

AGENDA
BOARD OF CITY COMMISSIONERS
October 18, 2021 AT 6:00 P.M.
COMMISSION CHAMBERS AT CITY HALL
16 WEST 9TH STREET
SHAWNEE, OKLAHOMA

CALL TO ORDER

DECLARATION OF A QUORUM

INVOCATION

FLAG SALUTE

1. Citizens Participation

(A three minute limit per person)
(A twelve minute limit per topic)
2. Consider approval of Consent Agenda:
 - a. Minutes from the October 4, 2021 regular meeting.
 - b. Acknowledge the following reports:
 - License Payment Report for September 2021
 - Project Payment Report for September 2021
 - c. Acknowledge receipt of Pioneer Library System Audit for the Year Ended June 30, 2021.
 - d. Acknowledge receipt of Pioneer Library System Revised Budget for July 1, 2021 through June 30, 2022.
 - e. Acknowledge the resignation of Cami Engles from the Planning Commission.
 - f. Acceptance of a Temporary Grading and Permanent Drainage Easement for Cedar Ridge Investments, LLC, located in the southwest quarter of the northwest quarter of Section 5, Township 10 North, Range 4 East.

g. Lake Lease Transfer:

TRANSFER:

Lot 6 Eckel Tract, 15305 Eckel Road

From: Patrick and Judith Henderson

To: Patrick and Judith Henderson, Levi Cain Weems

3. Presentation by Animal Control to present the Pet of the Week.
4. Discussion and presentation of services offered by Cityworks.
5. Discussion and consideration of a Contract with Latham Consulting Group and Dunnington Consulting for governmental and community affairs.
6. Discussion and consideration of amendment to an ordinance regulating safe turning movements; signals required for turning, stopping, or decreasing speed.
7. Discussion and consideration of creation of an ordinance providing regulations and certain exceptions for bicyclists at traffic-control devices within city limits.
8. Discussion and consideration of creation of an ordinance providing certain prohibitions for the safety of bicyclists within city limits.
9. Discussion and consideration of an ordinance amending Section 19-219 of the Municipal Code governing horns and warning devices.
10. Discussion and consideration of an ordinance amending Section 19-184 of the Municipal Code regulating license plate displays.
11. Discussion and consideration of an ordinance amending Section 19-292 of the Municipal Code regulating persons soliciting rides, donations, employment, or business.
12. Discussion and consideration of an ordinance amending portions of Chapter 8 of the Municipal Code regulating businesses, permits, and licenses within the city limits of the City of Shawnee.
13. Consider Bids:
 - a. HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement Project Heart of Oklahoma Exposition Center Project No. C-21-03D (Award)
14. Acknowledge monthly Sales Tax and Budget Reports.
15. Administrative Reports

a. City Manager Update – Andrea Weckmueller-Behringer, City Manager

16. New Business

(Any matter not known or which could not have been reasonably foreseen prior to the posting of the agenda)

17. Commissioners Comments

18. Adjournment

Respectfully submitted,

Lisa Lasyone, CMC, City Clerk

The City of Shawnee encourages participation from its citizens in public meetings. If participation is not possible due to a disability, notify the City Clerk, in writing, at least forty-eight hours prior to the scheduled meeting and necessary accommodations will be made. (ADA 28 CFR/36)

Regular Board of Commissioners

2. a.

Meeting Date: 10/18/2021

Minutes

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Minutes from the October 4, 2021 regular meeting.

Attachments

Minutes

BOARD OF CITY COMMISSIONERS PROCEEDINGS

OCTOBER 4, 2021 AT 6:00 P.M.

The Board of City Commissioners of the City of Shawnee, County of Pottawatomie, State of Oklahoma, met in Regular Session in the Commission Chambers at City Hall, 16 West 9th Street, Shawnee, Oklahoma on, Monday, October 4, 2021 at 6:00 p.m., pursuant to notice duly posted as prescribed by law at 10:39 a.m. on October 1, 2021. Mayor Bolt presided called the meeting to order. Upon roll call, the following members were in attendance.

Ed Bolt
Mayor

Daniel Matthews
Commissioner Ward 1

Vacant
Commissioner Ward 2

Travis Flood
Commissioner Ward 3

Darren Rutherford
Commissioner Ward 4-Vice Mayor

Mark Sehorn
Commissioner Ward 5

Ben Salter
Commissioner Ward 6

ABSENT: None

INVOCATION

Mr. John Bobb-Semple

FLAG SALUTE

AGENDA ITEM NO. 1:

Citizens Participation
(A three-minute limit per person)
(A twelve-minute limit per topic)

Mr. Eric Benson stated he would like to give his last paycheck back to the community. On behalf of the City Commission, Mr. Benson provided a check to Mr. Josh Trimble, Chief of Foundation Management for The Children's Center Rehabilitation Hospital. On behalf of the City of Shawnee employees, Mr. Benson provided a check to Commissioner Travis Flood, Friendship House Coordinator, for Community Renewal of Pottawatomie County Kids Club.

Mr. Rich Rudebock, President of the Twin Lakes Homeowners Association, provided a handout to the Commission. He discussed a proposed solution to install two new buoys on Shawnee Twin Lake No. 1.

Ms. Devra Waterman asked if there could be a resolution to getting questions presented by citizens answered by the Commission or Staff.

Ms. Loida Haffener Salmond, Red Cross Executive Director of South Central and Southeast Oklahoma Chapter, stated she would like to schedule meetings to share different programs the Red Cross has to offer our community. Ms. Haffener Salmond also announced a Blood Drive on November 11, 2021 at Emmanuel Episcopal Church.

Ms. Theresa Cody provided a handout to the Commission. She asked for clarification on the proposed resolution establishing the City Manager's compensation.

Mr. Rob Morris spoke regarding the Lake Advisory Committee, Shawnee Aligned, and the Open Meeting Act.

AGENDA ITEM NO. 2: Consider approval of Consent Agenda:

- a. Minutes from the September 20, 2021 Special Call meeting, September 20, 2021 regular meeting, and the September 21, 2021 Special Call meeting.
- b. Acknowledge the following minutes:
 - Shawnee Community Beautification Committee Minutes from the May 20, 2021 regular meeting.
- c. Lake Lease Transfers:

TRANSFERS:

Lot 11 Belcher Tract, 15609 Nickens Road
From: Bob and Kellianne Weaver
To: Mark H. and Mary Jane Cannon

Lot 1 Magnino A Tract, 16816 Magnino Road

From: Jose and Jennifer Massey

To: Sutton Ryan Petz Irrevocable Trust C/O Jordan Monk Reber, PC

A motion was made by Commissioner Matthews, seconded by Vice Mayor Rutherford, to approve Consent Agenda Item Nos. 2(a-c). Motion carried 6-0.

AYE: Matthews, Rutherford, Sehorn, Salter, Flood, Bolt

NAY: None

AGENDA ITEM NO. 3:

Presentation by Animal Control to present the Pet of the Week.

Animal Control Officer Spoon and Officer Miller introduced Machete, an 8-week-old domestic short kitten. His adoption fee is \$5.00 with a \$25.00 neuter deposit and a \$10.00 City tag if the owner resides in the City Limits.

AGENDA ITEM NO. 4:

Discussion and consideration of a contract with Andrea Weckmueller-Behringer as City Manager.

A motion was made by Commissioner Sehorn, seconded by Vice Mayor Rutherford, to approve a contract with Andrea Weckmueller-Behringer as City Manager. Motion carried 6-0.

AYE: Sehorn, Rutherford, Salter, Matthews, Flood, Bolt

NAY: None

AGENDA ITEM NO. 5:

Consideration of a resolution of the Mayor and City Commission of the City of Shawnee, Oklahoma that establishes and provides compensation of the City Manager pursuant to Article V, Section 3 of the City Charter.

City Attorney Joe Vorndran addressed Ms. Theresa Cody's inquiry regarding said resolution by explaining there may be times when Mrs. Weckmueller-Behringer will be on vacation and will require someone to fulfill her duties as Acting City Manager.

A motion was made by Commissioner Matthews, seconded by Commissioner Flood, to approve a resolution of the Mayor and City Commission of the City of Shawnee, Oklahoma that establishes and provides compensation of the City Manager pursuant to Article V, Section 3 of the City Charter.

Resolution No. 6646 was introduced.

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA THAT ESTABLISHES AND PROVIDES COMPENSATION OF THE CITY MANAGER PURSUANT TO ARTICLE V, SECTION 3 OF THE CITY CHARTER.

Motion carried 6-0.

AYE: Matthews, Flood, Bolt, Rutherford, Sehorn, Salter

NAY: None

AGENDA ITEM NO. 6:

Swearing in of Andrea Weckmueller-Behringer as City Manager. *(This item only occurs if a contract is approved during Agenda Item No. 4.)*

Andrea Weckmueller-Behringer was sworn in as City Manager by City Clerk Lisa Lasyone.

AGENDA ITEM NO. 7:

Presentation by Peggy Cook, Pioneer Library Systems, regarding a Story Walk at Boy Scout Park.

Ms. Peggy Cook, Pioneer Library Systems, gave a presentation regarding the Story Walk installation at Boy Scout Park.

AGENDA ITEM NO. 8:

Discussion and consideration of a contract with Meshek & Associates, LLC for the Right-of-Way Acquisition for the following projects:

- Kickapoo Street
- Independence Street
- Highland Street

City Engineer Seth Barkhimer explained Meshek & Associates, LLC are the same consultants that preformed the Kickapoo Street and MacArthur Street right-of-way acquisitions. The proposed contract includes 65 different parcels.

A motion was made by Commissioner Flood, seconded by Commissioner Sehorn, to approve a contract with Meshek & Associates, LLC for the Right-of-Way Acquisition for the Kickapoo Street, Independence Street, and Highland Street projects. Motion carried 6-0.

AYE: Flood, Sehorn, Salter, Matthews, Bolt, Rutherford

NAY: None

AGENDA ITEM NO. 9:

Discussion and consideration of a Real Property Exchange Agreement and approval of deeds ancillary thereto, between Shawnee Public Schools (Independent School District No. 93) and the City of Shawnee; and authorizing the Mayor to execute the Real Property Exchange Agreement and Deeds on behalf of the City of Shawnee.

City Manager Andrea Weckmueller-Behringer explained the City of Shawnee and Shawnee Public Schools (SPS) requests approval to enter into a Real Property Exchange Agreement. The City owns property at the corner of North Kickapoo Avenue and West Dill Street and SPS owns property located at 214 South Pennsylvania Avenue. The two entities wish to exchange said property with a closing date set on or before October 14th.

A motion was made by Mayor Bolt, seconded by Commissioner Flood, to approve a Real Property Exchange Agreement and approval of deeds ancillary thereto, between Shawnee Public Schools (Independent School District No. 93) and the City of Shawnee; and authorizing the Mayor to execute the Real Property Exchange Agreement and Deeds on behalf of the City of Shawnee. Motion carried 4-1-1.

AYE: Bolt, Flood, Rutherford, Matthews

NAY: Sehorn

ABSTAIN: Salter

AGENDA ITEM NO. 10:

Discussion and consideration of an ordinance relating to shopping carts, amending Chapter 8 of the Shawnee Municipal Code by creating Article XI of Chapter 8, shopping carts; providing for repeal; providing for severability; providing for codification; and providing for emergency clause. *(Deferred from the September 20, 2021 City Commission meeting.)*

Interim City Manager Eric Benson explained the penalty had been removed from the original draft presented to the Commission on September 20, 2021. He stated that this proposed ordinance would be a tool for the Police Department to investigate each circumstance.

A motion was made by Vice Mayor Rutherford, seconded by Commissioner Matthews, to defer this item to a future City Commission meeting. Motion carried 5-1.

AYE: Rutherford, Matthews, Flood, Bolt, Salter

NAY: Sehorn

AGENDA ITEM NO. 11:

Consideration of the following budget amendments for Fiscal Year 2021-2022:

- a. Fund 001 General Fund – To fund Lake Survey contract.
- b. Fund 001 General Fund – To fund Radio Maintenance contract.
- c. Fund 706 Gifts and Contributions – To fund expenditures for Fire Clown Program using prior year donations.

Assistant Finance Director Jacob Bussell explained each budget amendment.

A motion was made by Commissioner Flood, seconded by Commissioner Sehorn, to approve the budget amendments for Fiscal Year 2021-2022. Motion carried 6-0.

AYE: Flood, Sehorn, Salter, Matthews, Bolt, Rutherford

NAY: None

AGENDA ITEM NO. 12:

Consider Bids:

- a. Fence Removal and Replacement Project Heart of Oklahoma Exposition Center Project No. C-21-03D1 (Award)

The Heart of Oklahoma Exposition Center General Manager Katy Fleming announced that one (1) bid was received. After review and consideration, it was Ms. Fleming's recommendation to award the bid to RJ Fence of Wellston, Oklahoma in the total amount of \$266,032.50.

A motion was made by Vice Mayor Rutherford, seconded by Commissioner Matthews, to award the bid to RJ Fence in the total amount of \$266,032.50. Motion carried 6-0.

AYE: Rutherford, Matthews, Flood, Bolt, Sehorn, Salter

NAY: None

AGENDA ITEM NO. 13:

Administrative Report

- a. Heart of Oklahoma Exposition Center Progress – Katy Fleming, Heart of Oklahoma Exposition Center General Manager

The Heart of Oklahoma Exposition Center General Manager Katy Fleming gave an update on progress at the Heart of Oklahoma Exposition Center (Expo) since her arrival.

AGENDA ITEM NO. 14:

Discussion and presentations of City Commissioner Ward 2 applicants:

- Cami Engles – Ms. Engles was present and addressed the Commission.
- Elliot Shuler – Mr. Shuler was present and addressed the Commission.
- Frank Sims – Mr. Sims was present and addressed the Commission.

AGENDA ITEM NO. 15:

Discussion, consideration, and possible action to appoint a City Commissioner to the Ward 2 position to fill the open position left by the resignation of Ward 2 Commissioner Bob Weaver, to complete the remainder of term, expiring 2024.

After Commission discussion, a motion was made by Mayor Bolt, seconded by Commissioner Flood, to appoint Ms. Cami Engles to the Ward 2 City Commission position. Motion carried 5-0-1.

AYE: Bolt, Flood, Rutherford, Sehorn, Matthews

NAY: None

ABSTAIN: Salter

AGENDA ITEM NO. 16:

Swearing in of Ward 2 Commissioner. *(This item only occurs if a Commissioner for Ward 2 is appointed during Agenda Item No. 15.)*

Cami Engles was sworn in as Ward 2 City Commissioner by City Clerk Lisa Lasyone.

AGENDA ITEM NO. 17:

Discussion and consideration of Mayor's appointments to the Lake Advisory Committee.

Mayor Bolt stated that Commissioner Engles is currently on the Lake Advisory Committee and as a citizen appointment. Due her appointment as Commissioner replacing Bob Weaver, she will now serve on the Committee as a City Commissioner member. Mayor Bolt offered to appoint Ms. Amy Camarata as a citizen member to the Lake Advisory Committee.

A motion was made by Commissioner Matthews, seconded by Commissioner Flood, to approve the Mayor's appointment of Ms. Amy Camarata to the Lake Advisory Committee. Motion carried 7-0.

AYE: Matthews, Flood, Bolt, Rutherford, Sehorn, Salter, Engles

NAY: None

AGENDA ITEM NO. 18:

New Business (Any matter not known or which could not have been reasonably foreseen prior to the posting of the agenda.)

There was no New Business.

AGENDA ITEM NO. 19:

Commissioners Comments

The Mayor and Commissioners thanked Interim City Manager for his time spent serving the City of Shawnee. They welcomed City Manager Andrea Weckmueller-Behringer and Ward 2 City Commissioner Cami Engles.

