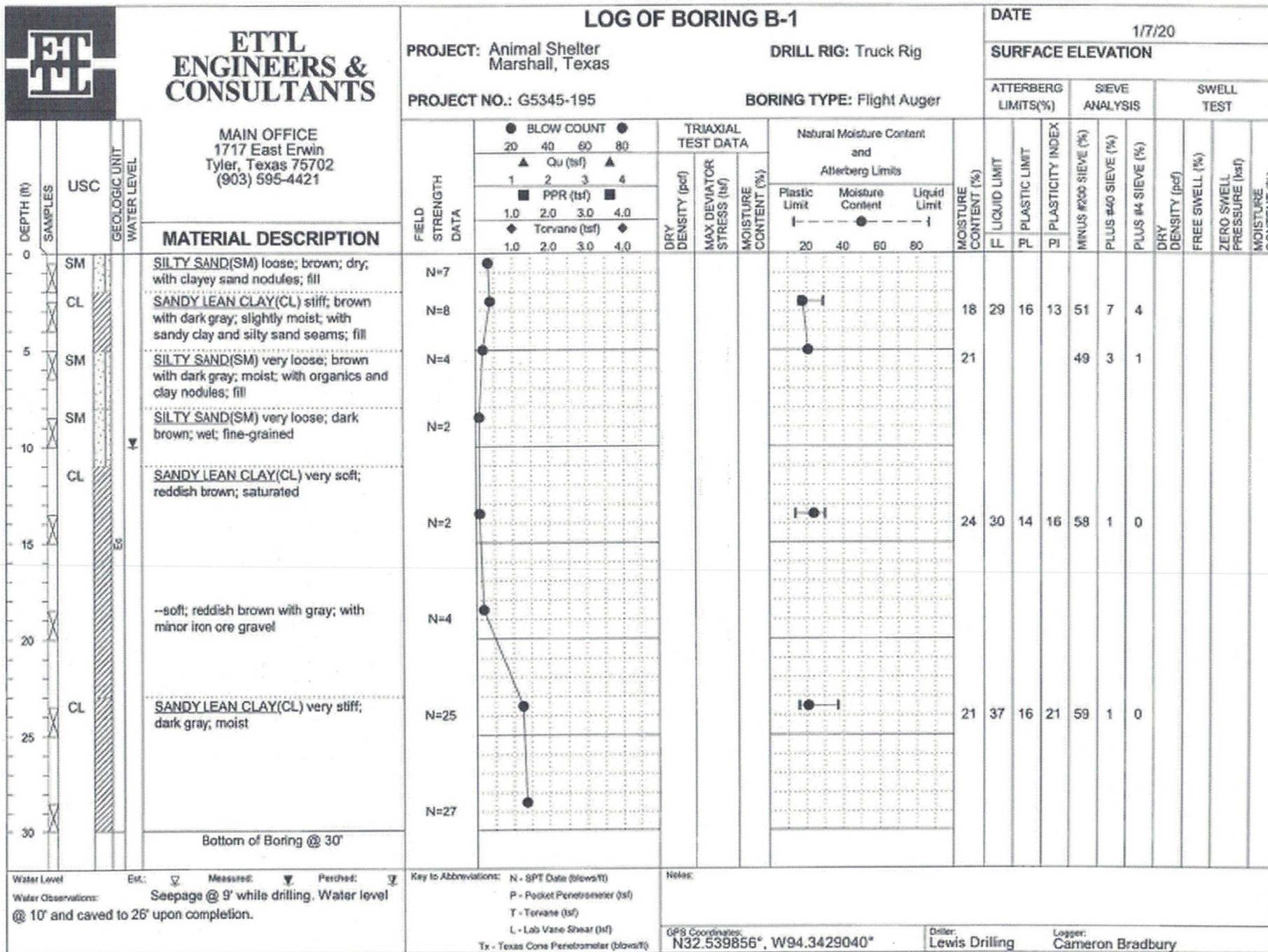


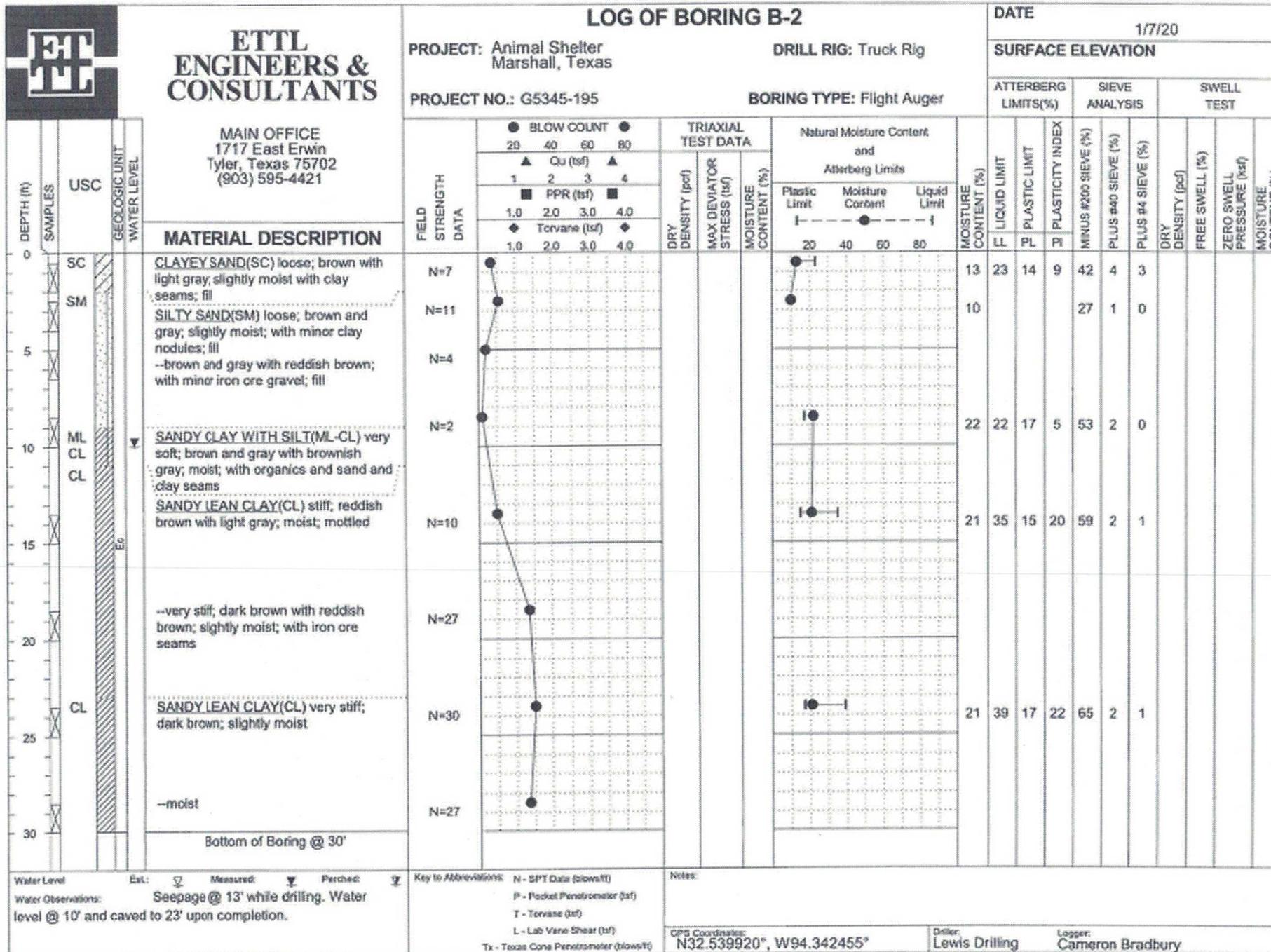

ETL
ENGINEERS & CONSULTANTS
 MAIN OFFICE
 1717 EAST SPRING
 TYLER, TEXAS 75702
 909-595-6627

**ANIMAL SHELTER
 MARSHALL, TEXAS**

PLATE I - PLAN OF BORINGS
JOB NO.: G5345-195
SCALE: AS SHOWN
DATE: JANUARY 2020

APPROVED BY:
DRAWN BY: A.K.B.