Commissioner Salter spoke regarding the exciting things happening within the City of Shawnee.

Commissioner Sehorn spoke regarding the proposed shopping cart ordinance.

Commissioner Flood addressed Ms. Waterman's concerns from Citizens Participation.

Commissioner Engles stated she was humbled to have been selected to serve as Ward 2 Commissioner.

Commissioner Matthews addressed Ms. Waterman's concerns from Citizens Participation. He also addressed Shawnee Aligned.

Mayor Bolt thanked Mr. Shuler and Mr. Sims for applying to serve as Ward 2 City Commissioner.

Mayor Bolt addressed Ms. Waterman and Mr. Morris' concerns from Citizens Participation.

AGENDA ITEM NO. 20:

Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair. (7:54 p.m.)

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

DRAFT

Regular Board of Commissioners

2. b.

Meeting Date: 10/18/2021

Reports

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acknowledge the following reports:

- License Payment Report for September 2021
 - Project Payment Report for September 2021
-

Attachments

License Payment Report

Project Payment Report



09/01/2021 - 09/30/2021

Name	Contractor	Fee Name	Payment Date	Fee Amount
RELIABLE HEAT & AIR, LLC	EDGAR CORTEZ	Contractor License - Initial	9/30/2021	100.00
CHIQUITA CASTLEBERRY		Alarm Registration - Annual Renewal	9/24/2021	15.00
KEY & SONS HEAT & AIR	KALEB KEY	Contractor License - Initial	9/23/2021	100.00
SEBASTIAN & KATHLEEN BARAHONA		Alarm Registration - Annual Renewal	9/21/2021	15.00
EMPIRE RISING, LLC dba EMPIRE LABS & EMPIRE FARMS	SHANW KHODADAD	Retail	9/21/2021	50.00
REYNOLDS ON COFFEE OKLAHOMA dba SCOOTERS COFFEE	BROOKE WENZL	Retail	9/17/2021	50.00
DIZZY DEAN ELECTRIC LLC	BRANDON DEAN	Contractor License - Initial	9/15/2021	100.00
IMAGINE DISPENSARY	CHRYSTAL RING	Alarm Registration - Initial	9/15/2021	25.00
MARK H & MARY JANE CANNON		Inspection	9/14/2021	75.00
CLAIRE'S #3289	CHRISTINE DABROS	Retail	9/17/2021	50.00

Entity Fee Report

Name	Contractor	Fee Name	Payment Date	Fee Amount
LUMBERJACK JOHNSON'S AXE THROWING	ERICA JOHNSON	Retail	9/29/2021	50.00
MARK H & MARY JANE CANNON		Transfer fee	9/14/2021	1,000.00
MARK H & MARY JANE CANNON		Lake Lease	9/14/2021	746.00
OKLAHOMA'S BEST HEATING AND AIR INC	MATTHEW OSLIN	Contractor License - Initial	9/14/2021	100.00
CC CANNON, LLC		Lake Lease	9/13/2021	746.00
CC CANNON, LLC		Transfer fee	9/13/2021	1,000.00
CC CANNON, LLC		Inspection	9/13/2021	75.00
LELAND PREWITT	RHONDA RENNE BERRY	Inspection	9/8/2021	75.00
LELAND PREWITT	RHONDA RENEE BERRY	Inspection	9/8/2021	75.00
LELAND PREWITT	RHONDA RENNE BERRY	Transfer fee	9/8/2021	1,000.00
LELAND PREWITT	RHONDA RENEE BERRY	Transfer fee	9/8/2021	1,000.00
IMAGINE DISPENSARY	CHRYSTAL RING	Retail	9/8/2021	50.00
LELAND PREWITT	RHONDA RENNE BERRY	Lake Lease	9/8/2021	746.00
LELAND PREWITT	RHONDA RENEE BERRY	Lake Lease	9/8/2021	746.00
AMK ELECTRIC	RANDY HOLBROOK	Contractor License - Initial	9/8/2021	100.00

Name	Contractor	Fee Name	Payment Date	Fee Amount
B'S SMOKEHOUSE	BRIAN SMITH	Food Truck	9/8/2021	50.00
ANTHONY KUMOR		Alarm Registration - Initial	9/7/2021	25.00
SUTTON RYAN PETZ IRREVOCABLE TRUST	C/O JORDAN MONK REBER, PC	Lake Lease	9/3/2021	746.00
SUTTON RYAN PETZ IRREVOCABLE TRUST	C/O JORDAN MONK REBER, PC	Transfer fee	9/3/2021	1,000.00
SUTTON RYAN PETZ IRREVOCABLE TRUST	C/O JORDAN MONK REBER, PC	Inspection	9/3/2021	75.00
CROSSROADS NEIGHBORHOOD EARLY HEADSTART	DAVA PETERS	Retail	9/1/2021	50.00
				10,035.00

Total Records: 31

10/1/2021



09/01/2021 - 09/30/2021

Permit #	Permit Date	Permit Type	Parcel Address	Applicant Name	Description	Project Cost
20210850	9/30/2021	M - Mechanical	1208 1/2 E 10TH ST	ACOCK CLIMATE CONTROL	REPLACE	0
20210849	9/30/2021	P - Plumbing	4408 BISON RD	VIP PLUMBING	REPAIR	0
20210848	9/30/2021	P - Plumbing	630 N TUCKER AVE	ALL ABOUT PLUMBING	REPAIR	0
20210847	9/28/2021	E - Electrical	105 W FEDERAL	ABOVE ALL ELECTRICAL SOLUTIONS	REMODEL	0
20210846	9/28/2021	P - Plumbing	514 N TUCKER	ROTO ROOTER	REPAIR	0
20210845	9/28/2021	P - Plumbing	612 POOL PL	MCCONNELL PLUMBING	NEW CONSTRUCTION	0
20210844	9/28/2021	O - Sign	3962 N KICKAPOO AVE	CROWN NEON SIGNS	CHANNEL LETTERS	10,000
20210843	9/28/2021	E - Electrical	901 E 35TH ST SUITE 103	EAST ELECTRICAL SERVICES	FINISH OUT	0
20210842	9/28/2021	M - Mechanical	227 N UNION	AMERICAN AIR CONDITION & HEATING & ELECTRIC	REPLACE	0
20210841	9/27/2021	P - Plumbing	1011 JEFFERSON PL	ROTO ROOTER	REPAIR	0
20210840	9/27/2021	M - Mechanical	913 N PATCHIN AVE	DRABEK & HILL	CHANGE OUT	0
20210839	9/27/2021	O - Curb Cut, Driveway and Sidewalk	1302 BERKSHIRE PL	GILBERT URIAS	REPLACE EXISTING	0
20210838	9/27/2021	O - Sign	1700 N KICKAPOO AVE	SIGN FACTORY LLC	FLAT PANEL	975

Monthly - City Clerk

Square Feet	Total Fees
0	\$54.50
0	\$54.50
0	\$54.50
0	\$54.50
0	\$54.50
0	\$54.50
6	
0	\$54.50
0	\$44.50
0	\$54.50
0	\$79.50
0	\$50.00
50	

Permit #	Permit Date	Permit Type	Parcel Address	Applicant Name	Description	Project Cost
20210837	9/24/2021	P - Plumbing	1506 N MARKET	COWBOYS PLUMBING	REPAIR	0
20210836	9/24/2021	ZBOA - Conditional Use Permit	17000 MAGNINO RD	JOSE MASSEY	CONDITIONAL USE	0
20210835	9/23/2021	M - Mechanical	17810 STEVENS RD	KEY & SONS HEAT & AIR	CHANGE OUT	0
20210834	9/22/2021	E - Electrical	541 N ELM	RODGERS ELECTRIC	REPAIR	0
20210833	9/22/2021	O - Demolition and Moving	124 S OAK AVE	A1 QUALITY SERVICES	REPLACE EXISTING	0
20210832	9/22/2021	M - Mechanical	3912 PINE RIDGE	WATKINS HEAT & AIR	CHANGE OUT	0
20210831	9/22/2021	O - Demolition and Moving	209 N LOUISA	MIDWEST WRECKING	DEMOLITION	0
20210830	9/21/2021	PC - Zoning Variance	2130 W BENEDICT	FREDDIE WHITE	VARIANCE	0
20210829	9/21/2021	B - Commercial - Remodel	901 E 35TH ST SUITE 103	RICHARDSON HOMES	REMODEL	5,000
20210828	9/21/2021	P - Plumbing	1222 ROSE DR	STANLEY PLUMBING SERVICES	RESET	0
20210827	9/21/2021	O - Demolition and Moving	1508 N LOUISA	K & M WRECKING	DEMOLITION	0
20210826	9/21/2021	P - Plumbing	1445 N KICKAPOO AVE	ACOCK CLIMATE CONTROL	CHANGE OUT	0
20210825	9/21/2021	M - Mechanical	657 N BROADWAY	ACOCK CLIMATE CONTROLL	CHANGE OUT	0
20210824	9/21/2021	M - Mechanical	301 N KENNEDY	ACOCK CLIMATE CONTROLL	CHANGE OUT	0
20210823	9/20/2021	P - Plumbing	1016 MUIRFIELD DR	LIBERTY PLUMBING & GAS	NEW INSTALLATION	0
20210822	9/20/2021	B - Solar Panels	914 N CHAPMAN AVE	GREEN LIGHT SOLAR	NEW INSTALLATION	50,000

Square Feet	Total Fees
0	\$54.50
0	\$330.00
0	\$79.50
0	\$54.50
0	
0	\$104.50
0	\$50.00
0	\$140.00
1,400	\$354.50
0	\$54.50
0	
0	\$54.50
0	\$129.50
0	\$304.50
0	\$54.50
440	\$152.50

Permit #	Permit Date	Permit Type	Parcel Address	Applicant Name	Description	Project Cost
20210821	9/20/2021	E - Electrical	914 N CHAPMAN AVE	GREEN LIGHT SOLAR	NEW INSTALLATION	0
20210820	9/20/2021	B - Residential - Remodel	1506 N MARKET	MONTY PORTER	REMODEL	12,000
20210819	9/17/2021	E - Electrical	1016 MUIRFIELD DR	LARRISON ELECTRIC	GENERATOR	0
20210818	9/17/2021	M - Mechanical	110 PONTOTOC AVE	WATKINS HEAT & AIR	CHANGE OUT	0
20210817	9/17/2021	P - Plumbing	112 E CALIFORNIA ST	COMPLETE PLUMBING	REPAIR	0
20210816	9/17/2021	B - Commercial - Remodel	3701 N KICKAPOO AVE	RED ARCHITECTURE AND PLANNING	REMODEL	200,000
20210815	9/17/2021	B - Commercial - New	4799 N HARRISON AVE	ASHTON GRAY	NEW CONSTRUCTION	1,700,000
20210814	9/16/2021	E - Electrical	1318 E 11TH ST	MARC JONES CONSTRUCTION dba SUNPRO SOLAR	NEW INSTALL	0
20210813	9/16/2021	M - Mechanical	225 E MACARTHUR	WAGGONERS MECHANICAL SERVICES, LLC	ADD ON	0
20210812	9/16/2021	P - Plumbing	1202 CASTLE CREEK	AIRCO SERVICE	CHANGE OUT	0
20210811	9/16/2021	M - Mechanical	12 W SANTA FE ST	AIRCO SERVICE	CHANGE OUT	0
20210810	9/16/2021	O - Demolition and Moving	202 S DRAPER	ARBOR TRANSPORT	DEMOLITION	0
20210809	9/16/2021	O - Demolition and Moving	1318 E MAIN	ARBOR TRANSPORT	DEMOLITION	0
20210808	9/16/2021	O - Demolition and Moving	710 S TENNESSEE AVE	ARBOR TRANSPORT	DEMOLITION	0

Square Feet	Total Fees
0	
300	\$68.25
0	\$54.50
0	\$54.50
0	\$54.50
2,546	\$611.50
7,378	\$2,674.00
0	
0	\$229.50
0	\$54.50
0	\$79.50
0	\$150.00
0	\$50.00
0	\$50.00

Permit #	Permit Date	Permit Type	Parcel Address	Applicant Name	Description	Project Cost
20210807	9/16/2021	O - Demolition and Moving	504 S KICKAPOO AVE	ARBOR TRANSPORT	DEMOLITION	0
20210806	9/15/2021	M - Mechanical	105 W FEDERAL	METRO MECHANICAL	CHANGE OUT	0
20210805	9/15/2021	E - Electrical	196 SHAWNEE MALL DR	DIZZY DEAN ELECTRIC	FINISH OUT	0
20210804	9/14/2021	O - Curb Cut, Driveway and Sidewalk	705 N PARK	ANTHONY BRADSHAW	REPLACE EXISTING	0
20210803	9/14/2021	O - Demolition and Moving	1407 N CENTER	ARBOR TRANSPORT & CONSTRUCTION INC	DEMOLITION	0
20210802	9/14/2021	B - Solar Panels	1318 E 11TH ST	SUNPRO SOLAR	NEW INSTALLATION	22,625
20210801	9/13/2021	M - Mechanical	925 N PARK	OKLAHOMA'S BEST HEATING AND AIR INC	REMODEL	0
20210800	9/13/2021	O - Sign	2426 N HARRISON AVE #300	SIGN FACTORY LLC	FLAT PANEL SIGN	950
20210799	9/13/2021	E - Electrical	925 N PARK	ABSOLUTE ELECTRICAL CONTRACTORS, LLC	REMODEL	0
20210798	9/13/2021	P - Plumbing	1401 N MINNESOTA	REACT PLUMBING	METER RESET	0
20210797	9/13/2021	O - Sign	4141 N HARRISON	SIGN FACTORY LLC	FLAT PANEL SIGN	500
20210796	9/13/2021	E - Electrical	5106 N HARRISON	FULL SPEED ELECTRIC	REMODEL	0
20210795	9/13/2021	O - Demolition and Moving	802 W FORD ST	K & M WRECKING	DEMOLITION	0
20210794	9/13/2021	B - Commercial - New	45208 GARRETTS LAKE RD	NORTH ROCK CREEK SCHOOL	ADDITION	419,985
20210793	9/13/2021	B - Storm Shelter	220 N TUCKER	LYNN GOODSON	OUTDOOR	3,200

Square Feet	Total Fees
0	\$150.00
0	\$79.50
0	\$54.50
0	\$50.00
0	
165	\$94.06
0	\$92.00
24	
0	\$54.50
0	\$54.50
64	\$100.00
0	\$54.50
0	\$50.00
6,997	\$1,753.75
48	\$29.50

Permit #	Permit Date	Permit Type	Parcel Address	Applicant Name	Description	Project Cost
20210792	9/10/2021	B - Storm Shelter	205 N LEO	CLIFFORD HOELZ	NEW INSTALLATION	3,850
20210791	9/9/2021	P - Plumbing	1707 WILDWOOD	CHAMPION PLUMBING	REPAIR	0
20210790	9/9/2021	O - Sign	1829 N KICKAPOO	REBEL SIGN COMPANY, LLC	NEW INSTALLATION	6,274
20210789	9/9/2021	P - Plumbing	4 CONCORD	ADVENT MECHANICAL	CHANGE OUT	0
20210788	9/9/2021	P - Plumbing	1702 N BEARD	DALE'S PLUMBING	REPAIR	0
20210787	9/8/2021	E - Electrical	2130 W BENEDICT	AMK OK ELECTRIC	NEW CONSTRUCTION	0
20210786	9/8/2021	P - Plumbing	1427 N MARKET	KENNEDY PLUMBING	REPAIR	0
20210785	9/8/2021	P - Plumbing	219 N LOUISA	GEORGE PATRICK PLUMBING	REPAIR	0
20210784	9/8/2021	M - Mechanical	124 E KIRK	EXECUTIVE HEATING AND AIR	REMODEL	0
20210783	9/8/2021	M - Mechanical	5 AMERICAN WAY	WATKINS HEAT & AIR	CHANGE OUT	0
20210782	9/7/2021	B - Commercial - New	4791 N HARRISON AVE	RIF CON, LLC	NEW CONSTRUCTION	850,000
20210781	9/7/2021	M - Mechanical	220 W ROSA ST	ACOCK CLIMATE CONTROL	CHANGE OUT	0
20210780	9/7/2021	M - Mechanical	32408 HOMER LANE RD	WATKINS HEAT & AIR	CHANGE OUT	0
20210779	9/7/2021	PC - Lot Split	4791 N HARRISON AVE	SHAWNEE HARRISION LLC	LOT SPLIT	0
20210778	9/7/2021	O - Sign	909 E INDEPENDENCE	SIGN FACTORY LLC	POLE SIGN INSERT	1,900
20210777	9/7/2021	E - Electrical	1830 N KICKAPOO	BOB GENZER ELECTRIC	NEW CONNECTION	0
20210776	9/7/2021	O - Demolition and Moving	616 S BELL ST	G & G SERVICES	DEMOLITION	0