APPENDIX B
Laboratory Test Results



ETTL Engineers & Consultants Inc.

GEOTECHNICAL * MATERIALS * ENVIRONMENTAL * DRILLING * LANDFILLS

LABORATORY TEST DATA SUMMARY SHEET

PROJECT: Animal Shelter
 Ettl Job Number: G5345-195
 PROJECT LOCATION: Marshall, Texas
 CLIENT: City of Marshall, Texas
 PROJECT MANAGER: Owen Sanderson

START DATE: 1/13/2020
 FINISH DATE: 1/15/2020
 TECHNICIAN(S): Micah
 DATE SAMPLED: 1/7/2020

Boring No.	Depth (ft.)		Sample No.	Description of Sample	USCS Classification	Atterberg Limits			Moisture Content (%)			Unit Weight / Compression Tests					Consol. / Swell Tests Results			
	Top	Bot				LL	PL	PI	(%) Passing No. 200 Sieve	(%) Retained No. 40 Sieve	(%) Retained No. 4 Sieve	Dry Unit Weight (pcf)	Moisture Content (%)	Compressive Strength (ksf)	Failure Strain (%)	Confining Pressure (psf)	Dry Unit Weight (pcf)	Moisture Content (%)	Free Swell (%)	Restraining Pressure (ksf)
B-1	2.5	4.0		Brown w/ Dk. Gray	CL Sandy Lean Clay	29	16	13	18	51	7	4								
B-1	13.5	15.0		Redd. Brown	CL Sandy Lean Clay	30	14	16	24	58	1	0								
B-1	23.5	25.0		Dk. Gray	CL Sandy Lean Clay	37	16	21	21	59	1	0								
B-2	0.5	2.0		Brown w/ Lt. Gray	SC Clayey sand	23	14	9	13	42	4	3								
B-2	8.5	10.0		Brown w/ Dk. Gray	CL-ML Sandy Silty Clay	22	17	5	22	53	2	0								
B-2	13.5	15.0		Redd. Br. w/ Lt. Gray	CL Sandy Lean Clay	35	15	20	21	59	2	1								
B-2	23.5	25.0		Dk. Brown	CL Sandy Lean Clay	39	17	22	21	65	2	1								
B-1	5.0	6.5		Brown w/ Dk. Gray	SM silty sand, with clay nodules	NT	NT	NT	21	49	3	1								
B-2	2.5	4.0		Brown w/ Gray	SM silty sand	NT	NT	NT	10	27	1	0								

NT = Not Tested, Visual Classification
 NP = Non Plastic, LL Attempted

Tyler, TX - Main Office

Longview, TX
 903-758-0402

*

1717 East Erwin Street Tyler, Texas 75702

Arlington, TX
 817-962-0048

*

Austin, TX
 512-519-9312

*

Phone: 903-595-4421

Texarkana, AR
 870-772-0013

APPENDIX C
Seismic Design Parameters



OSHPD

City of Marshall Animal Shelter,

Latitude, Longitude: 32.539856, -94.342904



E Travis St

Google

Map data ©2020

Date

1/20/2020, 4:58:14 PM

Design Code Reference Document

IBC-2015

Risk Category

II

Site Class

E - Soft Clay Soil

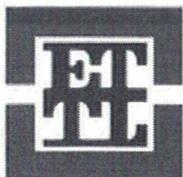
Type	Value	Description
S_S	0.122	MCE_R ground motion. (for 0.2 second period)
S_1	0.067	MCE_R ground motion. (for 1.0s period)
S_{MS}	0.306	Site-modified spectral acceleration value
S_{M1}	0.233	Site-modified spectral acceleration value
S_{DS}	0.204	Numeric seismic design value at 0.2 second SA
S_{D1}	0.155	Numeric seismic design value at 1.0 second SA

Type	Value	Description
SDC	C	Seismic design category
F_a	2.5	Site amplification factor at 0.2 second
F_v	3.5	Site amplification factor at 1.0 second
PGA	0.058	MCE_G peak ground acceleration
F_{PGA}	2.5	Site amplification factor at PGA
PGA_M	0.146	Site modified peak ground acceleration
T_L	12	Long-period transition period in seconds
S_{sRT}	0.122	Probabilistic risk-targeted ground motion. (0.2 second)
S_{sUH}	0.135	Factored uniform-hazard (2% probability of exceedance in 50 years) spectral acceleration
S_{sD}	1.5	Factored deterministic acceleration value. (0.2 second)
S_{1RT}	0.067	Probabilistic risk-targeted ground motion. (1.0 second)
S_{1UH}	0.078	Factored uniform-hazard (2% probability of exceedance in 50 years) spectral acceleration.
S_{1D}	0.6	Factored deterministic acceleration value. (1.0 second)
PGA_d	0.6	Factored deterministic acceleration value. (Peak Ground Acceleration)
C_{RS}	0.903	Mapped value of the risk coefficient at short periods
C_{R1}	0.849	Mapped value of the risk coefficient at a period of 1 s

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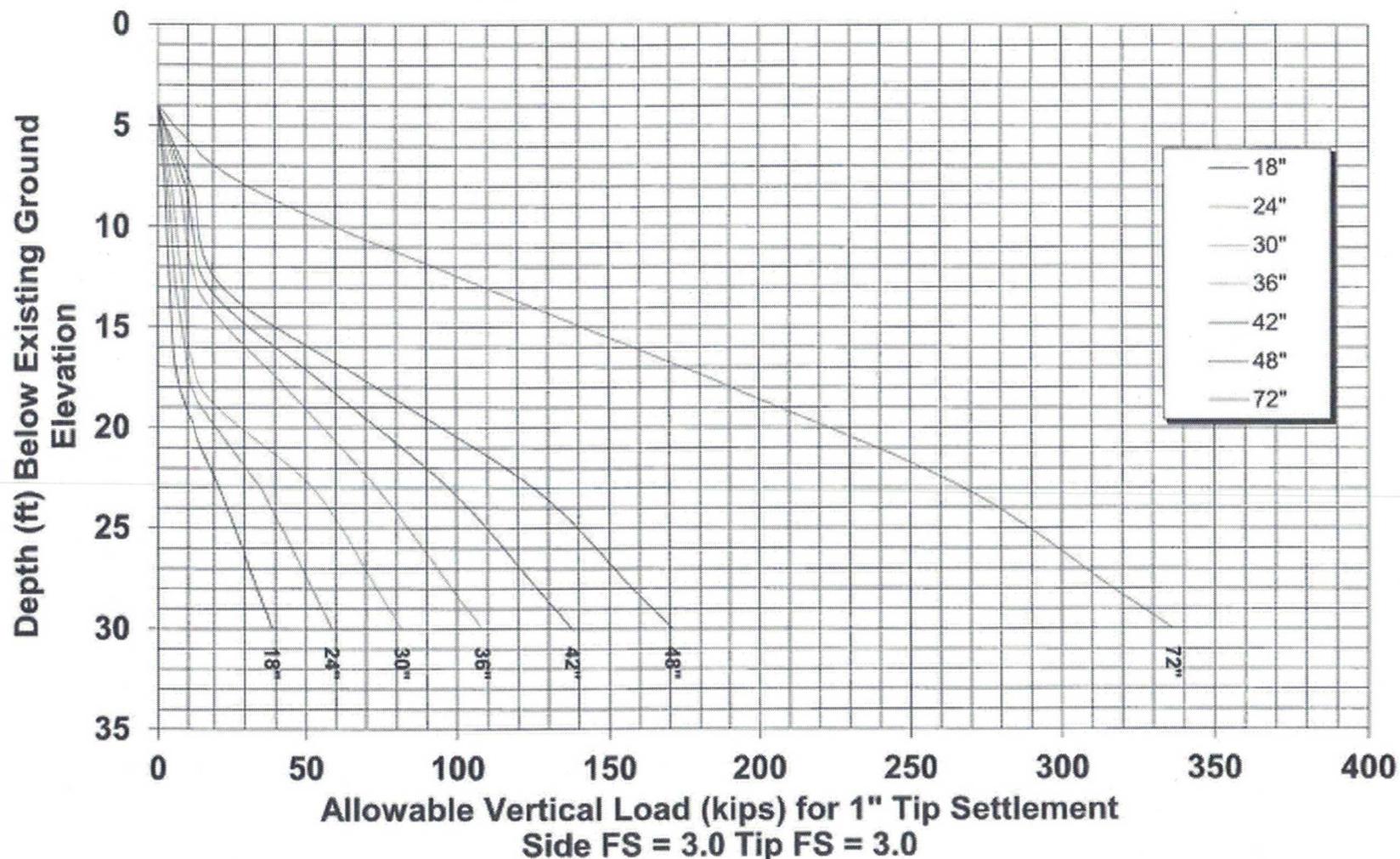
APPENDIX D
Drilled Shaft Design Curves

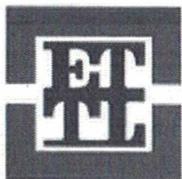


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GEOTECHNICAL * MATERIALS * ENVIRONMENTAL * DRILLING * LANDFILLS

DRILLED SHAFT CAPACITIES

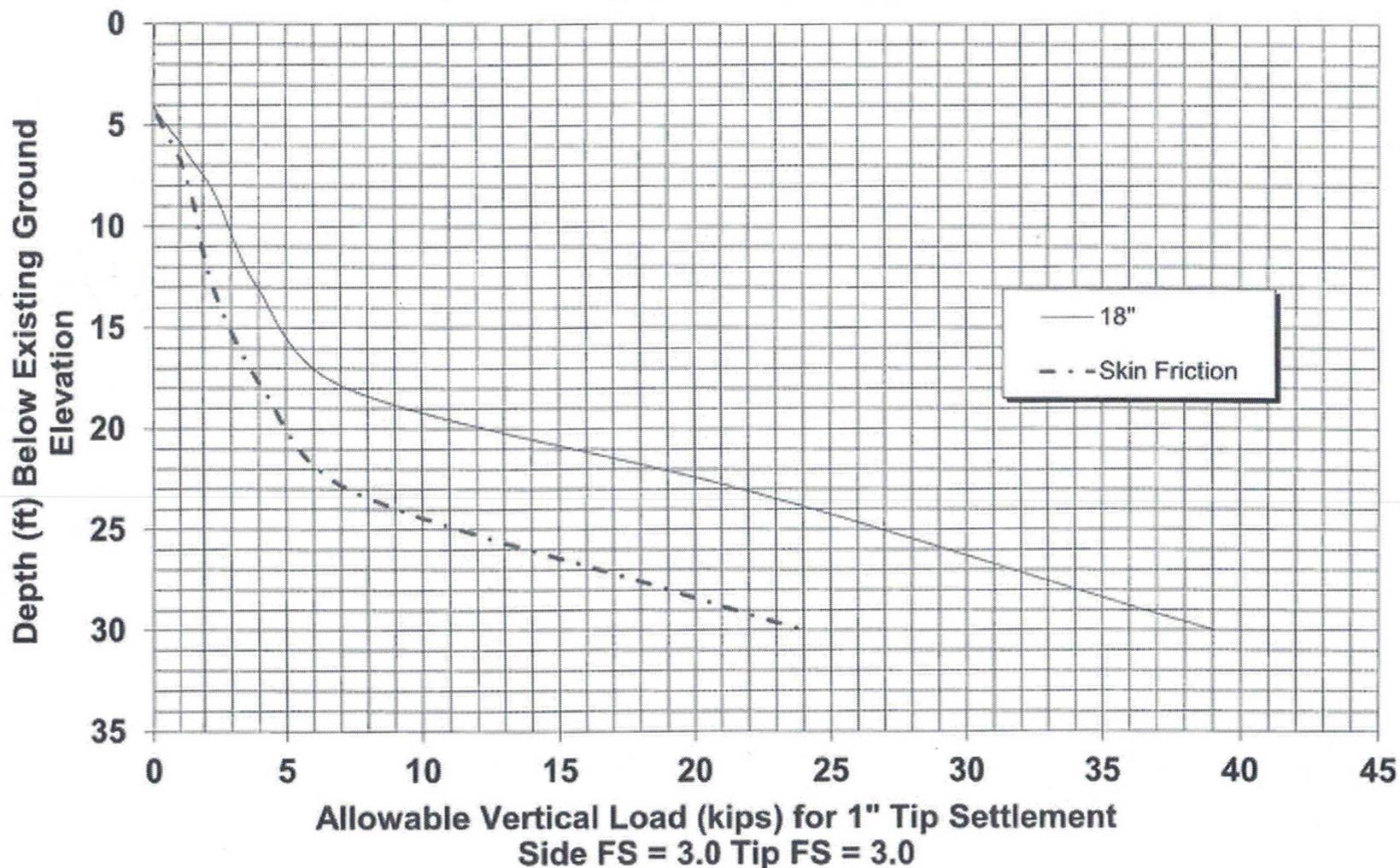


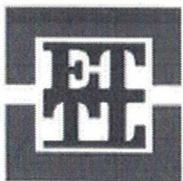


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DRILLED SHAFT CAPACITIES