Square Feet	Total Fees
48	\$29.50
0	\$54.50
38	\$50.00
0	\$54.50
0	\$54.50
0	\$54.50
0	\$54.50
0	\$54.50
0	\$54.50
0	\$54.50
0	\$104.50
3,306	
0	\$54.50
0	\$79.50
0	\$75.00
48	\$100.00
0	\$54.50
0	\$50.00

Permit #	Permit Date	Permit Type	Parcel Address	Applicant Name	Description	Project Cost
20210775	9/7/2021	O - Demolition and Moving	830 S UNION	G & G SERVICES	DEMOLITION	0
20210773	9/7/2021	E - Electrical	540 N AYDELOTTE AVE	GROVE ELECTRICAL SOLUTIONS	REWIRE	0
20210772	9/3/2021	O - Demolition and Moving	542 N KICKAPOO	MEIER AND SON DEMOLITION LLC	DEMOLITION	0
20210771	9/3/2021	O - Demolition and Moving	728 W FORD ST	K & M WRECKING	DEMOLITION	0
20210770	9/3/2021	P - Septic	51 SERENADA LN	FIRESTORM	NEW INSTALLATION	0
20210769	9/3/2021	P - Septic	7811 N KICKAPOO	FIRESTORM	NEW INSTALLATION	0
20210768	9/3/2021	M - Mechanical	1830 N KICKAPOO	ACOCK CLIMATE CONTROL	CHANGE OUT	0
20210767	9/3/2021	P - Plumbing	1932 N BELL AVE	COMPLETE PLUMBING	REPLACE	0
20210766	9/3/2021	P - Plumbing	70 SEQUOYAH BLVD	COMPLETE PLUMBING	REPLACE	0
20210765	9/2/2021	P - Plumbing	1 N TENNESSEE AVE	DALE'S PLUMBING	CHANGE OUT	0
20210764	9/2/2021	M - Mechanical	701 N HARRISON	SPARKS HEAT & AIR INC	CHANGE OUT	0
20210763	9/2/2021	B - Commercial - Remodel	227 S PHILADELPHIA	ICYS BUDS LLC	REMODEL	11,000
20210762	9/2/2021	E - Electrical	227 S PHILADELPHIA	ROBB-N-SONS ELECTRIC INC	ADD	0

Total Records: 88

Square Feet	Total Fees
0	\$50.00
0	\$54.50
0	\$50.00
0	\$50.00
0	\$25.00
0	\$25.00
0	\$79.50
0	\$54.50
0	\$54.50
0	\$54.50
0	\$129.50
1,203	\$305.25
0	\$154.50
	\$11,340.81

10/1/2021

Regular Board of Commissioners

2. c.

Meeting Date: 10/18/2021

Library Audit

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acknowledge receipt of Pioneer Library System Audit for the Year Ended June 30, 2021.

Attachments

PLS Audit

PLS Gov. Letter



Financial Statements

For the Year Ended June 30, 2021

PIONEER LIBRARY SYSTEM

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June 30, 2021

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Gray, Blodgett & Company, PLLC

CERTIFIED PUBLIC ACCOUNTANTS
BUSINESS ADVISORS

629 24TH AVE SW
NORMAN, OKLAHOMA 73069
(405) 360-5533 FAX (405) 364-3771

TED BLODGETT, CPA, CVA, ABV, JD
C. JANESE SHEPARD, CPA
ROSS H. ROYE, CPA
SAM BLODGETT, CPA
CYNTHIA K. BYARS, CPA
JONATHAN M. KERN, CPA
JERRY D. KING, CPA
BREE MONTOYA, CPA, CVA, ABV
RHONDA E. RAY, CPA
CHRISTINE J. STEPHENS, CPA
BRIAN C. WILKINS, CPA
TIM WILSON, CPA
JASON D. WINTERS, CPA

INDEPENDENT AUDITORS' REPORT

September 28, 2021

To the Board of Trustees of
Pioneer Library System
Norman, Oklahoma

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the aggregate discretely presented component unit, each major fund and the fiduciary fund type of Pioneer Library System, as of and for the year ended June 30, 2021, and the related notes to the financial statements, which collectively comprise the System's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The financial statements of the aggregate discretely presented component unit, the Pioneer Library System Foundation, were not audited in accordance with *Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the aggregate discretely presented component unit, each major fund, as well as the fiduciary fund type of the Library, as of June 30, 2021, and the respective changes in financial position, for the year then ended in accordance with accounting principles generally accepted in the United States of America.



To the Board of Trustees of
Pioneer Library System
September 28, 2021

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 5–14, the budgetary comparison information on page 36, and the net pension liability and contribution information on pages 37–38 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated September 28, 2021, on our consideration of the System's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the System's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering Pioneer Library System's internal control over financial reporting and compliance.

GRAY, BLODGETT & COMPANY, PLLC

Gray, Blodgett & Company, PLLC



Management's Discussion & Analysis for the Fiscal Year Ended June 30, 2021

This discussion and analysis of the financial performance of Pioneer Library System provides an overall review of PLS's financial condition and results of operations for the fiscal year ended June 30, 2021. Readers should read this information in conjunction with the system's financial statements.

Governmental Accounting Standards Board (GASB) statements 84, 90, and 93 became effective as of June 30, 2021 however these pronouncements do not affect the library's financial statements.

PLS Overview

The Pioneer Library System is comprised of twelve library branches in ten communities within three counties serving more than 400,000 residents. More than one million visits are made to the library per year. Print and digital collections are checked out over two million times per year by people of all ages. 66% of people in this service area have a library card and 9 out of 10 library users surveyed would recommend the library to others.

- Mission: Inspiring innovation, engagement, and learning in our communities.
- Customer Service Philosophy: Creating positive experiences for you.
- Values: Welcome, Empower, Respect.

Working with local partners, PLS helps connect people with jobs and supports career development, partners with schools to offer resources and assistance to students with their schoolwork, and delivers programming focused on early literacy. The library provides services to those unable to come to the library through homebound services, digital materials, virtual programs, and more. The library provides Internet access and assistance to connect customers with vital services, including housing, utilities, food, health care, and public assistance. Whether in-person or virtually, PLS inspires innovation, engagement, and learning in our communities.

This fiscal year presented immeasurable challenges as well as incredible opportunity for PLS to connect to the community in new ways throughout the various stages of the COVID-19 pandemic. Customers' patterns of behavior changed both in-person or for those who transitioned to using the library virtually, and PLS adjusted to create a seamless experience for all. Curbside service implemented in FY19-20 continued to gain in popularity even with the libraries open for essential services. During that time, library staff connected virtual learners, job seekers and those impacted by the pandemic to Wi-Fi, printing/copying services, library materials, homework help, and more. Online Summer Learning Challenge participation increased 18% from the year before and social media engagement was the highest PLS has ever seen.

In May, the PLS Board of Trustees approved a three-year Strategic Plan that had been worked on by multiple stakeholders since 2018. The priorities defined in the Plan move the PLS mission, philosophy, and values forward, and focuses on: Curating an inclusive customer experience; Reimagining the library; Collaborating for a broader impact; Fostering an engaged and inclusive culture; and Ensuring a vibrant

and sustainable future. Decisions made this year and outlined in this document were measured and aligned with each section of the Strategic Plan.

Financial Highlights

For fiscal year 2020-2021, PLS's general fund reported an ending balance of \$16,159,914 versus \$12,217,633 for the fiscal year 2019-2020. Of the 2020-2021 year-end total, \$757,979 is committed for outstanding encumbrances, and \$568,555 is assigned for service upgrades and improvements of library services at current and future libraries within the system. A majority of the outstanding encumbrances are for vehicles, materials, and technology equipment. Although the remaining balance of \$14,833,380 is unassigned, the library administration, with the Board of Trustee's approval, will use a portion of these funds to fund upcoming library projects in the service area. The remainder of the money in these funds will be prudently used or committed to alleviate summer/fall cash flow problems and other emergencies that might arise.

PLS's operating revenue increased by 4.0% this year. This increase enabled PLS to further the library's mission through a variety of opportunities:

- PLS terminated the Pioneer Library System Pension Plan and Trust. This plan was frozen on December 31, 2008, with the goal to terminate when the system could fully fund the plan.
- Author Wes Moore was contracted as a part of the PLS Reads Spark a Change community conversation series for \$35,000.
- Hourly staff were granted paid time off to receive their COVID-19 vaccinations.
- PLS spent \$9,287 on scholarships and fees for Online High School. Six students graduated from the program with their high school diploma this fiscal year.
- A new server for the telephone system was purchased for the Administration building at a cost of \$9,287.
- Other items purchased from the technology equipment budget included a Movie Box, a book locker, and self-checks for select branches. These items will improve the customer experience by providing faster and, in some cases, 24/7 access to materials and technology.
- Additional digital materials were purchased to meet demand and provide customers with a wider selection throughout the pandemic. Digital activity increased throughout the year as the pandemic changed daily life in our communities.
- A new laser printer and embroidery machine were purchased at a total cost of \$26,786 for the Maker Mobile to ensure the library is providing the latest, most innovative STEAM technology to our customers.

The general fund balance increased by \$3,942,281 from fiscal year 2020 due to the increase in collection of revenue and the decrease in spending in expense categories including salaries, retirement, contract labor, workers compensation, attorney fees, professional services, continuing education, equipment, membership, postage, telephone, travel, marketing and communication, data processing, fine collection, technology, development, and system facilities.

The Pioneer Library System Foundation completed its eleventh year of operation as of June 30, 2021. The Foundation was organized for the purpose of Supporting Literacy and a Love of Learning throughout Pioneer Library System Communities. The Foundation awarded \$600 grants to eleven of its twelve branches and awarded two \$1,000 competitive grants to the winning branch applicants to support local

programs. More than \$45,199 in grant funds were awarded to the PLS Foundation by the Oklahoma Department of Libraries and the Institute of Museum and Library Services for health literacy initiatives at all twelve branches. In addition, the Foundation provided financial support for many of PLS's programs including the 2021 PLS Reads and the system-wide Summer Learning Challenge. The Foundation sponsored and hosted Literally Yours featuring author and sports reporter Kate Fagan. People across the PLS service area joined virtually to learn more about mental health and Fagan's book *What Made Maddy Run*. The Foundation also funded \$11,900 books that were donated to children enrolled in area health department programs as reward for exceeding the Summer Learning Challenge community goal of spending 6.8 million minutes learning. The Foundation has been included as a component unit of the Library System and the Foundation has issued its own financial statements, available from the Library Foundation administrative office.

Overview of the Financial Statement

The Pioneer Library System's basic financial statements consist of fund financial statements, notes to financial statements, and required supplementary information.

Government-Wide Financial Statements

The government-wide financial statements are designed to provide readers with a broad overview of the system's finances, in a manner similar to a private-sector business.

The statement of net position represents information on all of the system's assets, liabilities, deferred inflows, and deferred outflows, with the difference between them reported as net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the system is improving or deteriorating.

The statement of activities presents information showing how the system's net position changed during the most recent fiscal year. All changes in net assets are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows.

Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future periods (e.g. uncollected taxes and earned but unused vacation leave).

The government-wide financial statements can be found on pages 15 and 16 of this report.

Fund Financial Statements

The Library System has two kinds of funds – Governmental Funds and Fiduciary Funds:

Governmental Funds encompass two types: General Fund and Other Governmental Funds:

General Fund represents unrestricted resources that are available for on-going general library operations. This is PLS's primary operating fund.

Other Governmental Funds include Gift/Grant Funds.

Gifts/Grant Funds include funds provided by intergovernmental grants and other third parties' gifts and grants. All those funds are generally restricted as to use. Therefore, each fund accounts for its receipts and disbursements of the restricted functions.

Fiduciary Funds are reported in the fiduciary fund financial statements but are excluded from government-wide reporting. They include the Pioneer Library System Pension Plan and Trust. Fiduciary fund financial statements report resources that are not available to fund Library System general operations.

Notes to the Financial Statements

The accompanying notes to the financial statements provide information essential to a full understanding of PLS's financial statements.

Supplemental Information

In addition to the basic financial statements and accompanying notes, this report also presents certain required supplementary information, such as comparative statement between budget and actual expenditures, and certain historical data concerning the Pioneer Library System Pension Plan and Trust.

Financial Analysis of Library System's Funds

As financial information is accumulated on a continuous and consistent basis, financial statements and expenditure reports for governmental funds are presented to the Pioneer Library System Board of Trustees.

For fiscal year 2020-2021 governmental fund balances changed as follows:

	General Fund Funds	Other Governmental Funds	Total Governmental Funds
Revenues	\$ 20,032,979	\$ 163,150	\$ 20,196,129
Expenditures	\$ 16,090,698	\$ 59,243	\$ 16,149,941
Net Increase	\$ 3,942,281	\$ 103,907	\$ 4,046,188

For fiscal year 2019-2020 governmental fund balances changed as follows:

	General Fund Funds	Other Governmental Funds	Total Governmental Funds
Revenues	\$ 19,263,566	\$ 127,829	\$ 19,391,395
Expenditures	\$ 17,202,801	\$ 124,358	\$ 17,327,159
Net Decrease	\$ 2,060,765	\$ 3,471	\$ 2,064,236

General Fund

PLS is primarily (or 98%) funded by Ad Valorem (property) tax. For the 2020-21 financial year the tax rates were: a 6.06 mill Ad Valorem (property) tax in Pottawatomie County; a 6.11 mill Ad Valorem (property) tax in McClain County; and a 6.11 mill Ad Valorem (property) tax in Cleveland County. For fiscal year 2020-21, the Counties' assessed property value had an increase of 4.98% versus 5.26% for 2019-20. Actual tax collections increased by 4.5% versus 4.2% for the prior year. The increase of 4.5% was due to the collection of more tax revenue. Fine and other charges for services revenue for 2020-21 increased by \$46,923 from 2019-20. This increase was precipitated by the increase of fax and lost book revenue over the previous year and the insurance proceeds received from our insurance company for the damage received to several of our vehicles as the result of a large hailstorm. State Aid decreased by \$5,633 over the prior year. Interest income decreased by \$103,656 over the prior year. This decrease is attributed to a decrease in interest rates.

The Expense category Personnel Services decreased from 2020 to 2021 due to the decrease in salaries paid as a result of a decrease in hours worked by staff during the pandemic; a decrease in retirement expenses due to no contribution made to the Pioneer Library System Pension Plan and Trust since it was in the process of being terminated; a decrease in workers compensation insurance as our rate decreased; and a decrease in contract labor expenses due to the pandemic. The Expense category of Materials increased to purchase more digital materials for the collection to meet demand. The Technology and Automation category decreased because most of the technology equipment purchased for the new Norman Public Library Central were purchased in the prior fiscal year.

The System Services and General and Administrative expense categories were different in 2021 than in 2020 because of the following:

- Professional Services expenses decreased as a result of no pay compensation study and no move of a materials collection. Excessive moisture remediation will occur in 2021-2022 as part of the new roof project and will be covered by insurance.
- The Continuing Education expenses decreased as the majority of scheduled conferences and learning opportunities moved to a virtual format due to the pandemic.
- Equipment expenses decreased compared to last year as less equipment was purchased.
- Insurance increased to reflect the cost of insuring the additional materials and technology at the new Norman Public Library Central and the addition of a cyber-insurance policy.
- Telephone costs decreased due to certain services being eliminated.
- Travel expenses decreased throughout the pandemic as travel opportunities were limited.
- The purchase of a new delivery van instead of a Ford Escape resulted in an increase in Vehicle expenses.
- Marketing and Communications costs decreased as there were no grand opening costs for a new library.
- The number of employees and wages paid decreased due to the pandemic, resulting in a decrease in Data Processing expenses.
- Revaluation expenses increased when compared to last year.
- Fine Collection expenses decreased as a result of discontinued service with a third-party collector.
- Board Development expenses increased in order to provide updated devices to PLS Board of Trustees used for board governance software.

- Funds from the Literacy budget were moved to the Programming budget, and the Programming budget increased to allot for the cost of authors visits and Summer Learning Challenge giveaways.
- Development expenses decreased as a result of the pandemic.

Other Governmental Funds

Gifts/Grants Funds: In fiscal year 2020-2021, Pioneer Library System received \$46,994 in gifts and grants.

Outright gifts to PLS totaled \$19,956, over 33% (\$6,616) of which was provided by Friends groups throughout PLS. This past year, Pioneer Library System received \$16,689 in grants. The City of Purcell donated \$11,000 to fund programs at the Purcell Library. All grantors and donors provided financial support and were also active partners providing excellent library services to the community.

Fiduciary Funds

The investments of the PLS Pension Plan increased due to the increase in the stock market. The Pioneer Library System Board of Trustees froze the Pioneer Library System Pension Plan and Trust as of December 31, 2008 and instituted a defined contribution retirement plan. The provider of all system retirement plans is Empower. The PLS Board voted at the April 27, 2021 meeting to terminate the plan. All the assets were transferred to a money market account on June 24th in anticipation of the plan termination. Fully funding this plan offered employees a resolution to a decision approved more than a decade ago.

The Library System as a Whole

	2020-2021	2019-2020
Assets		
Current and Other Assets	\$ 18,622,667	\$ 14,178,005
Capital Assets	\$ 9,065,700	\$ 9,998,577
Total Assets	\$ 27,688,367	\$ 24,176,582
Deferred Outflows of Resources		
Outflows Related to Net Pension Liability	\$ 349,118	\$ 790,015
Total Deferred Outflows of Resources	\$ 349,118	\$ 790,015
Liabilities		
Accounts Payable and Accrued Expenses	\$ 444,693	\$ 545,275
Other Liabilities	\$ 433,429	\$ 483,308
Net Pension Liability	\$ -	\$ -
Total Liabilities	\$ 878,122	\$ 1,028,583
Deferred Inflows of Resources		
Inflows Related to Net Pension Liability	\$ 1,045,235	\$ 704,641
Total Deferred Inflows of Resources	\$ 1,045,235	\$ 704,641
Net Position		
Net Investment in Capital Assets	\$ 9,065,700	\$ 9,998,577
Restricted Net Assets	\$ 1,584,631	\$ 931,789
Unrestricted Net Assets	\$ 15,463,797	\$ 12,303,007
Total Net Position	\$ 26,114,128	\$ 23,233,373
Change in Net Position		
Beginning Net Position	\$ 23,233,373	\$ 20,806,532
Restatement	\$ -	\$ 174,013
Beginning Net Position as Restated	\$ 23,233,373	\$ 20,980,545
Revenues		
Property Taxes	\$ 19,551,112	\$ 18,716,453
Charges for Services	\$ 340,806	\$ 296,763
Operating Grants	\$ 46,994	\$ 94,177
Capital Grants	\$ 4,738	\$ 28,705
State Aid	\$ 111,079	\$ 116,712
Investment Earnings	\$ 29,982	\$ 133,638
Net Change In Beneficial Assets Held by Others	\$ 111,418	\$ 4,947
Loss on Disposal	\$ (20,216)	\$ (1,395)
Total Revenues	\$ 20,175,913	\$ 19,390,000
Expenses		
Public Library Services	\$ 12,639,851	\$ 13,007,340
Administrative Services	\$ 2,329,707	\$ 1,900,169
Depreciation-Unallocated	\$ 2,325,600	\$ 2,229,663
Total Expenses	\$ 17,295,158	\$ 17,137,172
Increase in Net Position	\$ 2,880,755	\$ 2,252,828
Ending Net Position	\$ 26,114,128	\$ 23,233,373

General Fund Budgetary Highlights

The General Fund budget for fiscal year 2020-2021 was \$19,994,332. This was a 1.13% increase over the previous year. The highlights of the budget include:

- A 2.0% salary adjustment was approved for staff who received a successful or outstanding rating on their annual performance evaluation and were not in their training period.
- Health Insurance expenses increased \$29,347 to cover an expected increase in costs for the last three months of the fiscal year when the new rates for Medical and Dental Insurance are received in April.
- Group Term Life Insurance decreased \$5,000 to reflect actual costs.
- Disability Insurance increased \$1,000 to reflect actual costs.
- A \$5,000 decrease in Workers Compensation expenses was a result of a reduction in insurance rates.
- Scholarships increased \$2,000 to further support staff continuing education.
- Materials increased \$372,887 to purchase additional digital materials and cover the cost of outstanding purchase orders at year-end.
- Materials Norman Central was eliminated as opening day materials were purchased in previous years and this project is complete.
- Professional Services decreased by \$14,500 as there was no pay compensation study and no moving of a materials collection.
- Insurance increased \$15,000 due to the addition of the materials and technology at the new Norman Public Library Central and the addition of the cyber insurance policy.
- Telephone costs decreased \$15,000 to reflect certain services that were eliminated.
- Travel decreased \$3,000 as there were limited travel opportunities due to the pandemic.
- Vehicle decreased \$10,737 to reflect a reduction in travel due to the pandemic.
- Audit decreased \$2,000 to reflect actual cost following a new audit RFP award.
- Data Processing increased \$7,000 for the cost of processing payroll.
- Technology increased \$490,458 to cover the cost of outstanding purchase orders at year-end and to cover the purchase of additional technology equipment and services.
- Technology items for Norman Public Library Central were purchased in prior years, allowing the Technology Norman Central category to be eliminated.
- Continuing Education increased \$15,000 to cover the costs of attending the Public Library Association conference and Oklahoma Library Association conference.
- Marketing and Communications decreased \$65,000 to reflect a reduction in outstanding purchase orders compared with the prior year and the removal of grand opening costs for the new Norman Public Library Central.
- Literacy budget was eliminated and the costs were relocated to programming.
- Programming increased \$15,000 to reflect the movement of funds from the Literacy budget and for the cost of authors visits and Summer Learning Challenge giveaways.
- System Facilities increased \$100,000 to reflect the proposed replacement of HVAC units, the roof, and the cost associated with the repurposing of some space at the 300 Norman Center Court location.

- System Outreach increased \$70,000 to cover the literacy backpack program and to cover the cost of a keynote speaker for the PLS Foundation's annual event.
- Fund Balance Carryover Current Year decreased \$285,851.
- Assigned Fund Balance reflects several items: Cleveland County, \$124,560; McClain County, \$173,996; Pottawatomie County, \$50,000; Library Projects, \$220,000.
- Unassigned Fund Balance Increased \$2,454,509.
- Total Fund Balance for 2020-2021 was \$11,924,648.

Capital Asset and Long-Term Debt

PLS's investment in capital assets, net of accumulated depreciation, as of June 30, 2021 was \$9,065,700 and on June 30, 2020 was \$9,998,557. Of the total depreciable capital assets, net of accumulated depreciation, on June 30, 2021, 16% are furniture, equipment and vehicles; 44% are building and property; and the remaining 40% are books and materials. Of the total depreciable capital assets, net of accumulated depreciation, on June 30, 2020 19% are furniture, equipment, and vehicles; 41% are building and property; and the remaining 40% are books and materials.

PLS has no long-term liabilities. The Board limits borrowing to short-term, usually in the fall in anticipation of ad valorem receipts beginning in December. Typically, the note is paid off in mid-January. In 2020-2021, PLS borrowed no money and incurred no interest expense.

Economic Environment and Next Year's Budget

PLS's primary revenue is Ad Valorem (property) tax. The annual growth in the Cleveland, McClain and Pottawatomie County's property value is the most important factor for PLS's revenue outlook. For the most recent fiscal year PLS collected 6.11, 6.11 and 6.06 mills of the assessed property value from the respective counties. The fractional part of the millage is due to the abolishment of the personal property tax in two of the counties. The system is now at the millage cap allowed by state law.

In general, PLS still expects a continued growth in the tax revenue for the next year. The Cleveland County Assessor has certified 4.96% growth in property value for 2021; the Pottawatomie County Assessor has certified a 4.14% growth and the McClain County Assessor has certified a 5.58% growth.

For fiscal year 2021-2022, the Library Board plans to approve a general fund budget of \$21,358,100 versus \$19,994,432 for 2020-2021. A highlight of the budget follows:

- A 4.0% salary adjustment for staff who receive a successful or outstanding rating on their annual performance evaluation and are not in their training period.
- Retirement decreased \$350,000 to reflect termination of the Pioneer Library System Pension Plan and Trust.
- Health Insurance increased \$63,000 to cover an expected increase in costs for the last three months of the fiscal year when we receive the new rates for Medical and Dental Insurance in April.
- Disability Insurance increased \$2,500 to reflect actual costs.
- Scholarship increased \$3,000 to award scholarships to eligible staff pursuing an undergraduate degree.
- Materials increased \$170,381 to reflect additional funds to purchase digital materials and to cover the costs of outstanding purchase orders as of year-end.

- Professional Services increased \$623,272 for additional mobile app development with Phase Two, a marketing campaign with OrangeBoy, and drug screening sensitive positions.
- Equipment increased \$171,740 for purchase of new security systems at four branches and to purchase AEDs for all the branches.
- Insurance increased \$14,000 to reflect actual insurance costs.
- Telephone decreased \$20,000 to reflect certain services that were eliminated.
- Travel decreased \$7,000 to reflect a reduction in travel due to the pandemic.
- Vehicles increased \$94,266 to reflect the cost of outstanding purchase orders at year-end.
- Fine Collection decreased \$20,000 as a result of discontinued service with a third-party collector.
- Revaluation increased \$10,000 to reflect actual costs.
- Audit decreased \$2,000 to reflect the cost of the new audit bid.
- Technology increased \$504,392 to cover the costs of outstanding purchase orders at year-end.
- Employee Development increased \$10,000 for price increases for LinkedIn Learning and Niche Academy, and for the costs of the Oklahoma Library Association and Public Library Association conferences.
- Marketing and Communications increased \$31,858 to cover the cost of outstanding purchase orders at year-end and for the purchase of adding Canva, a graphic design software platform.
- The Literacy budget was eliminated and funds were relocated to the Programming budget.
- Programming increased \$45,000 as a result of Literacy and for the cost of author visits for PLS Reads and the Spark a Change community conversation series.
- System Outreach decreased \$25,000 as expenses were relocated to a different budget category.
- Fund Balance Carryover Current Year, decreased to zero, was budgeted as an expense.
- Fund Balance Assigned Current Year increased \$153,806 and is assigned to help fund expenses for the future new Moore Public Library.
- Assigned Fund Balance reflects several items: Cleveland County, \$124,560; McClain County, \$173,996; and Pottawatomie County, \$50,000; Library Projects, \$220,000.
- Unassigned Fund Balance increased \$3,553,092.
- Total Fund Balance for 2021-2022 is anticipated to be \$15,477,739.

Contacting the Library System's Financial Management

This financial report is designed to provide a general overview of the Pioneer Library System, comply with finance-related laws and regulations, and demonstrate the Library System's commitment to public accountability. If you have any questions about this report or would like to request additional information, contact the Pioneer Library System's Business Office at 300 Norman Center Court, Norman, OK 73072.

PIONEER LIBRARY SYSTEM
Statement of Net Position
June 30, 2021

	Primary Government Governmental Activities	Component Unit Library Foundation
Assets		
Cash and Cash Equivalents	\$ 16,222,482	\$ 280,195
Beneficial Interest in asset held by others	507,370	72,732
Ad Valorem Tax Receivable	166,057	-
Accrued Interest Receivable	-	28
Other Current Assets	874,794	36,741
Other Receivable	20,755	-
Net Pension Asset	831,209	-
Non-Depreciable Capital Assets	264,654	-
Depreciable Capital Assets, Net	<u>8,801,046</u>	<u>-</u>
Total Assets	<u>\$ 27,688,367</u>	<u>\$ 389,696</u>
Deferred Outflows of Resources		
Outflows related to net pension liability	<u>\$ 349,118</u>	<u>\$ -</u>
Liabilities		
Accounts Payable and Accrued Expenses	\$ 444,693	\$ 6,906
Compensated Absences Payable	<u>433,429</u>	<u>-</u>
Total Liabilities	<u>\$ 878,122</u>	<u>\$ 6,906</u>
Deferred Inflows of Resources		
Inflows related to net pension liability	<u>\$ 1,045,235</u>	<u>\$ -</u>
Net Position		
Net Investment in Capital Assets	\$ 9,065,700	\$ -
Restricted - Non Spendable Net Assets	-	44,908
Restricted - Literacy and Other Programs	753,422	125,145
Restricted - Net Pension Asset	831,209	-
Unrestricted - Board Designated Endowment	-	12,569
Unrestricted - Undesignated	<u>15,463,797</u>	<u>200,168</u>
Total Net Position	<u>\$ 26,114,128</u>	<u>\$ 382,790</u>

See Accompanying Notes to Financial Statements

PIONEER LIBRARY SYSTEM
Statement of Activities
For the Year Ended June 30, 2021

					Net (Expense) Revenue and Changes in Net Assets	(Expense) Revenue and Changes in Net Assets
Program Revenues					Primary Government Activities	Component Unit Library Foundation
Functions/Programs	Expenses	Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions		
Governmental Activities:						
Public Library Services	\$ 12,639,851	\$ 340,806	\$ 46,994	\$ 4,738	\$ (12,247,313)	
Administrative Services	2,329,707	-	-	-	(2,329,707)	
Depreciation - unallocated	2,325,600	-	-	-	(2,325,600)	
Total Primary Government	<u>\$ 17,295,158</u>	<u>\$ 340,806</u>	<u>\$ 46,994</u>	<u>\$ 4,738</u>	<u>\$ (16,902,620)</u>	
Component Unit						
Library Foundation	<u>\$ 87,050</u>	<u>\$ -</u>	<u>\$ 152,839</u>	<u>\$ -</u>		<u>\$ 65,789</u>
General Revenues:						
Property taxes, levied for general purposes					\$ 19,551,112	\$ -
State Aid					111,079	-
Net Change in Beneficial Assets held by others					111,418	16,908
Investment earnings					29,982	(463)
Loss on Disposals					(20,216)	-
Total General Revenues					<u>\$ 19,783,375</u>	<u>\$ 16,445</u>
Change in net assets					\$ 2,880,755	\$ 82,234
Net position - beginning					<u>23,233,373</u>	<u>300,556</u>
Net position - ending					<u>\$ 26,114,128</u>	<u>\$ 382,790</u>