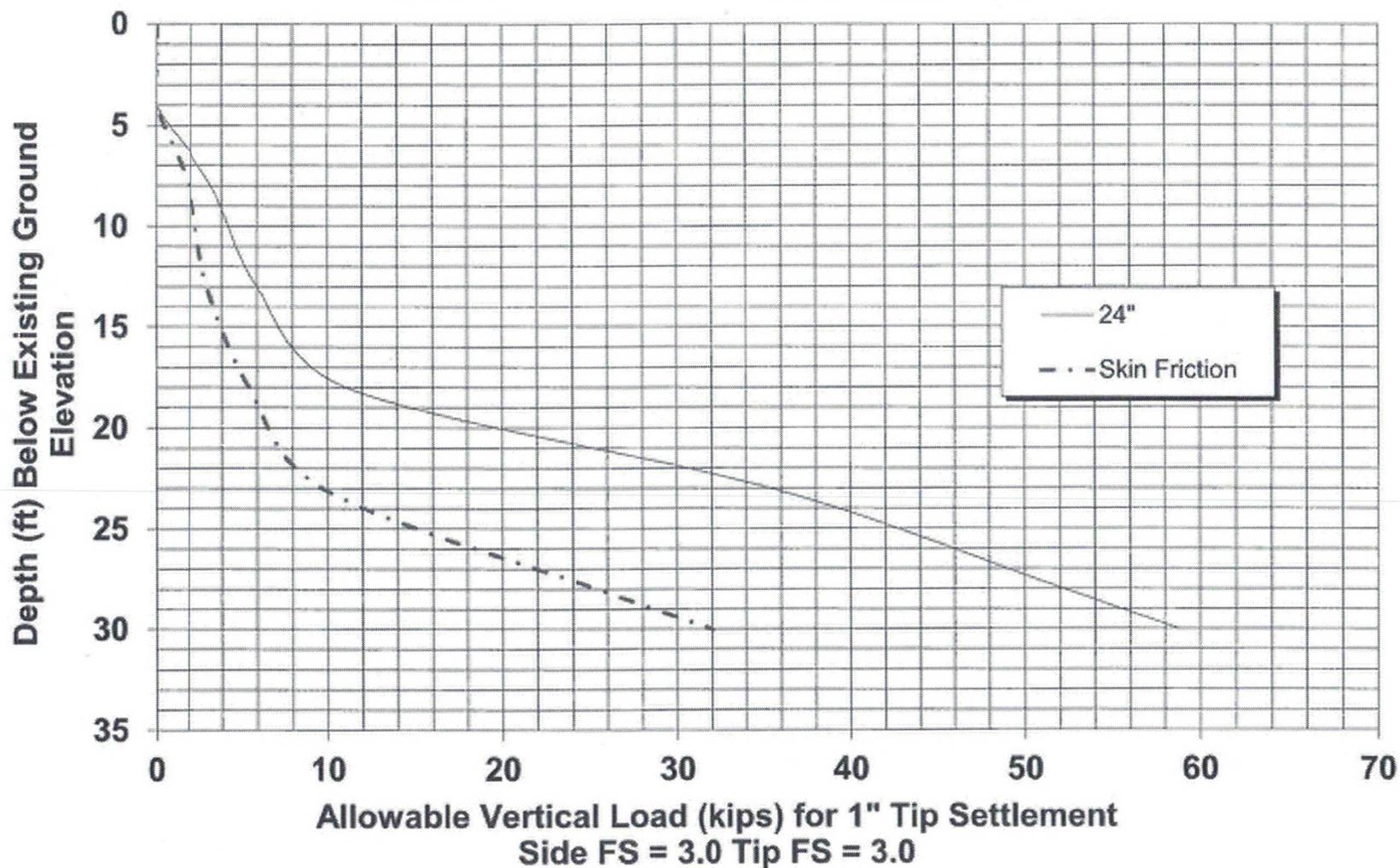


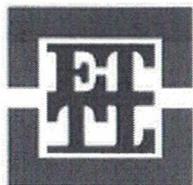


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DRILLED SHAFT CAPACITIES

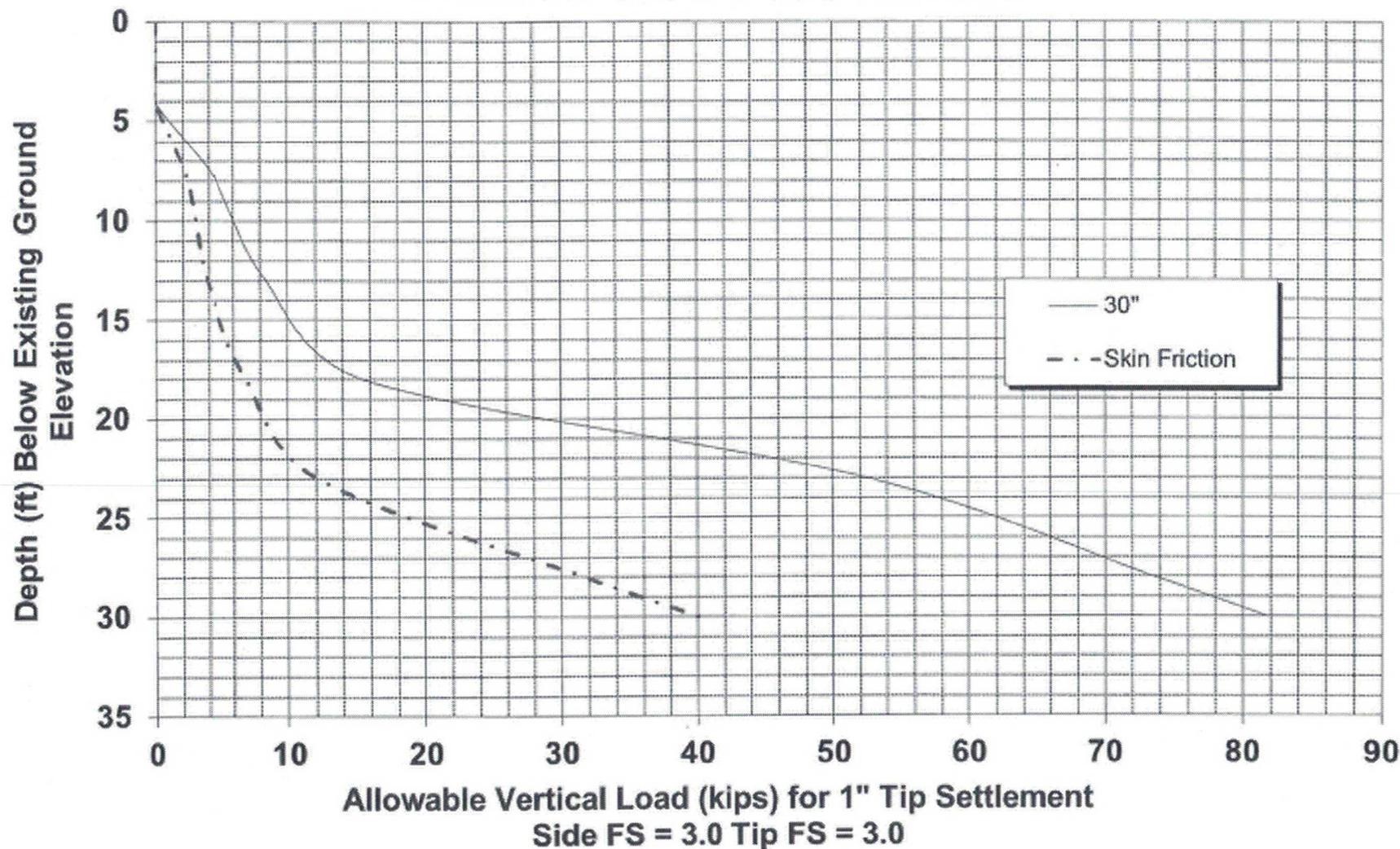


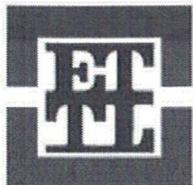


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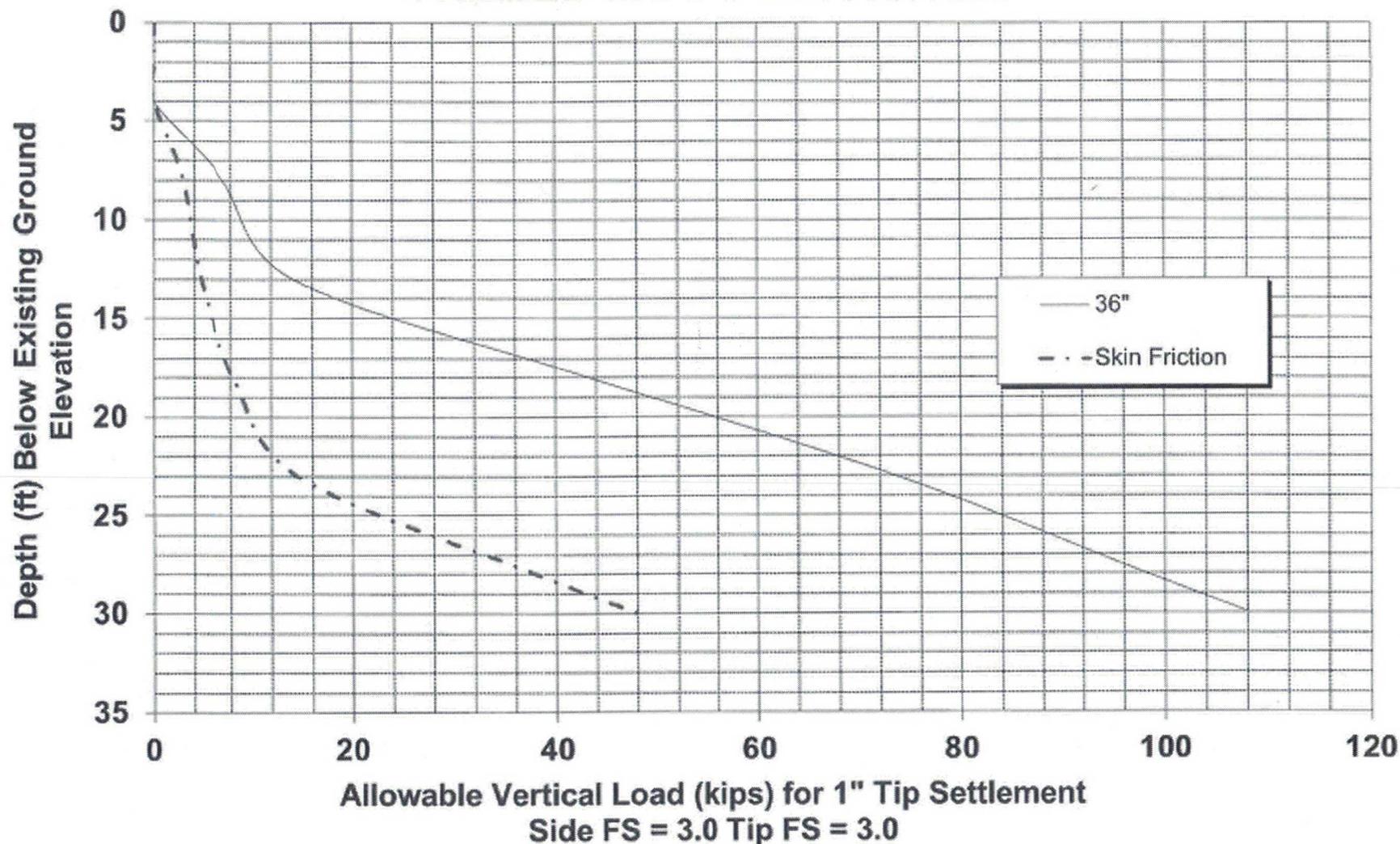