See Accompanying Notes to Financial Statements

PIONEER LIBRARY SYSTEM
Balance Sheet
Governmental Funds
June 30, 2021

ASSETS	General Fund	Gifts and Grants Fund	Total Governmental Funds
Cash	\$ 16,094,858	\$ 127,623	\$ 16,222,481
Investments	-	507,370	507,370
Receivable from General Fund	-	112,355	112,355
Ad Valorem Tax Receivable	166,057	-	166,057
Other Receivable	-	20,755	20,755
Deposit	9,764	-	9,764
Prepaid Expenses	865,030	-	865,030
Total Assets	\$ 17,135,709	\$ 768,103	\$ 17,903,812

LIABILITIES AND FUND BALANCES

Liabilities			
Accounts Payable	\$ 249,962	\$ 14,681	\$ 264,643
Accrued Salaries and Employee Benefits	180,050	-	180,050
Compensated Absences Payable	433,429	-	433,429
Payable to Special Revenue	112,355	-	112,355
Total Liabilities	\$ 975,796	\$ 14,681	\$ 990,477
Fund Balances			
Assigned for Service Upgrades and Improvements	\$ 568,555	\$ 752,601	\$ 1,321,156
Committed for Outstanding Encumbrances	757,979	821	758,800
Unassigned	14,833,380	-	14,833,380
Fund Balances, End of Year	\$ 16,159,914	\$ 753,422	\$ 16,913,336
Total Liabilities and Fund Balances	\$ 17,135,710	\$ 768,103	

Amounts reported for governmental activities in the statement of net assets are different because:

Capital assets used in governmental activities are not financial resources and therefore are not reported as assets in governmental funds. The cost of the assets is \$28,839,293, including \$264,654 of non-depreciable assets, and the accumulated depreciation is \$19,773,593.	\$ 9,065,700
Long-term liabilities that pertain to governmental funds are not due and payable in the current period and therefore are not reported as fund liabilities.	
Net Pension Asset	831,209
Deferred outflows of resources related to net pension liability	349,118
Deferred inflows of resources related to net pension liability	(1,045,235)

Total Net Position - Governmental Activities	<u>\$ 26,114,128</u>
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See Accompanying Notes to Financial Statements

PIONEER LIBRARY SYSTEM
Statement of Revenues, Expenditures, and Changes in Fund Balances -
Governmental Funds
For the Year Ended June 30, 2021

	General Fund	Gifts and Grants Fund	Total Governmental Funds
Revenues:			
Property Taxes	\$ 19,551,112	\$ -	\$ 19,551,112
Collections on Book Fines and Copy Services	192,733	-	192,733
Gifts and Grants	-	46,994	46,994
State Revenue	111,079	-	111,079
Other Contracts	148,073	-	148,073
In-Kind Donations	-	4,738	4,738
Interest	29,982	111,418	141,400
	<u>\$ 20,032,979</u>	<u>\$ 163,150</u>	<u>\$ 20,196,129</u>
Total Revenues			
Expenditures			
Personal Services	\$ 10,902,689	\$ -	\$ 10,902,689
Materials	2,777,517	59,243	2,836,760
General and Administrative	940,055	-	940,055
Technology and Automation	1,038,751	-	1,038,751
System Services	431,686	-	431,686
	<u>\$ 16,090,698</u>	<u>\$ 59,243</u>	<u>\$ 16,149,941</u>
Total Expenditures			
Net Change in Fund Balance	\$ 3,942,281	\$ 103,907	\$ 4,046,188
Beginning Fund Balance	12,217,633	649,515	12,867,148
Ending Fund Balances	<u>\$ 16,159,914</u>	<u>\$ 753,422</u>	<u>\$ 16,913,336</u>
Total net changes in fund balances - governmental funds			\$ 4,046,188

The change in nets assets reported in the statement of activities is different because:

Capital outlays to purchase or build capital assets are reported in governmental funds as expenditures.

However, for governmental activities those costs are shown in the statement allocated over their estimated useful lives as annual depreciation expenses in the statement of activities. This is the amount by which depreciation exceeds capital outlay during the period.

Depreciation Expense	\$ (2,325,600)	
Capital Outlay	<u>1,412,939</u>	(912,661)

Disposals of capital assets are not considered to be expenditures in the governmental funds. They are however, recorded as a loss in the statement of activities.

(20,216)

Some expenses reported in the statement of activities do not require the use of current financial resources and, therefore, are not reported as expenditures in governmental funds:

Change in pension expense per actuary calculation (232,556)

Change in net position of governmental activities \$ 2,880,755

See Accompanying Notes to Financial Statements

PIONEER LIBRARY SYSTEM
Statement of Fiduciary Net Position
Fiduciary Fund
June 30, 2021

	<u>Pension Fund</u>
ASSETS	
Current Assets	
Cash and Cash Equivalents	<u>\$ 4,773,550</u>
Total Assets	<u><u>\$ 4,773,550</u></u>
NET POSITION	
Restricted Net Assets	
Held in Trust for Pension	
Benefits and Other Purposes	<u><u>\$ 4,773,550</u></u>

See Accompanying Notes to Financial Statements

PIONEER LIBRARY SYSTEM
Statement of Changes in Fiduciary Net Position
Fiduciary Fund
For the Year Ended June 30, 2021

	<u>Pension Fund</u>
Additions	
Contributions	
Employer	\$ -
Net Increase/(Decrease) in the Fair Value of Investments	<u>1,116,869</u>
Total Additions	<u>\$ 1,116,869</u>
Deductions	
Benefits Paid	276,820
Trustee and Management Fees	<u>37,081</u>
Total Deductions	<u>\$ 313,901</u>
Net Increase	\$ 802,968
Net Position, Beginning of Year	<u>3,970,582</u>
Net Position, End of Year	<u><u>\$ 4,773,550</u></u>

See Accompanying Notes to Financial Statements

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 1 – Summary of Significant Accounting Policies

The Reporting Entity –

Pioneer Library System (the System) is a corporate body for public purposes created under Title 65 of the Oklahoma Statutes and accordingly is a separate entity for operating and financial reporting purposes.

The System is governed by trustees composed of 13 voting members. The System operations are conducted by a librarian appointed by the trustees. Trustees include voting members who are appointees of the various cities and counties in which the System has locations.

The System's financial statements are prepared in accordance with generally accepted accounting principles in the United States of America (U.S. GAAP). The System's reporting entity applies all relevant Governmental Accounting Standards Board (GASB) pronouncements and applicable Financial Accounting Standards Board (FASB) pronouncements and Accounting Principles Board (APB) opinions issued on or before November 30, 1989, unless they conflict with GASB pronouncements. The System's reporting entity does not apply FASB pronouncements or APB opinions issued after November 30, 1989.

Financial Statement Presentation –

In evaluating how to define the System, for financial reporting purposes, management has considered all potential component units. The decision to include a potential component unit in the reporting entity was made by applying the criteria established by the Governmental Accounting Standards Board (GASB). The basic -- but not the only -- criterion for including a potential component unit within the reporting entity is the governing body's ability to exercise oversight responsibility. The most significant manifestation of this ability is financial interdependency. Other manifestations of the ability to exercise responsibility include, but are not limited to, the selection of governing authority, the designation of management, the ability to significantly influence operations, and accountability for fiscal matters. A second criterion used in evaluating potential component units is the scope of public service. Application of this criterion involves considering whether the activity benefits the System and/or its citizens, or whether the activity is conducted within the geographic boundaries of the System and is generally available to its patrons. A third criterion used to evaluate potential component units for inclusion or exclusion from the reporting entity is the existence of special financing relationships, regardless of whether the System is able to exercise oversight responsibilities. Based upon the application of these criteria, the Pioneer Library System Foundation meets the criteria, which requires a component unit to be presented discretely and including in the System's reporting entity.

Complete financial statements for the Foundation are available from the Foundation administrative office.

Basic Financial Statements – Government-Wide Statements –

The System's basic financial statements include both government-wide (reporting the Library System as a whole) and fund financial statements (reporting the System's major funds). Both the government-wide and fund financial statements categorize primary activities as either governmental or business type. The System does not have any activities classified as business-type activities. Internal service fund activity is eliminated to avoid "doubling up" revenues and expenses. Fiduciary funds are excluded.

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 1 – Summary of Significant Account Policies (continued)

In the government-wide Statement of Net Position, the System's governmental activities are reported using the economic resources measurement focus and the accrual basis of accounting. The System's net assets are reported in three parts – invested in capital assets, net of related debt; restricted net assets; and unrestricted net assets. Revenues are recognized when earned and expenses are recognized when incurred.

The government-wide Statement of Activities reports both the gross and net cost of each of the System's programs and functions. The functions are also supported by general government revenues. The Statement of Activities reduces gross expenses (including depreciation) by related program revenues, operating and capital grants. Program revenues must be directly associated with the function. Operating grants include operating-specific and discretionary (either operating or capital) grants while the capital grants column reflects capital-specific grants.

The pension trust fund recognizes employer and participant contributions in the period in which contributions are due and the System has made a formal commitment to provide the contributions. Retirement benefits and refunds are recognized when due and payable in accordance with the terms of the Plan. See Note 9.

The net costs are normally covered by general revenue (property taxes, State aid, other taxes etc.).

The government-wide focus is more on the sustainability of the System as an entity and the change in the System's net position resulting from the current year's activities.

Basic Financial Statements – Fund Financial Statements

Fund financial statements report detailed information about the System. The focus of governmental fund financial statements is on major funds rather than reporting funds by type. Non-major funds are aggregated and presented in a single column.

All governmental funds are accounted for using the current financial resources measurement focus and the modified accrual basis of accounting. Under this basis revenues are recorded when susceptible to accrual; i.e. both measurable and available. "Available" means collectible within the current period or within 60 days after year end. Expenditures are generally recognized under the modified accrual basis of accounting when the related liability is incurred. The exception to this general rule is that principal and interest on general obligation long-term debt, if any, is recognized when due.

The System reports the following major governmental funds:

General Fund – is the primary operating fund of the System. It is used to account for all financial resources except those required to be accounted for in another fund.

Gifts and Grants Fund – is used to account for all gifts and grants made to the System, which are to be used for specific purposes.

The System reports the following fiduciary funds:

Pension Trust Funds – The Pension Trust Funds are used to account for the receipt, investment and distribution of retirement contributions to the Pioneer Library System Pension Plan and Trust (the Plan). See also Note 9.

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 1 – Summary of Significant Accounting Policies (continued)

Fund Balance:

Fund Balance – In the government-wide financial statements, equity is classified as net assets and displayed in three components:

1. Invested in capital assets – Consists of capital assets, net of accumulated depreciation.
2. Restricted net assets – Consists of net assets with constraints placed on the use either by external groups, such as grantors or laws and regulations of other governments, or law through constitutional provisions or enabling legislation.
3. Unrestricted net assets – All other assets that do not meet the definition of "restricted" or "invested in capital assets, net of related debt."

When both restricted and unrestricted net assets are available for use, generally it is the System's policy to use restricted resources first.

Governmental fund equity is classified as fund balance. Fund balance is further classified as follows:

- a) Non-spendable – Includes fund balance amounts that cannot be spent either because it is not in spendable form or because of legal or contractual requirements.
- b) Restricted – Includes fund balance amounts that are constrained for specific purposes which are externally imposed by contributors, grantors, or amounts constrained due to constitutional provisions or enabling legislation.
- c) Committed – Includes fund balance amounts that are constrained for specific purposes that are internally imposed by the System through formal action of the highest level of decision making authority. The Board of Trustees is the highest level of decision making authority that can commit fund balance. Once committed, the limitation imposed remains in place until a similar action is taken to remove or revise the limitation.
- d) Assigned – Includes fund balance amounts that are constrained by the System's intent to be used for specific purposes, but are neither restricted nor committed. Intent can be stipulated by the Board of Trustees. With the exception of the General Fund, this is the residual fund balance of the classification for all governmental funds with positive balances.
- e) Unassigned – Includes the residual balance of the General Fund that has not been assigned to other funds and that has not been restricted, committed, or assigned to specific purposes with the General Fund.

When an expenditure is incurred for which committed, assigned, or unassigned fund balances are available, the System considers amounts to be spent first out of committed funds, then assigned funds, and finally unassigned funds as needed, unless the Board of Trustees has provided otherwise in its commitment or assignment actions.

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 1 – Summary of Significant Accounting Policies (continued)

Basis of Accounting – Basis of accounting refers to when revenues and expenditures are recognized in the accounts and reported in the financial statements. It relates to the timing of the measurements made regardless of the measurement focus applied.

Capital Assets – Capital assets purchased or acquired with an original cost of \$1,000 or more are reported at historical cost or estimated historical cost. Additions, improvements and other capital outlays that significantly extend the useful life of an asset are capitalized. Other costs incurred for repairs and maintenance are expensed as incurred. Depreciation on all assets is provided on the straight-line basis over the following estimated useful lives:

Furniture and Fixtures	7 years
Computer Equipment	4 years
Vehicles	5 years
Books and Materials	5 years
Buildings	40 years

Compensated Absences – The System accrues accumulated unpaid annual leave when earned by the employee. Generally, annual leave must be taken during the calendar year earned. Eligible employees who end their employment with the System are reimbursed for each day of accumulated annual leave.

Budgets and Budgetary Accounting – The System is required by state law to prepare an annual budget. The budget is filed with the Oklahoma Department of Libraries, various City or Town Clerks if the City or Town has a PLS Board of Directors member, the County Commissioners and County Excise Boards of each County that is a System member, the Oklahoma State Auditor, the Oklahoma State Inspector, and the State of Oklahoma Equalization Board.

Budgets generally assume the expenditure of all available resources. Therefore, when the legal budget is prepared, it is assumed these funds will not have a carryover balance to a subsequent year. Program revenue received but not spent is restricted and deferred to the subsequent fiscal year. Amounts reported as program revenue includes (1) charges to customers, (2) operating grants and contributions, and (3) capital grants and contributions.

Cash and Cash Equivalents – The System considers all cash on hand, demand deposits, money market checking and certificates of deposit with an initial maturity of three months or less, held at an individual bank which are subject to early withdrawal penalties no matter what the maturity period, to be cash. All short-term cash surpluses are maintained in a cash pool, the earnings from which are allocated to each fund based on month-end deposit balances.

Fair Market Value Measurement – Fair value is defined as “the price that would be received to sell an asset, or paid to transfer a liability in an orderly transaction between market participants at a measurement date.” Accounting standards set a framework for measuring fair value using a three tier hierarchy based on the extent to which inputs used in measuring fair value are observable in the market.

Level 1 – Values are unadjusted quoted prices for identical assets and liabilities in active markets that are accessible at the measurement date.

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 1 – Summary of Significant Accounting Policies (continued)

Level 2 – Inputs other than quoted prices for identical assets or liabilities that are observable in the market place. For example, Level 2 inputs include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices are observable for the asset or liability (such as interest rates and yield curves, volatilities, prepayment speeds, loss severities, credit risks, and default rates), and market-corroborated inputs.

Level 3 – Inputs that are unobservable (supported by little or no market value activity) and are significant to the fair value measurement. Unobservable inputs reflect the System's best estimate of what hypothetical market participants would use to determine a transaction price for the asset or liability at the reporting date.

Financial assets and liabilities carried at fair value on a recurring basis include beneficial interests in assets held by others.

Receivables – All taxes receivable are expected to be collected in one year.

Property Tax Revenues – Property taxes attach an enforceable lien on property as of January 1. Taxes are levied annually on November 1 and are due one-half by December 31 and one-half by March 31. The County Assessor's office bills and collects the property taxes and remits to the System its portion. Property taxes not paid prior to April are considered delinquent. Such delinquent tax payments have not historically been material. Delinquent tax payments are received throughout the year and are recognized as revenue in the year received, except for those received within 60 days of year end, which are recognized as revenues as of June 30, 2021 in both the government-wide and fund financial statements.

State Revenues – The System receives revenue from the state to administer certain categorical library programs.

Interfund Balances - During the course of normal operations, the System has transactions between funds including expenditures and transfers of resources to provide services, purchase assets and service debt. Transactions that are normal and recurring between funds are recorded as operating transfers.

Contributed Facilities and Services - The System operates several branches located in government-owned buildings and receives certain services without charge. The estimated fair rental value of the premises and service is not reported in the accompanying statement of revenues, expenditures, and changes in fund balance.

Grants - The System records income from grants in the period received or to the extent of expenses paid prior to reimbursement by a grant.

Income Taxes - The System was established under the provisions of the Oklahoma Constitution and as such is exempt from income taxes under the Internal Revenue Code as a unit of government.

The Foundation is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code. The Foundation has also been classified as an entity that is not a private foundation within the meaning of Section 509(a) and qualifies for deductible contributions. No provision for federal or state income taxes has been recorded. There was no interest or penalties to the Internal Revenue Service included in these financial statements.

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 1 – Summary of Significant Accounting Policies (continued)

Tax years before 2017 are no longer subject to examination by the Internal Revenue Service and the State of Oklahoma.

Prepaid Expenses - The System records prepaid insurance, subscriptions and maintenance agreements for that portion of payments which have not been used at year-end for government-wide financial statement purposes. Prepaid expense is included in other current assets in the statement of net assets.

Restricted Resources - The System records gifts and grants as restricted when the donor specifies a restriction on the timing or use of the gift or grant. Expenses are allocated first to the restricted resource. If additional expense is incurred, the expense is allocated to unrestricted funds when the restriction has been depleted.

Deferred Outflows and Inflows of Resources – In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position or fund balance that applies to a future period(s) and thus, will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position or fund balance that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time.

See Note 9 for discussion of the System's deferred outflows of resources and deferred inflows of resources.

Use of Estimates - The preparation of financial statements requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

New Accounting Pronouncements – During the year, GASB Statement No. 84, *Fiduciary Activities*, GASB Statement No. 90, *Major Equity Interests*, and GASB Statement 93, except paragraphs 11b and 13-14, *Replacement of Interbank Offered rates* became effective but do not affect the Libraries financial statements.

Note 2 – Cash and Investments

The System's investment policies are governed by state statute. Permissible investments include direct obligations of the United States Government and Agencies; certificates of deposit of savings and loan associations and bank and trust companies; and savings accounts or savings certificates of savings and loan associations and trust companies. A certificate of deposit in the amount of \$9,764 is pledged on a letter of credit for a security deposit.

Custodial Credit Risk - Deposits – Custodial credit risk is the risk that in the event of a bank failure, the System's deposits may not be returned to it. At June 30, 2021, none of the System's bank balance of \$16,528,532 was exposed to custodial credit risk because it was not insured or collateralized. The balance is partially collateralized with securities held by First Fidelity Bank in the System's name. The market value

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 2 – Cash and Investments (continued)

of these securities as of June 30, 2021 was \$19,924,668 plus \$250,000 of FDIC insurance gives coverage of \$20,174,668.

Beneficial interest in assets held by others – In previous years the System transferred funds to the Communities Foundation of Oklahoma (CFO) for investment. The recorded portion of all of these funds consists of transfers to CFO from the System and the earnings thereon.

The following methods and assumptions were used to estimate the fair value of the beneficial interest in assets held by others reported at fair market value in the accompanying financial statements.

The organization believes that fair value of the future cash flows to be received from its beneficial interest in assets held by other the CFO which primarily include a diversified portfolio of marketable securities. The organization classifies its beneficial interest in the assets held by the CFO as level 3.

As of June 30 2021, assets measured at fair value on a recurring basis are classified within the fair value hierarchy as follows:

	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Beneficial interest in assets held				
by CFO	\$ 507,370	\$ -	\$ -	\$ 507,370
Total Recurring Fair Value				
Measurements	<u>\$ 507,370</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 507,370</u>

Grant awards shall be available for distribution on a yearly basis, subject to final approval by the Board of Directors of CFO, and based on a specified percentage of the fair market value of assets on a rolling average of the previous eight quarters. The Community Foundation maintains variance power over these assets. Variance power assures donors that if the charitable purpose of their contribution becomes impractical or impossible, the distributions will be directed to similar purposes in the community. The System's board may, by an affirmative vote of two thirds of the board, for an unusual circumstance, recommend and request distribution of all or part of the assets held by CFO. However, the CFO has the ultimate authority over and control of all property held by CFO. Distributions in the amount of \$958 for the year ended June 30, 2021, was received by the System from these combined funds.

The Community Foundation maintains legal ownership of the funds. However, accounting principles generally accepted in the United States of America require the Organization to reflect its beneficial interest in these assets in its financial statements. At June 30, 2021, assets transferred to the Community Foundation by the Organization had a fair value of \$507,370 based on the approximate present value of future cash flows from CFO.

Direct donations to existing funds at the Community Foundation from individuals are restricted for endowment purposes and are not recorded as assets of the System. Only the earnings on these funds can be distributed to the System.

Distributions in the amount of \$1,542 for the year ended June 30, 2021, were received by the System. The fair value of the funds originally donated by third parties at June 30, 2021 was \$39,116. The Organization has no remainder interest in the corpus of these funds.

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 2 – Cash and Investments (continued)

Investment Interest Rate Risk - The investments of the Pension Plan (see also Note 9) were all transferred to the Money Market Fund with Empower on June 24, 2021 as part of the process of terminating the Pension Plan. These assets may be used only for the payment of benefits to the members of the Plan. The composition of the pension trust fund at fair value is shown in the following table:

	Market Value	Credit Exposure as a Percentage of Total Investments
Pension Fund		
Cash and Cash Equivalents	\$ 4,773,550	100.00%
Total Pension Fund Investments	<u>\$ 4,773,550</u>	<u>100.00%</u>

The following investments represent 5% or more of the net assets of the Plan at June 30, 2021:

Barings Premium US Govt. Money Market	\$ 4,773,550
---------------------------------------	--------------

The fair values of the Company's pension investments by asset category as of June 30, 2021 were as follows:

	Total	Level 1	Level 2	Level 3
Cash and Cash Investments	\$ 4,773,550	\$ 4,773,550	\$ -	\$ -
Total Recurring Fair Value Measurements	<u>\$ 4,773,550</u>	<u>\$ 4,773,550</u>	<u>\$ -</u>	<u>\$ -</u>

Pension Fund Policy

The Pioneer Library System Pension Plan and Trust provides for investment managers who have full discretion of assets allocated to them subject to the overall investment guidelines set out in the policy.

Manager performance is reviewed by a consultant who provides reports to the retirement plans investment and administrative committee and to the board. Any changes in the investment management firm must be reported as they occur. Overall investment guidelines provide for diversification and allow investment in domestic and international common stocks, fixed income securities, cash equivalents, index funds, collective trust funds and mutual funds. The Plan addresses custodial credit risk with policy providing for the engagement of a custodian who accepts possession of securities for safekeeping; collects and disburses income; collects principal of sold, matured, or called items; and provides periodic accounting to the board. The pension trust fund holds \$4,773,550 in money market funds. This amount is held by the investment counterparty, not in the name of the pension fund or the System.

Pension Trust investing is restricted by Oklahoma Statutes to the Prudent Investor Rule.

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 3 – Collections

The System has not capitalized existing inexhaustible collections, including research books, because the values are not readily determinable.

Note 4 – Short-Term Borrowing

On an annual basis, the System utilizes short-term unsecured promissory notes in anticipation of the collection of ad valorem taxes. In accordance with Title 65 Section 4-105 of the Oklahoma Statutes, the term of the loan may not exceed one year. As of June 30, 2021, no balance was owed. No interest expense was paid or incurred during the year ended June 30, 2021.

Note 5 – Other Current Liabilities

The liability balance and activity for the year were as follows:

	Beginning Balance	Additions	Reductions	Ending Balance	Amounts Due Within One Year
Compensated Absences	\$ 483,308	612,493	662,373	\$ 433,428	\$ 433,428

The general fund will be used to settle the compensated absences liability.

Note 6 – Commitments

Lease Commitments – The System leases a building, two postage machine and copiers for its branch facilities and for administration under operating leases. The leases are renewed on an annual basis. Lease expense under these leases for 2021 was \$65,153.

Encumbrances – As discussed in Note 1 above, budgetary information, budgetary basis of accounting, and encumbrance accounting is utilized to the extent necessary to assure effective budgetary control and accountability and to facilitate effective cash planning and control. At June 30, 2021 the amount of encumbrances expected to be honored upon performance by the vendor in the next year were:

General Fund	\$ 757,979
Gifts and Grants Fund	821
Total	<u>\$ 758,800</u>

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 7 – Capital Assets

Capital assets of the System at June 30, 2021 are as follows:

	Beginning <u>Balances</u>	<u>Increases</u>	<u>Decreases</u>	Ending <u>Balances</u>
Non-depreciable Capital Assets:				
Land	\$ 161,179	\$ -	\$ -	\$ 161,179
Computer Equipment	<u>199,512</u>	<u>-</u>	<u>96,037</u>	<u>103,475</u>
Total Non-Depreciable Capital Assets	<u>\$ 360,691</u>	<u>\$ -</u>	<u>\$ 96,037</u>	<u>\$ 264,654</u>
Depreciable Capital Assets:				
Library Books	\$ 18,514,106	\$ 1,122,811	\$ 2,591,705	\$ 17,045,212
Building	4,722,647	20,535	-	4,743,182
Furniture and Fixtures	1,229,436	8,981	22,519	1,215,898
Computer Equipment	5,033,742	327,386	213,397	5,147,731
Vehicles	<u>474,468</u>	<u>29,263</u>	<u>81,115</u>	<u>422,616</u>
Total Depreciable Capital Assets	<u>29,974,399</u>	<u>1,508,976</u>	<u>2,908,736</u>	<u>28,574,639</u>
Less Accumulated Depreciation for:				
Library Books	14,611,509	1,429,375	2,591,705	13,449,179
Building	794,616	118,181	-	912,797
Furniture and Fixtures	1,174,030	18,098	22,519	1,169,609
Computer Equipment	3,382,376	696,437	206,477	3,872,336
Vehicles	<u>373,982</u>	<u>63,509</u>	<u>67,819</u>	<u>369,672</u>
Total Accumulated Depreciation	<u>20,336,513</u>	<u>2,325,600</u>	<u>2,888,520</u>	<u>19,773,593</u>
Total Depreciable Capital Assets, Net	<u>\$ 9,637,886</u>	<u>\$ (816,624)</u>	<u>\$ 20,216</u>	<u>\$ 8,801,046</u>

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 8 – Fund Balance

The following table shows the fund balance classifications as shown on the governmental funds balance sheet as of June 30, 2021:

	General Fund	Gifts and Grants Fund	Total Governmental Funds
Fund Balance			
Assigned:			
Cleveland County Libraries	\$ 124,560	\$ -	\$ 124,560
McClain County Libraries	173,995	-	173,995
Pottawatomie County Libraries	50,000	-	50,000
Library Projects	220,000	-	220,000
Special Revenue Funds		752,601	752,601
Committed:			
Reserved for Encumbrances	757,979	821	758,800
Unassigned	14,833,380	-	14,833,380
Total Fund Balance	<u>\$ 16,159,914</u>	<u>\$ 753,422</u>	<u>\$ 16,913,336</u>

Note 9 – Defined Benefit Retirement Plan

Plan Description - The Pioneer Library System Pension Plan and Trust (The Plan) is a single-employer public employees' retirement system (PERS) plan that covers all full-time employees of the System. This plan was frozen as of December 31, 2008 and closed to new entrants. Retirement benefits are based on length of service and salary. Normal retirement for the plan is 65 years of age. Death and deferred vested benefits are also available under the plan. All benefits vest after 10 years of credited service. Pioneer employees who retire after age sixty-five with more than four years of credited service are entitled to an annual retirement benefit, payable monthly, in an amount equal to one percent of their average salary based on their highest five consecutive years within 10 years of retirement. If an employee has less than 10 years of vesting service, the amount of the benefit is reduced by 1/10th for each vesting year of service fewer than ten. Actuarial valuations are performed annually on January 1.

Plan membership as at June 30, 2021 consisted of the following:

Inactive plan members or beneficiaries currently receiving benefits	32
Inactive plan members entitled to but not yet receiving benefits	32
Active plan members	<u>51</u>
Total plan members	<u>115</u>

Funding Policy - Employees of the System are not required to contribute to the plan. The System is required to make annual contributions based on an actuarially computed percentage of covered wages in amounts sufficient to cover normal cost of benefits and amortize the prior service liabilities. The Pioneer Library System Board of Trustees has the authority to establish and or amend the funding policy of the plan. No contribution was made to the plan for the year ended June 30, 2021 because the System is terminating the plan.

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 9 – Defined Benefit Retirement Plan (continued)

Termination of the Defined Benefit Retirement Plan – The System’s Board of Trustees voted at their meeting on April 27, 2021 to terminate the plan. All of the plan assets were transferred to a money market account with Empower on June 24, 2021 in anticipation of the plan termination. Members of the plan will be provided an election window in July 2021 to elect whether to receive a lump sum cash payment directly to the member, to receive a lump sum amount that can be rolled over into one of the other existing plans with the system or rolled over into an IRA, or elect to receive annuity payments. The lump sum payment amounts will be issued in September of 2021. In September of 2021 the System will issue an invitation to bid to insurance companies to provide the annuity payments to those members who elect to receive a monthly annuity payment. The bid will be awarded in September and the plan should be closed out in early October of 2021.

Net Pension Liability – The System’s net pension liability was measured as of December 31, 2020, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of that date. The total pension liability in the December 31, 2020 actuarial valuation was determined using a revised interest rate and investment rate of return of 0.5%, down from 6% in prior year. This long-term expected rate of return was obtained from the trustee of the plan assets.

The actuarial assumptions used in the December 31, 2020 valuation were based on the results of an actuarial experience study for the period January 1, 2020 through December 31, 2020. In addition, the mortality rates were based on the RP-2014 Mortality Table using Scale MP-2020 instead of the RP-2014 Mortality Table using scale MP-2019 which was the table used for the previous year’s calculation.

The discount rate used to measure the total pension liability was 6%. The projection of cash flows used to determine the discount rate assumed that contributions from the System will be made at contractually required rates, as actuarially determined. Based on this assumption, the Plan’s fiduciary net position was projected to be available to make all projected future benefit payments of current active and inactive employees. Therefore, the long-term expected rate of return on Plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

Changes in Net Pension Liability or (Assets) – Changes in the System’s net pension liability for the year ended June 30, 2021 were as follows:

	Increase (Decrease)		
	Total Pension Liability (a)	Plan Fiduciary Net Position (b)	Net Pension Liability (a) - (b)
Balance, June 30, 2020	\$ 3,686,833	\$ 3,969,107	\$ (282,274)
Changes for the year:			
Interest	211,889	-	211,889
Difference between expected and actual experience	82,513	-	82,513
Net investment income	-	522,026	(522,026)
Administrative Expense	-	(34,149)	34,149
Change of assumptions	(48,203)	-	(48,203)
Contributions - employer	-	307,257	(307,257)
Benefit payments including refunds of employee contributions	(267,700)	(267,700)	-
Net Changes	(21,501)	527,434	(548,935)
Balance, June 30, 2021	\$ 3,665,332	\$ 4,496,541	\$ (831,209)

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 9 – Defined Benefit Retirement Plan (Continued)

Sensitivity of the Net Pension Liability to Changes in the Discount Rate – The following presents the net pension liability calculated using the discount rate of 6%, as well as what the net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower (5%) or 1 percentage point higher (7%) than the current rate:

	1% Decrease (5.00%)	Current Discount Rate (6.00%)	1% Increase (7.00%)
Pension Liability	\$ 4,032,734	\$ 3,665,332	\$ 3,353,726
Fiduciary Net Position	4,496,541	4,496,541	4,496,541
Net Pension Liability	<u>\$ (463,807)</u>	<u>\$ (831,209)</u>	<u>\$ (1,142,815)</u>

The Plan's annual financial report is available from the Business Office of the Pioneer Library System, 300 Norman Center Court, Norman, Oklahoma 73072.