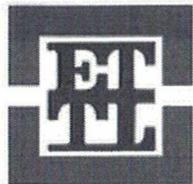


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DRILLED SHAFT CAPACITIES

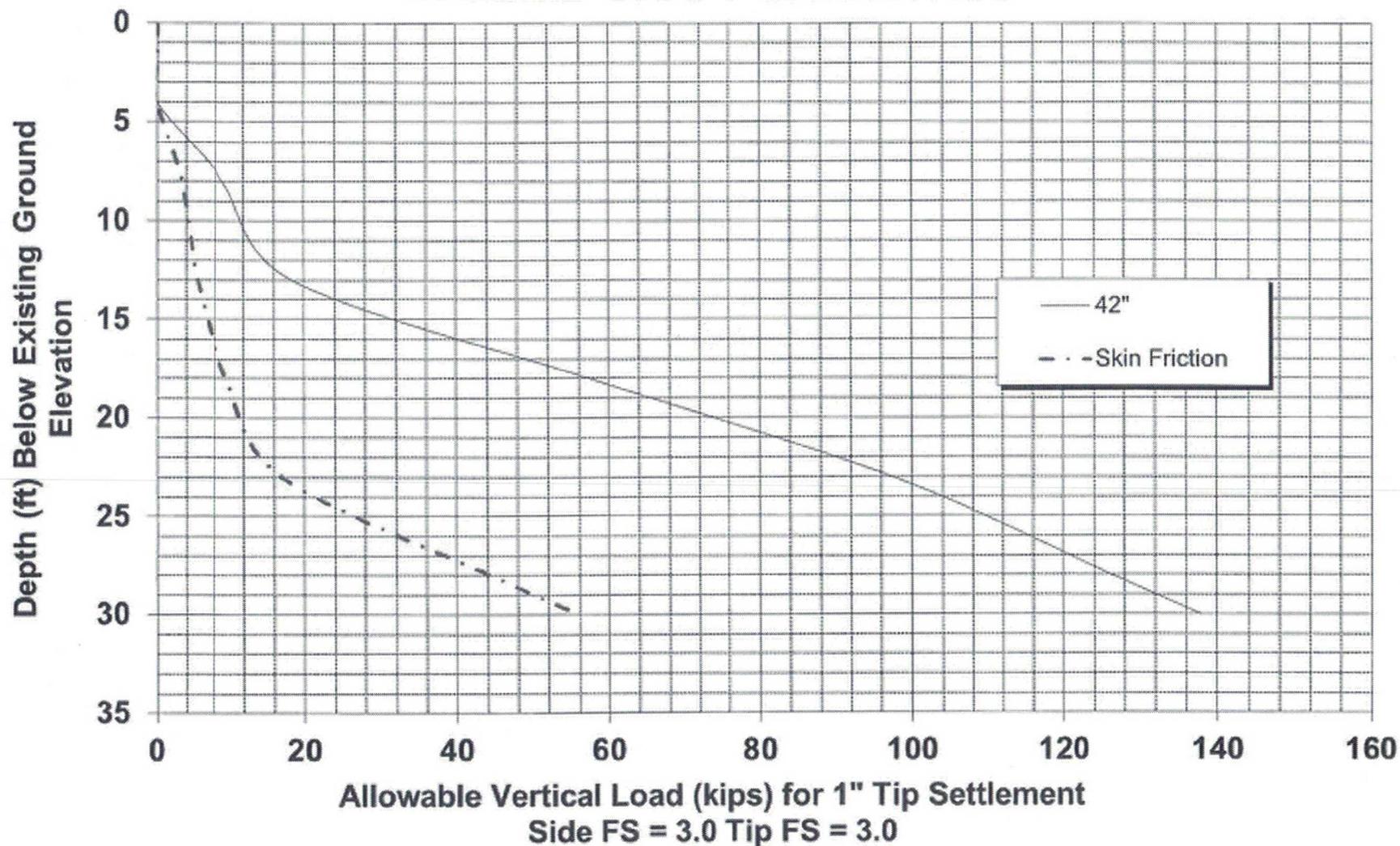


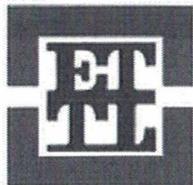


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DRILLED SHAFT CAPACITIES

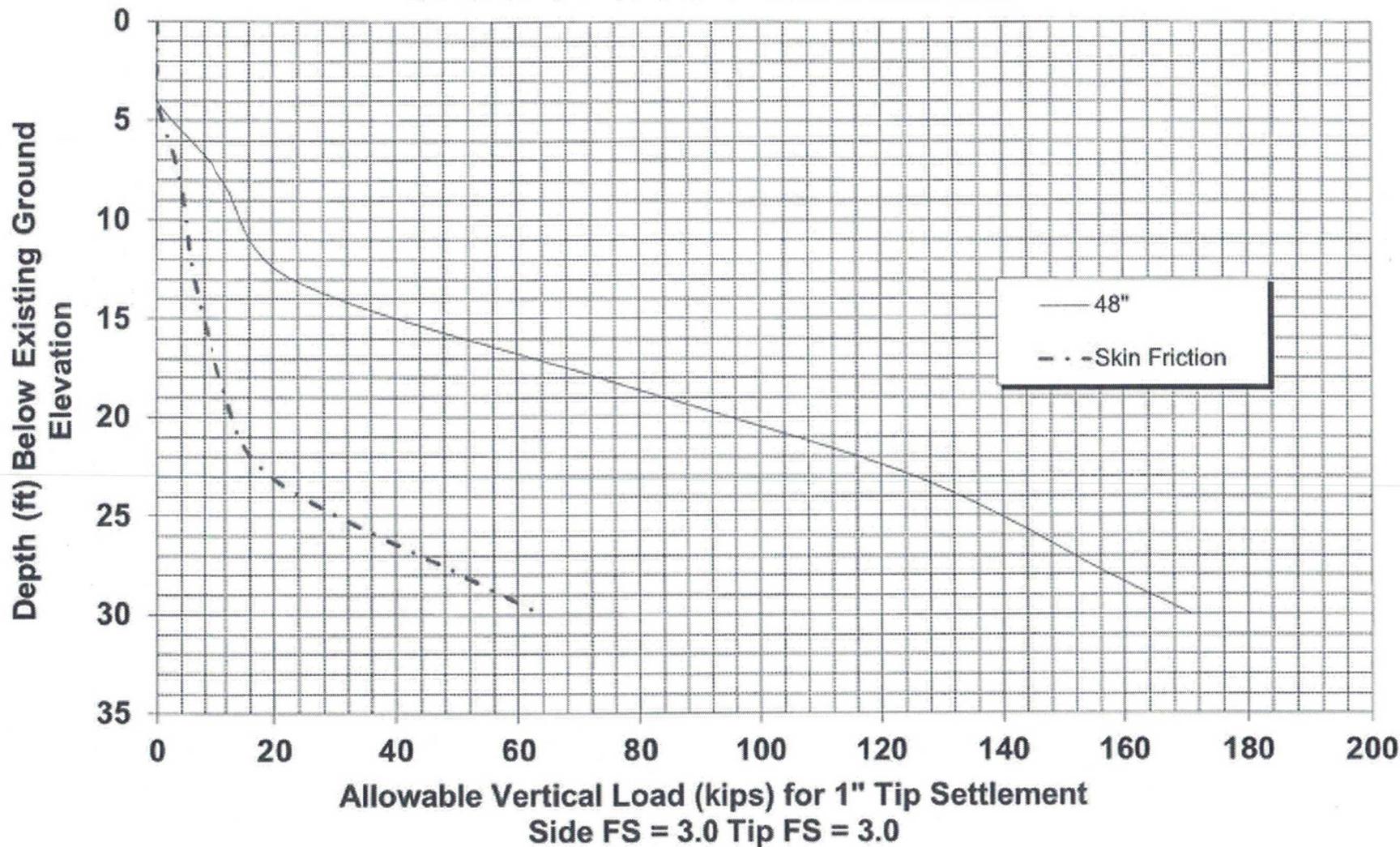


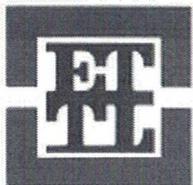


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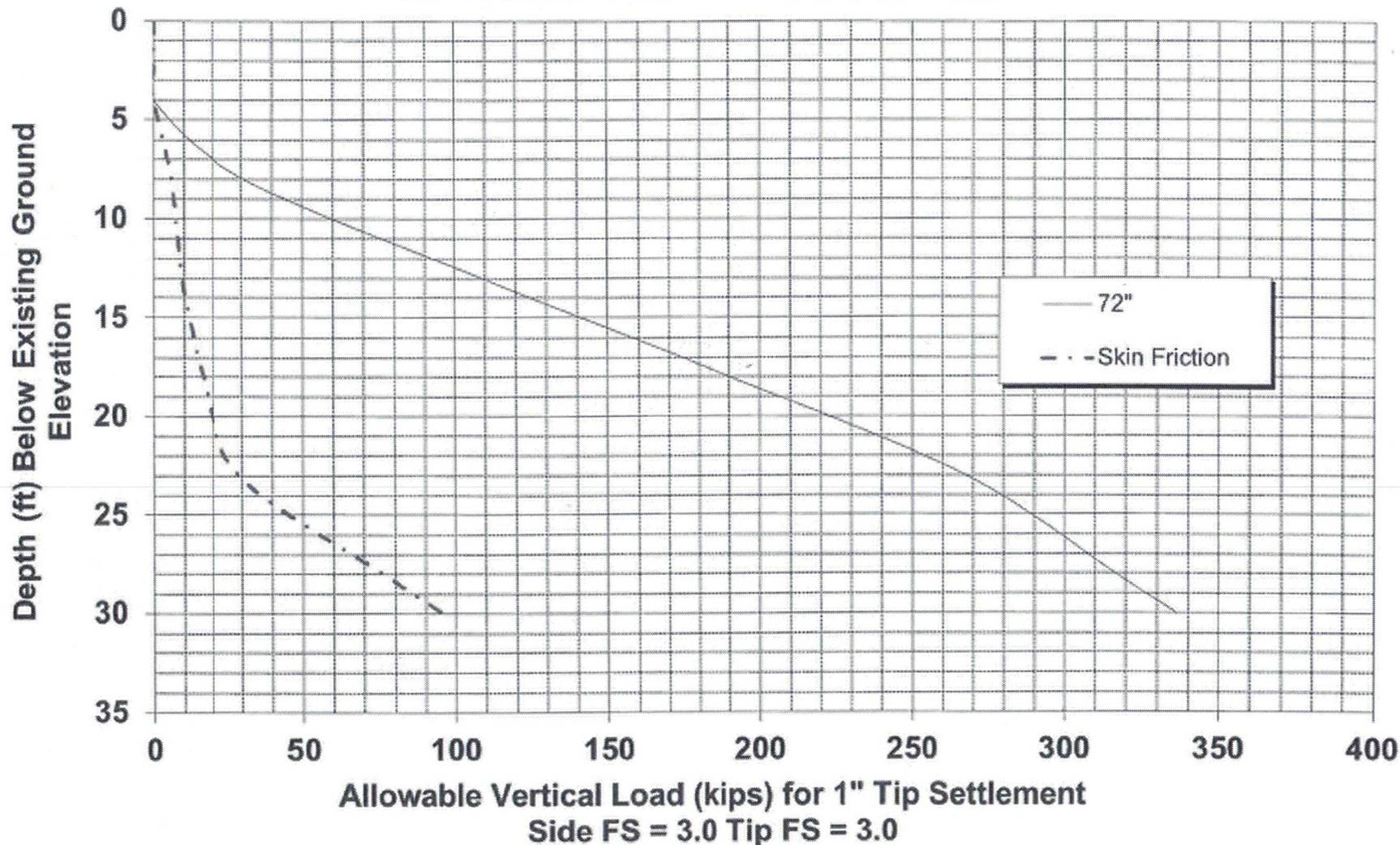


EXHIBIT 4

ADDENDUM TO AIA DOCUMENT A141 BETWEEN THE CITY OF MARSHALL, TEXAS (“Owner”) AND Berry and Clay, Inc. (“Design Builder”) dated June 25, 2020.

This Addendum supplements and modifies the attached (or accompanying) Agreement by and between Owner and the Design Builder; and in the event of any inconsistency between the terms and provisions of this Addenda, on the one hand, and the terms and provisions of the attached Agreement, on the other hand, the terms and provisions of this Addenda shall supersede and be controlling. The capitalized terms used in this Addenda shall have the same meaning as such capitalized terms when used in such Agreement. The word "Design Builder" shall mean Berry and Clay, Inc.. The words “Design Builder’s Architect” shall mean Goodwin-Lassiter-Stong.

1. With reference to the Project, Design Builder agrees with Owner as follows: (a) Design Builder has qualifications and abilities relating to the services to be rendered by Design Builder with respect to the Project; (b) in the performance of such services, Design Builder shall utilize Design Builder's best efforts, skill, judgment and abilities; (c) Design Builder shall perform Design Builder's services and other services with respect to the Project in compliance with all laws, regulations, codes, ordinances and orders of governmental bodies having jurisdiction; (d) Design Builder’s Architect shall specify usage of only suitable materials for the Project; and (e) the Project, if built in compliance with the Design Builder’s Proposal, will comply with all applicable laws, regulations, codes, ordinances and orders of governmental bodies having jurisdiction. Governmental Orders and Governmental Code Interpretations of codes, regulations and ordinances shall supersede and be controlling over the codes, regulations and ordinances. Design Builder, Design Builder’s Architect, and their employees and consultants shall perform all professional services under this Agreement in conformance with the standards of care, skill and quality provided by architects experienced with projects similar to this Project. Design Builder will be responsible to the Owner for all costs and damages resulting from (1) defects in design; (2) Non-workability of design details; (3) failure to comply with the terms of the Agreement; and (4) errors, and omissions (negligence) of the Design Builder’s Architect. Any designs or drawings contained within the Design Builder’s Proposal that contain errors, conflicts, or omissions will be promptly corrected by the Design Builder’s Architect at no cost to Owner. Owner’s approval, acceptance, use, or payment for all or any part of Design Builder’s or Design Builder’s Architect’s services shall not alter the Design Builder’s Architect’s obligations or the Owners rights hereunder in any way
2. Design Builder certifies that the Design Builder’s Architect is a registered professional architect licensed to practice architecture in the State of Texas, and that any engineer employed is licenced to practice engineering the State of Texas. Design Builder agrees to notify Owner should Design Builder’s Architect or any professional lose his or her licensure.
3. Design Builder, at its own and sole expense, purchase from and maintain (or cause to be-maintained in the case of consultants to the Design Builder, the Design Builder’s Architect or

other professionals employed or used by Design Builder) the following insurance in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located for not less than the limits stated below or greater if required by law for the duration of this Agreement or for such longer periods as may be required herein:

<u>TYPE OF INSURANCE COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Commercial General Lines	\$2,000,000 Aggregate \$1,000,000 Each Occurrence \$2,000,000 Products and completed operations \$1,000,000 Personal and Adv. Injury
CGL coverage shall include liability arising from premises operations independent contractors completed operations personal injury products and liability assumed under contract	
Automobile Liability	\$1,000,000 Combined single Limit (ea. accident)
Professional Liability	\$1,000,000 Per claim \$2,000,000 Annual Aggregate
Excess/Umbrella Liability	\$2,000,000 Each occurrence \$2,000,000 Aggregate
Worker's Compensation	\$1,000,000 E.L. Each Accident \$1,000,000 E.L. Disease - Each Employee \$1,000,000 E.L. Disease-Policy Limit

The required insurance must be written by companies acceptable to the Owner. The required insurance policies, except for professional liability insurance and worker's compensation insurance shall and must name the Owner its officials, employees and officers as additional insureds. The required insurance shall contain no specific limitations on the coverage afforded the Additional Insureds.

All insurance and limits of liability required herein shall be in effect as of the earlier of the effective date of this Agreement or the date of the commencement of Design Builder's

Architect's services in relation to the Project and shall remain in effect continuously throughout the term of this Agreement or for such longer periods as are required herein. In the case of Professional Liability insurance, the required coverage and limits of liability shall remain in effect for a minimum period of two (2) years following the completion of professional services hereunder.

Certificates of insurance acceptable to the Owner and naming the Owner its officials employees and officers as additional insureds shall be filed with the Owner prior to commencement of the Design Builder's services or the services of Design Builder's Architect or consultants to the Architect or other professionals employed or used by Architect in relation to the Project and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required herein shall contain a provision that coverages afforded under the policies will not be canceled, non-renewed, allowed to expire or materially changed until at least 30 days' prior written notice has been given to the Owner.

4. BONDS: Design Builder is required to arrange and furnish separate performance and payment bonds, each for the full amount of the Guaranteed Maximum Price guaranteeing the faithful performance of all of the provision of the Agreement as well as payment to all persons for labor and material used in the performance of the Agreement. The bonds shall be executed by a surety company acceptable to Owner, on a form acceptable to Owner, and shall become a part of the Agreement. Owner may withhold payments on account until such time as said bonds have been furnished and accepted. No change, alteration or modification in the terms and conditions of the Agreement, or in the terms or manner of payment shall in any way exonerate or release, in whole or in part, any surety on any bond furnished on behalf of Design Builder. The cost of the bonds is included in the Contract Price.

The Payment Bond is to conform to the following requirements:

- A. The Payment Bond is to be in statutory form.
- B. The Payment Bond is to include coverage for consequential and delay damages due to Design Builder's default.
- C. The issuer must be at least a Best's Key Rating Guide A/VII company and listed on the United States Department of the Treasury's List of Acceptable Sureties and Reinsurers (the "T" list) and duly licensed and authorized to issue surety bonds in Texas.
- D. The Payment Bond is to be in effect for the period required by the Texas Property Code.

The Performance Bond is to conform to the following requirements:

- A. The Performance Bond is to be on the AIA form or equivalent. The Performance Bond is to cover Design Builders' express warranty and obligations to correct defective Work arising under the Agreement.
- B. The issuer must be at least a Best's Key Rating Guide A/VII company and listed on the United States Department of the Treasury's List of Acceptable Sureties and Reinsurers (the "T" list) and duly licensed and authorized to issue surety bonds in Texas.
- C. The Performance Bond is to cover risk of contract penalties and delay damages.

D. The Performance Bond is to be in effect for a period of not less than one year following Final Completion.

5. The Design Builder's Architect shall advise the Owner of any need or advisability of the Owner's securing any tests, analyses, studies, reports, or consultants' services in connection with the development of the design and construction documents for the Project. Design Builder shall not obtain any tests or consultants without the prior written consent of the Owner. The costs of any approved tests or consultants, including engineers shall be paid by the Design Builder, unless Owner agrees, in writing, to be responsible for the cost.

6. Owner shall at all times have reasonable access to the files and personnel of Design Builder's Architect relating to the Project in order to answer any reasonable questions Owner may have relating to the Design Builder's performance on the Project. All plotting, printing and reproduction costs(including labor) unless included in basic Service shall be a reimbursable cost to the Owner, but no cost shall be charged the Owner unless Owner approved such charge in writing.

7. The Proposal, including any Drawings, Specifications and other documents prepared by the Design Builder or the Design Builder's Architect (the "Instruments of Service")for this Project shall be made available by the Design Builder to the Owner for use by the Design Builder or, if Design Builder is terminated, another Design Builder that may be chosen by the Owner for completion of the Project. The Design Builder agrees to provide the Instruments of Service upon request and will include delivery of the Instruments of Service in such format as available to the Design Builder, including DWG electronic format that is modifiable. If such Instruments of Service are hereafter utilized by the Owner in connection with the Project with respect to which the Owner does not continue to use the services of the Design Builder, Owner shall be obligated to indemnify and hold harmless the Design Builder with respect to, relating to, or arising out of the usage by the Owner of such Instruments of Service without the contemporaneously utilization of the services of the Design Builder in conjunction with the Owner's usage of such Instruments of Service. The Design Builder shall also transfer the copyright to the Instrument of Service to Owner if Design Builder is terminated and also after completion of Project.