Pension Expense, Deferred Outflows of Resources, and Deferred Inflows of Resources – For the year ended June 30, 2021; the System recognized a pension expense of \$232,556. At June 30, 2021, the System reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	<u>Balances at June 30, 2021</u>	
<u>Source</u>	<u>Deferred Outflows of Resources</u>	<u>Deferred Inflows of Resources</u>
Differences between expected and actual experience	\$ 148,712	\$ (46,382)
Changes of assumptions	46,624	(60,247)
Net difference between projected and actual earnings on investments	-	(784,824)
Contribution to pension plan after measurement date	-	-
Total	<u>\$ 195,336</u>	<u>\$ (891,453)</u>

Deferred outflows of resources related to pensions resulting from System contributions of \$0 subsequent to the measurement date will be recognized as a reduction of the net pension asset in the year ended June 30, 2021. Other amounts reported as deferred outflows of resources and deferred inflows of resources will be recognized in pension expense as follows:

<u>Year</u>	
2021	\$ (147,120)
2022	(158,796)
2023	(252,384)
2024	(135,627)
2025	(2,190)
Thereafter	-

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 10 – Defined Contribution Retirement Plan

Plan Description - On January 1, 2009 the System implemented this plan. Normal retirement age for this plan is 65 years of age. Death and deferred vested benefits are also available under this plan. All benefits vest after 5 years of credited service. Employees who retire after age sixty-five will receive their vested benefits in one of the following manners out of the amount accumulated in their accounts: (i) by lump sum payments, or (ii) in equal monthly, quarterly, semi-annual or annual installment payments; provided an installment election must be for a period less than their life expectancy or the life expectancy of their beneficiaries.

Funding Policy - Employees of the System are not required to contribute to the plan. The System makes an annual contribution based on a percentage of an employee's salary. For employees that are members of the Defined Benefit retirement plan that was frozen in 2008, the percentage of salary was based on an actuarial calculation that was done in 2008. These percentages were reviewed and recalculated during the current year which resulted in several of the percentages being changed. These new percentages were used when calculating the contributions to participants' accounts for 2021. The Pioneer Library System Board of Trustees has the authority to establish and or amend the funding policy of the plan. Contributions paid to the plan for the year ended June 30, 2021 totaled \$455,376.

Note 11 – Risk Management

The System is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions and natural disasters for which the System carries commercial insurance. There have been no significant reductions in coverage from the prior year and settlements have not exceeded coverage in the past three years.

Because the Pioneer Library System is substantially funded by ad valorem taxes, there was no significant loss of revenues due to the COVID-19 pandemic. However, the System's operations have continued to change due to the pandemic.

From April 1, 2021 to June 1, 2021 the System operated in phase five of the reopening plan. This phase ended the quarantining of materials, mail, and deliver. All kits, board books, magazines and newspapers now are allowed to circulate. No in-person programs in the branch or in the communities will be allowed until further notice. The System recommends that meeting rooms remain unavailable and that the essential services provided in the previous phase continue with the addition of browsing and Wi-Fi access in grab-and-go environment.

On May 12, 2021 the System entered phase six of the reopening plan. Branches cleared their meeting rooms and returned furniture to the floor. The System's facial covering mandate expired on May 19, 2021 in communities without a municipal mandate. The System continues to support staff and community members who chose to wear facial coverings. Computer time limits returned to normal and toys returned to the public floor. Beginning June 1, 2021 meeting rooms opened and became available to the public as the System returned to full capacity. In person programs may be held outside or in open-air settings. Branches may host outdoor activities and participate in outdoor events. Outreach may resume.

On August 5, 2021 the System announced that outdoor programming will continue for children 11 and under in alignment with the System's Safety for Children Policy. Indoor programming for customers 12 and up will be available in settings where physical distancing can be accommodated and control of the size

PIONEER LIBRARY SYSTEM
Notes to Financial Statements
June 30, 2021

Note 11 – Risk Management (continued)

of the group is possible. The System continues to follow CDC guidelines and recommends facial coverings for all staff and customers while they are indoors.

As of the date of this report on these financial statements, the virus continues to spread and the future effects of the continuing pandemic are unknown at this time.

Note 12 – Related Party Leases

The System leases space to the City of Norman (City) under an operating lease with annual mutual renewal, for a term of twenty years. Rent revenue under this lease equaled \$115,961, included in Other Contracts on the Statement of Revenues, Expenditures, and Changes in Fund Balances – Governmental Funds. Under this lease agreement the City agreed to pay \$50,000 a year for ten years as reimbursement for costs incurred to remodel the space for a total of \$500,000. If the lease is not mutually renewed the remainder of \$500,000 is to be remitted to the System.

The cost of the leased space is included in the Building category in Note 7 – Capital Assets, and the amount of accumulated depreciation thereon. The amount of cost attributable to only the leased space is not determinable and therefore not disclosed here.

Note 13 – Subsequent Events

Subsequent events have been evaluated through the issuance date of this report.

On April 28, 2021 a significant hail storm came through Norman and the System's building located at 300 Norman Center Court was in the path of the storm. Several of the System's vehicles and the System's building received damage from the storm. The claims filed on the vehicles were completed immediately. The claim filed on the building for roof damage was finally settled on August 30, 2021 for a total cost of \$444,047. These repairs will happen in the fall of 2021.

PIONEER LIBRARY SYSTEM
Budgetary Comparison Schedule – General Fund (Unaudited)
For the Year Ended June 30, 2021

	Budgeted Amounts Original	Budgeted Amounts Final	Actual Amounts GAAP Basis	Budget to GAAP Differences Over(Under)	Actual Amounts Budgetary Basis	Variance with Final Budget Positive (Negative)
Resources (inflows)						
Property Taxes	\$ 18,463,547	\$ 19,227,473	\$ 19,551,112	\$ (75,804)	\$ 19,626,916	\$ 399,443
State Revenue	117,500	117,500	111,079	-	111,079	(6,421)
Interest	50,000	40,000	29,982	564	29,418	(10,582)
Other	316,373	316,373	340,806	15,309	325,497	9,124
Use of Designated Fund Balance	-	292,986	-	-	-	(292,986)
Amounts Available for Appropriation	18,947,420	19,994,332	20,032,979	(59,931)	20,092,910	98,578
Charges to Appropriations (outflows)						
Personnel Services	12,464,372	12,620,922	10,902,689	47,789	10,950,478	1,670,444
Materials	2,500,000	2,872,887	2,777,517	36,087	2,813,604	59,283
General and Administrative	1,174,500	1,254,051	940,055	(1,360)	938,695	315,356
Technology	1,400,000	1,890,548	1,038,751	13,289	1,052,040	838,508
System Services	745,000	870,000	431,686	(4,667)	427,019	442,981
Total Charges to Appropriations	18,283,872	19,508,408	16,090,698	91,138	16,181,836	3,326,572
Change in Net Assets	663,548	485,924	3,942,281	(151,069)	3,911,074	(3,227,994)
Beginning Fund Balance	9,470,139	11,924,648	11,924,648	-	11,924,648	-
Ending Fund Balance	\$ 10,133,687	\$ 12,410,572	\$ 15,866,929	\$ (151,069)	\$ 15,835,722	\$ (3,227,994)

Budget to Actual Reconciliation:

Revenues on a budgetary basis are based on cash received rather than the modified accrual basis used for financial reporting	\$ (59,931)
Encumbrances for the prior fiscal year which were included in the year ordered for budgetary purposes but were cancelled during the current budgetary year	(91,138)
	<u>\$ (151,069)</u>

Notes to required Budgetary Information

Note Budgeting and Budgetary Control

Oklahoma Statute requires the System to prepare an annual budget. The budget is filed with the Oklahoma Department of Libraries, various City or Town Clerks if the City or Town has a PLS Board of Directors member, the County Commissioners and County Excise Boards of each County that is a System member, the Oklahoma State Auditor, the Oklahoma State Inspector, and the State of Oklahoma Equalization Board. The System adopts its budget at the fund level.

Budgetary Basis of Accounting

Under the budgetary basis of accounting, revenues are recognized when they are received rather than earned. Purchases of materials, outside services and capital outlay are recognized as expenditures when the commitment to purchase is made (encumbered).

PIONEER LIBRARY SYSTEM
Schedule of Changes in Net Pension Liability (Unaudited)
Last Ten Years

Pioneer Library System Pension Plan and Trust

Schedule of Changes in Net Pension Liability

For the Year Ended December 31	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Total Pension Liability										
Service Cost	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest	211,889	224,544	227,221	235,645	252,873	239,135	240,458	252,881	238,612	248,546
Changes of benefit terms	-	-	-	-	-	-	-	-	-	-
Differences between expected and actual experience	82,513	(73,424)	45,793	124,628	10,006	107,515	(29,079)	49,618	247,559	(116,955)
Changes of assumptions	(48,203)	(13,805)	(8,364)	(26,958)	-	357,460	-	(618,094)	-	244,140
Benefit payments, including refunds of member contributions	(267,700)	(385,772)	(393,085)	(394,007)	(706,017)	(244,284)	(259,643)	(252,483)	(201,018)	(158,505)
Net change in total pension liability	\$ (21,501)	\$ (248,457)	\$ (128,435)	\$ (60,692)	\$ (443,138)	\$ 459,826	\$ (48,264)	\$ (568,078)	\$ 285,153	\$ 217,226
Total Pension Liability--Beginning	3,686,833	3,935,290	4,063,725	4,124,417	4,567,555	4,107,729	4,155,993	4,724,071	4,438,918	4,221,692
Total Pension Liability--Ending (a)	\$ 3,665,332	\$ 3,686,833	\$ 3,935,290	\$ 4,063,725	\$ 4,124,417	\$ 4,567,555	\$ 4,107,729	\$ 4,155,993	\$ 4,724,071	\$ 4,438,918
Plan fiduciary net position										
Contributions--employer	\$ 307,257	\$ 320,506	\$ 179,749	\$ 269,607	\$ 490,156	\$ 83,368	\$ 56,500	\$ 208,000	\$ 208,000	\$ 146,000
Contributions--member	-	-	-	-	-	-	-	-	-	-
Net investment income	522,026	731,845	(166,936)	458,600	305,447	(63,755)	135,323	481,674	310,945	(27,967)
Benefit payments, including refunds of member contributions	(267,700)	(385,772)	(393,085)	(394,007)	(706,017)	(244,284)	(259,643)	(252,483)	(201,018)	(158,505)
Administrative expense	(34,149)	(32,728)	(32,844)	(32,981)	(33,731)	(31,409)	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-
Net change in plan fiduciary net position	\$ 527,434	\$ 633,851	\$ (413,116)	\$ 301,219	\$ 55,855	\$ (256,080)	\$ (67,820)	\$ 437,191	\$ 317,927	\$ (40,472)
Plan fiduciary net position--beginning	3,969,107	3,335,256	3,748,372	3,447,153	3,391,298	3,647,378	3,715,198	3,278,007	2,960,080	3,000,552
Plan fiduciary net position--ending (b)	\$ 4,496,541	\$ 3,969,107	\$ 3,335,256	\$ 3,748,372	\$ 3,447,153	\$ 3,391,298	\$ 3,647,378	\$ 3,715,198	\$ 3,278,007	\$ 2,960,080
PLS net pension liability (asset)--ending (a) - (b)	\$ (831,209)	\$ (282,274)	\$ 600,034	\$ 315,353	\$ 677,264	\$ 1,176,257	\$ 460,351	\$ 440,795	\$ 1,446,064	\$ 1,478,838
Plan fiduciary net position as a percentage of the total pension liability	122.68%	107.66%	84.75%	92.24%	83.58%	74.25%	88.79%	89.39%	69.39%	66.68%
Covered-employee Payroll	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Net pension liability (asset) as a percentage of covered-employee payroll	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Notes to Schedule:

Information is not provided for years prior to 2009 due to it not being available.

Covered-employee payroll is not provided after 2008 since the plan was frozen December 31, 2008 and participants no longer accrue additional benefits.

Changes of assumptions - In 2011, amounts reported as changes of assumptions resulted primarily from the actuary correcting an error based on him using the wrong assumptions for his lump sum calculations.

In 2013, amounts reported as changes of assumptions resulted primarily from changing the interest rate, changing the cost method, and changing the mortality tables.

In 2015, amounts reported as changes of assumptions resulted from the changing of the mortality tables.

In 2017, amounts reported as changes of assumptions resulted from the update to the mortality projection scale contained in the mortality tables.

In 2018, amounts reported as changes of assumptions resulted from the change to the mortality tables.

In 2018, amounts reported as changes of assumptions resulted from the change to the mortality tables.

In 2020, amounts reported as changes of assumptions resulted from the update of the mortality improvement scale from MP-2019 to MP-2020.

PIONEER LIBRARY SYSTEM
Schedule of Pension Contributions (Unaudited)
Last Ten Years

Pioneer Library System Pension Plan and Trust
Schedule of Pension Contributions

For the Year Ended December 31	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
Actuarially determined contribution	\$ 39,691	\$ 241,012	\$ 157,203	\$ 169,607	\$ 240,155	\$ 68,369	\$ 56,500	\$ 176,976	\$ 197,670	\$ 149,985
Contributions in relation to the actuarially determined contribution	<u>307,257</u>	<u>320,506</u>	<u>179,749</u>	<u>269,607</u>	<u>490,156</u>	<u>83,368</u>	<u>56,500</u>	<u>208,000</u>	<u>208,000</u>	<u>146,000</u>
Contribution deficiency (excess)	<u><u>\$(267,566)</u></u>	<u><u>\$ (79,494)</u></u>	<u><u>\$ (22,546)</u></u>	<u><u>\$(100,000)</u></u>	<u><u>\$(250,001)</u></u>	<u><u>\$ (14,999)</u></u>	<u><u>\$ -</u></u>	<u><u>\$ (31,024)</u></u>	<u><u>\$ (10,330)</u></u>	<u><u>\$ 3,985</u></u>
Covered-employee Payroll	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Contributions as a percentage of covered-employee payroll	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Notes to schedule:

Valuation date:

Actuarially determined contribution rates are calculated as of December 31, six months prior to the end of the fiscal year in which contributions are reported.

Methods and assumptions used to determine contribution rates:

Actuarial cost method

Active and terminated vested participants are assumed to elect a 10 year Certain and Life Annuity upon retirement.

Amortization method

Level dollar

Remaining amortization period

Unfunded past service liability, 10 year closed period beginning January 1, 2014. Subsequent plan year gains and losses are amortized over five years.

Asset valuation method

Market value of assets

Inflation

N/A

Salary increases

N/A - plan is frozen

Investment rate of return

0.50%

Retirement age

100% at age 65

Mortality

RP - 2014 Mortality Table projected using scale MP-2020

Other information:

Covered-employee payroll is not provided since the plan was frozen December 31, 2008 and participants no longer accrue additional benefits.