8. In the event of any termination of this Agreement, the Owner may select another Design Builder of the Owner's choice to assist the Owner in any way in completing the Project. The Design Builder's Architect consents and authorizes the making of any reasonable and legal changes to the design of the Project by such other Design Builder as the Owner may choose and shall transfer the copyright of the Instrument of Service to allow such use. The original Design Builder is specifically indemnified from any changes or revisions made by the replacement Design Builder. The replacement Design Builder must have Errors & Omissions Insurance equal or exceeding the original Design Builder of this contract. Any services provided by Design Builder, which are requested by the Owner after termination, shall be fairly compensated by the Owner.

9. The Design Builder shall keep all information concerning this Project confidential and

proprietary unless otherwise expressly indicated in writing to Design Builder. Design Builder agrees that it will not use the Instruments of Service in connection with any other project other than the Project under this Agreement without the express written consent of Owner. All formal notices required hereunder must be in writing, delivered in person, by email, by certified mail return receipt requested, or by a recognized overnight service which obtains a signature in connection with receipt. If formal notice is provided by email, it shall require the party receiving the same to provide notice of receipt in order to be effective. The formal notice delivered in person, certified mail or overnight mail shall be considered delivered upon delivery to the person, entity or firm to which it was intended or when it is deposited into a receptacle for the United States Postal Service or to the overnight carrier. The parties hereto will agree to provide formal notice by email of the activities in addition to any other types of notice. Ordinary questions may be provided by e,mail only.

10. The duties and obligations imposed upon the parties under this Agreement, and the rights and remedies available hereunder shall be in addition to, and not a limitation of any duties imposed or available at law or in equity.

11. Notwithstanding anything to the contrary, Owner shall not be obligated to make any payment (whether a Progress Payment or Final Payment) to Design Builder hereunder if any one or more of the following conditions exist: (1) Design Builder is in default of any of its obligations hereunder or otherwise in default under this Agreement; (2) Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, that payment shall be made as part thereof attributable to services which were performed in accordance with this Agreement; or (3) Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid for a particular phase of the services of the Design Builder shall not be sufficient to complete such phase in accordance with the Agreement, no additional payments will be due Design Builder hereunder unless and until Design Builder, at its sole cost, performs a sufficient portion of the services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the services. The Design Builder may terminate this agreement within seven days, if any payment due is 30 days late per the original contract.

12. No partial or final payment by the Owner to the Design Builder is to be treated as a waiver of any of the Owner's or Design Builder's rights. Design Builder shall present each months statement of all Changes in Work rendered and reimbursable expenses incurred for the preceding month. Design Builder expressly waives any right to payment for any Change in Services rendered if Design Builder does not give written notice of its claim that the services are additional within thirty (30) days of rendering the services and if such services are not billed as a Change in Services within sixty (60) days following their rendition.

13. Owner also shall have the right to inspect and copy all other records of the Design Builder relating to the Project. All of such records should be preserved by the Design Builder for a period of three (3) years after final payment. The Design Builder shall submit valid certificates in form and substance satisfactory to the Owner evidencing the effectiveness of all insurance policies along with original copies of the amendatory riders to any such policies to the Owner for

the Owner's approval before the Design Builder commences the rendition of any services hereunder.

14. All references to the Agreement in this Addenda (and all references in the Agreement to some other portion of the Agreement) shall, in each such case, mean the Agreement as modified by this Addenda.

15. After the Completion Date, the Design Builder shall provide assistance to the Owner in connection with troubleshooting, analysis, evaluation, and consultation in the utilization of any system or equipment installed in the Project.

16. The Design Builder shall incorporate a requirement within the Plans and Specifications that all subcontractors accurately and completely mark the as built bond set of the working drawings, and the large and full scale detail drawings and the specifications to show field changes thereon and to describe in sufficient detail any deviation so as to evidence the "record drawings" construction of the Improvements. The Design Builder shall review such Drawings and Specifications and promptly notify the Owner and the applicable subcontractor of any deficiencies observed by the Design Builder.

17. The Agreement is modified to indicate that the Design Builder's services shall encompass, without limiting or negating other parts of the Agreement, the following responsibilities of the Design Builder:

Using reasonable diligence and the Design Builder's and the Design Builder Architect's own skill and knowledge in construction to prepare the Proposal, including any Drawings and Specifications, in a manner which meets the budget of Owner (i.e., not exceed construction costs indicated by Owner to Design Builder), and which provides a guaranteed maximum price;

If requested by Owner to do so, making such modifications in the construction drawings as shall be reasonably necessary to bring the Project within the Owner's budget.

18. The Parties hereby agree that 1.) If an order for relief is entered on behalf of the Design Builder pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2.) if an other similar order is entered under any debtor relief laws; 3.) if Design Builder makes an assignment for the benefit of one or more of its creditors; 4.) if a receiver is appointed for the benefit of one or more of its creditors; 5.) if a receiver is appointed on account of its insolvency; 6.) If Design Builder or any of its principals or key personnel are placed under indictment or information, such event could impair or frustrate Design Builder's performance of this Agreement. Accordingly, it is agreed that upon occurrence of any such event, Owner may at its discretion (a) request the Design Builder to provide adequate assurance of future performance in accordance with the terms and conditions of this Agreement or (b) terminate this Agreement. In the event that Owner elects to request adequate assurance the Design Builder's failure to comply with such request within ten (10) days of delivery of the request to the Owner's satisfaction shall entitle Owner to terminate this Agreement and the Design Builder's

Services.

19. Owner and Design Builder agree that time is of the essence in the performance of Design Builder's duties under the Agreement. Owner shall be entitled to liquidated damages of One Thousand Dollars (\$1000.00) per day for a delay of completion of the Project beyond the Contract Time.

20. Owner and Design Builder agree that the Texas Department of Licensing and Regulation/ Americans with Disabilities Act Plan review for the Project is a reimbursable item to Design Builder.

21. The Owner will be financially responsible for third party testing laboratory services.

22. Owner will waive for Design Builder all City of Marshall, Texas fees relating to the Project, including, without limitation, fees for permitting.

RESOLUTION _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS AUTHORIZING THE APPROVAL OF A DESIGN/BUILD CONTRACT FOR THE DEVELOPMENT, DESIGN AND CONSTRUCTION OF A NEW ANIMAL ADOPTION CENTER

WHEREAS, on August 22, 2019, the Marshall City Commission approved the Design/Build method of project delivery for the construction of a new animal adoption center, finding the process allowed the city and its citizens to achieved the best value for the new facility; and

WHEREAS, on February 27, 2020, the City Commission approved the issuance of a Request for Qualifications and Proposals for the Development, Design and Construction of a new Animal Adoption Center; and

WHEREAS, the Request for Qualification/Proposals and evaluation process has been followed in accordance with the Design/Build method of construction contract procurement; and

WHEREAS, city staff, working with the Adoption Center Advisory Committee, has prepared a recommendation of the apparent best value to the city and requests the approval of the Commission to enter into a contract for Design/Build services for the construction of an animal adoption center.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS;

Section 1. The City Manager is hereby authorized to finalize and execute the contract and addendum for Design/Build services for the construction of an animal adoption center with Berry and Clay Construction as the best value for the city.

Section 2. The City Manager is hereby authorized to manage the attached Design/Build Services Contract and Addendum with regular reporting to the Commission on contract status and progress.

Section 3. This Resolution shall become effective as and from the date of final passage.

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

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

ATTEST:

Elaine Altman, City Secretary

ITEM 8

ITEMS WITHDRAWN FROM THE CONSENT AGENDA

ITEM 9

EXECUTIVE SESSION

DISCUSSION & CONSIDERATION OF RESULTS OF ANNUAL EVALUATION OF CITY SECRETARY/FINANCE DIRECTOR

ITEM 10

ADJOURNMENT