Gray, Blodgett & Company, PLLC

CERTIFIED PUBLIC ACCOUNTANTS
BUSINESS ADVISORS

629 24TH AVE SW
NORMAN, OKLAHOMA 73069
(405) 360-5533 FAX (405) 364-3771

TED BLODGETT, CPA, CVA, ABV, JD
C. JANESE SHEPARD, CPA
ROSS H. ROYE, CPA
SAM BLODGETT, CPA
CYNTHIA K. BYARS, CPA
JONATHAN M. KERN, CPA
JERRY D. KING, CPA
BREE MONTOYA, CPA, CVA, ABV
RHONDA E. RAY, CPA
CHRISTINE J. STEPHENS, CPA
BRIAN C. WILKINS, CPA
TIM WILSON, CPA
JASON D. WINTERS, CPA

INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

September 28, 2021

To the Board of Trustees of
Pioneer Library System
Norman, Oklahoma

We have audited the financial statements of the governmental activities, the aggregate discretely presented component unit, each major fund and the fiduciary fund type of Pioneer Library System (the System), as of and for the year ended June 30, 2021, and the related notes to the financial statements, which collectively comprise the System's basic financial statements, and have issued our report thereon dated September 28, 2021. We conducted our audit in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. The financial statements of the aggregate discretely presented component unit, the Pioneer Library System Foundation, were not audited in accordance with *Government Auditing Standards*, and accordingly, this report does not include reporting on internal control over financial reporting or instances of reportable noncompliance associated with the Pioneer Library System Foundation.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the System's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the System's internal control. Accordingly, we do not express an opinion on the effectiveness of the System's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

To the Board of Trustees of
Pioneer Library System
September 28, 2021

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the System's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

GRAY, BLODGETT & COMPANY, PLLC
Gray, Blodgett & Company, PLLC



Gray, Blodgett & Company, PLLC

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NORMAN, OKLAHOMA 73069
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September 28, 2021

To the Board of Trustees
Pioneer Library System

We have audited the financial statements of the governmental activities, the aggregate discretely presented component unit, each major fund, and the fiduciary fund information of Pioneer Library System for the year ended June 30, 2021. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller of the United States, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated June 21, 2021. Professional standards also require that we provide you with the following information related to our audit.

Our Responsibility under U.S. Generally Accepted Auditing Standards

As stated in our engagement letter dated June 21, 2021, our responsibility, as described by professional standards, is to express an opinion about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

Planned Scope and Timing of the Audit

We performed the audit according to the planned scope and timing previously communicated to management in telephone and electronic mail discussions about planning matters.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by Pioneer Library System are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during

To the Board of Trustees
Pioneer Library System
September 28, 2021

the year. We noted no transactions entered into by the System during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events.

Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the System's financial statements were:

Management's estimate of depreciation expense is based on the expected lives of depreciable assets. We evaluated the key factors and assumptions used to develop depreciation expense in determining that it is reasonable in relation to the financial statements taken as a whole.

The estimate of fair market value of investments held by the System is also considered a sensitive estimate. Management's estimate of the market values is based on information as provided by a third party. We evaluated the key factors and assumptions used to develop the estimate in determining that it is reasonable in relation to the financial statements taken as a whole.

The estimate of net pension asset is based on actuarial assumptions, investment performance of fiduciary assets, and the difference between the actual and expected experience of participants. We evaluated the key factors and assumptions used to develop the estimate in determining that it is reasonable in relation to the financial statements taken as a whole.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

To the Board of Trustees
Pioneer Library System
September 28, 2021

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. There were no material misstatements detected as a result of audit procedures.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditors' report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated September 28, 2021.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the System's financial statements or a determination of the type of auditors' opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the System's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

To the Board of Trustees
Pioneer Library System
September 28, 2021

Other Matters

We applied certain limited procedures to management's discussion and analysis, the budgetary comparison schedule, the schedule of changes in net pension liability, and the schedule of pension contributions, which is required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with managements' responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

Restriction on Use

This information is intended solely for the use of the board of trustees and management of Pioneer Library System and is not intended to be and should not be used by anyone other than these specified parties.

GRAY, BLODGETT & COMPANY, PLLC
Gray, Blodgett & Company, PLLC

Regular Board of Commissioners

2. d.

Meeting Date: 10/18/2021

Library Budget

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acknowledge receipt of Pioneer Library System Revised Budget for July 1, 2021 through June 30, 2022.

Attachments

PLS Revised Budget

**PIONEER LIBRARY SYSTEM
REVISED BUDGET
JULY 1, 2021- JUNE 30, 2022**

REVENUES

Ad Valorem Taxes			
Cleveland County	\$15,272,048		
McClain County	2,347,320		
Pottawatomie County	2,555,138		
Total Ad Valorem Taxes		\$20,174,506	
Oklahoma Department of Libraries			
State Aid	\$111,079		
Total State Aid		\$111,079	
Other Revenue	\$314,536		
		\$314,536	
Subtotal All Revenue			\$20,600,121
Release of Fund Balance			
Reserved for Encumbrances			\$757,979
Fund Balance			
Fund Balance Carryover			
Assigned Fund Balance			\$568,555
Unassigned Fund Balance			\$14,909,184
Total Fund Balance			<u>\$15,477,739</u>
TOTAL REVENUE			<u><u>\$36,835,839</u></u>

EXPENDITURES

Personnel Services	\$12,708,837		
Books and Other Materials	3,043,268		
General & Administrative	2,120,791		
Technology	2,394,940		
System Services	936,458		
(Development, Programming, System Facilities)			
(Marketing and Communication, Outreach, Employee Development)			
Subtotal All Expenditures			<u>\$21,204,294</u>
Fund Balance			
Fund Balance Assigned - Current Year			\$153,806
Fund Balance Carryover - Prior Year			
Assigned Fund Balance			\$568,555
Unassigned Fund Balance			\$14,909,184
Total Fund Balance			<u>\$15,477,739</u>
TOTAL GENERAL FUND EXP & FUND BALANCE			<u><u>\$36,835,839</u></u>


Jeannette McNally, Chair


Lisa Wells, Secretary

9/28/2021

Regular Board of Commissioners

2. e.

Meeting Date: 10/18/2021

Resignation

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acknowledge the resignation of Cami Engles from the Planning Commission.

Attachments

Resignation

From: [Kacie Eck](#)
To: [Kacie Eck](#)
Subject: FW: Planning Commission Resignation
Date: Thursday, October 14, 2021 2:18:08 PM

From: Cami Engles
Sent: Tuesday, October 5, 2021 1:37 PM
To: Rachel Clyne
Subject: [EXTERNAL EMAIL]Planning Commission Resignation

"CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe."

Hello Rachel,
I'm writing to inform you of my resignation from the planning commission, as I have taken on the City Commission Ward 2 seat. It was a pleasure to work with you as well as the commissioners. I wish you guys the best of luck on your search to fill my seat.
Thank you and have a wonderful week ahead.
Cami Engles

Regular Board of Commissioners

2. f.

Meeting Date: 10/18/2021

Easement

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acceptance of a Temporary Grading and Permanent Drainage Easement for Cedar Ridge Investments, LLC, located in the southwest quarter of the northwest quarter of Section 5, Township 10 North, Range 4 East.

Attachments

Easement

TEMPORARY & PERMANENT DRAINAGE EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT Hudimax II, LLC in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, and warrant unto the City of Shawnee, an Oklahoma municipal corporation, its successors and assigns, the right, privilege and authority to enter upon and operate, maintain a storm sewer drainage box, combined with a temporary grading easement for improvements to the existing drainage system including the right of ingress and egress to and from said easement across adjoining lands of grantors, upon and across the following real property and premises, situated in Pottawatomie County, State of Oklahoma, to wit:

(See Attachment 'A')

Said temporary easement will terminate upon completion of the grading by Cedar Ridge Investments, LLC to the owner's satisfaction.

The rights and privileges above granted to continue in perpetuity.

Signed and delivered this 8 day of September, 2021.

Max Fairchild
OWNER

OWNER

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF OK, COUNTY OF OKLA SS.

Before me, a Notary Public, within and for said County and State on this 8 day of

SEP, 2021, personally appeared Max Fairchild
(NAME)

of owner, to me known to be the identical person(s) who executed the within and
(TITLE)

foregoing instrument and acknowledged to me that Max Fairchild executed the same as owner
free and voluntary act and deed for the uses and purposes set forth.

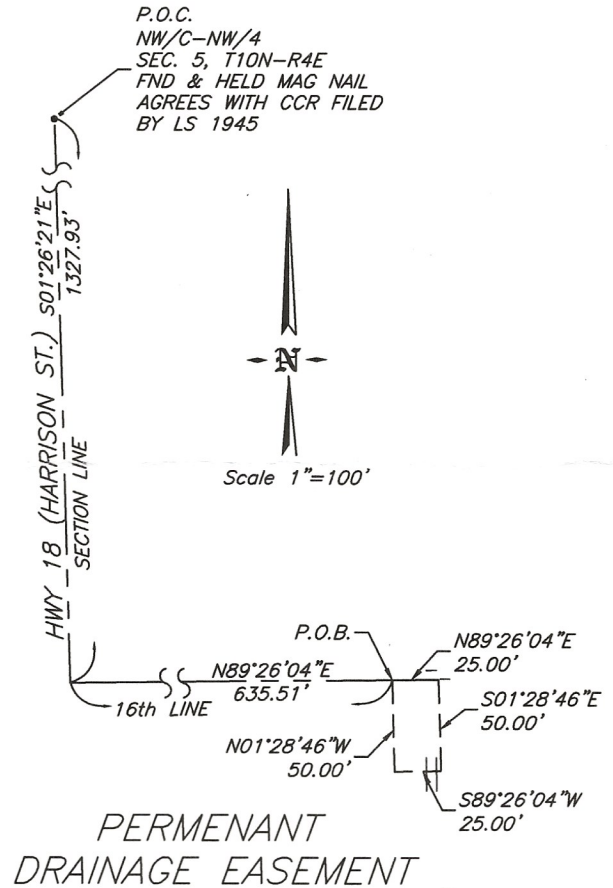
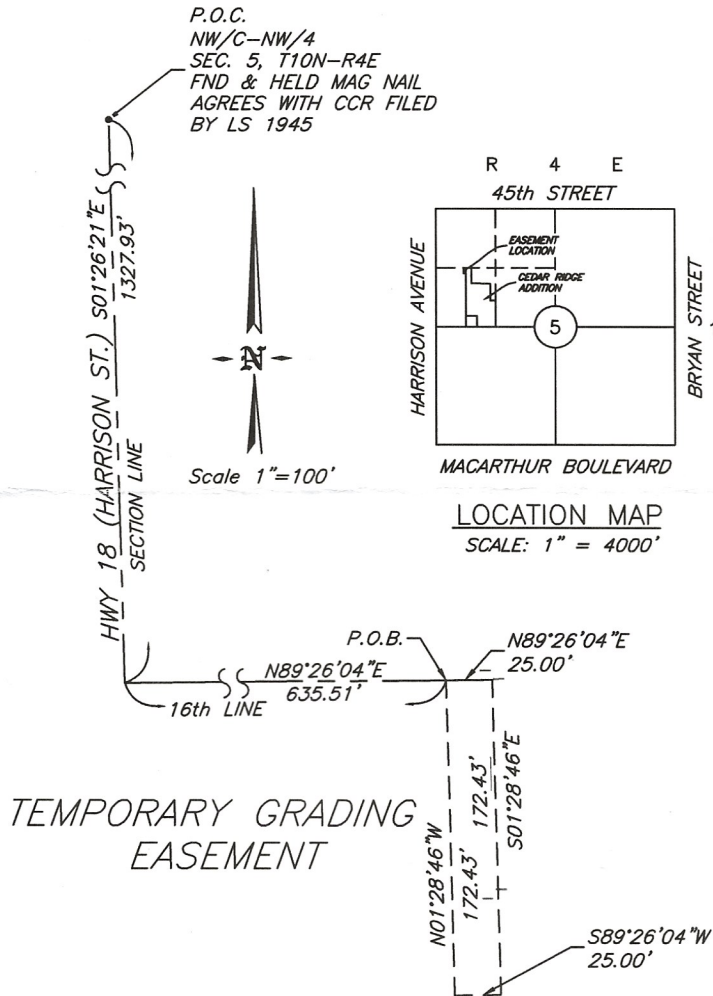
Witness my hand and seal the day and year last above written.

My commission Expires: 8-4-25

Shelly D. Ray
Notary Public



ATTACHMENT "A"



DRAINAGE EASEMENT DESCRIPTION:

A TRACT OF LAND BEING A PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (E/2-SW/4-NW/4) OF SECTION FIVE (5), TOWNSHIP TEN (10) NORTH, RANGE FOUR (4) EAST OF THE INDIAN MERIDIAN, POTTAWATOMIE COUNTY, OKLAHOMA, WITH A BASIS OF BEARING OF S01°26'21"E ALONG THE WEST LINE OF SAID NW/4, BASED ON OKLAHOMA SOUTH STATE PLANE COORDINATE SYSTEM, AND MORE PARTICULARLY DESCRIBED AS: COMMENCING AT A MAG NAIL AT THE NORTHWEST CORNER (NW/C) OF SAID NW/4; THENCE S01°26'21"E ALONG THE WEST LINE OF SAID NW/4 A DISTANCE OF 1327.93 FEET TO A POINT ON THE NORTH LINE OF THE SW/4-NW/4 OF SAID SECTION 5; THENCE N89°26'04"E ALONG SAID NORTH LINE A DISTANCE OF 635.51 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N89°26'04"E A DISTANCE OF 25.00 FEET; THENCE S01°28'46"E A DISTANCE OF 50.00 FEET; THENCE S89°26'04"W A DISTANCE OF 25.00 FEET; THENCE N01°28'46"W A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.028 ACRES MORE OR LESS.

TEMPORARY GRADING EASEMENT DESCRIPTION:

A TRACT OF LAND BEING A PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (E/2-SW/4-NW/4) OF SECTION FIVE (5), TOWNSHIP TEN (10) NORTH, RANGE FOUR (4) EAST OF THE INDIAN MERIDIAN, POTTAWATOMIE COUNTY, OKLAHOMA, WITH A BASIS OF BEARING OF S01°26'21"E ALONG THE WEST LINE OF SAID NW/4, BASED ON OKLAHOMA SOUTH STATE PLANE COORDINATE SYSTEM, AND MORE PARTICULARLY DESCRIBED AS: COMMENCING AT A MAG NAIL AT THE NORTHWEST CORNER (NW/C) OF SAID NW/4; THENCE S01°26'21"E ALONG THE WEST LINE OF SAID NW/4 A DISTANCE OF 1327.93 FEET TO A POINT ON THE NORTH LINE OF THE SW/4-NW/4 OF SAID SECTION 5; THENCE N89°26'04"E ALONG SAID NORTH LINE A DISTANCE OF 635.51 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N89°26'04"E A DISTANCE OF 25.00 FEET; THENCE S01°28'46"E A DISTANCE OF 172.43 FEET; THENCE S89°26'04"W A DISTANCE OF 25.00 FEET; THENCE N01°28'46"W A DISTANCE OF 172.43 FEET TO THE POINT OF BEGINNING, CONTAINING 0.099 ACRES MORE OR LESS.

Landes Engineering, LLC
903 E. 35th St., P.O. BOX 1032
SHAWNEE, OK. 74802-1032
(405) 275-5388

Cedar Ridge Investments, LLC
SHAWNEE, OKLAHOMA
DRAINAGE EASEMENT
ATTACHMENT "A"

DATE: 01/19/2021

REV.

DRAWN BY: ml

CHECKED: STL

DRAWING NUMBER: 1 OF 1

Community Acknowledgement

ACCEPTED by the City of Shawnee

this _____ day of _____, 2021.

City Clerk

REVIEWED for form and legality

Assistant Municipal Counselor

APPROVED by the Mayor of the City of

Shawnee this ____ day of _____, 2021.

Mayor

Regular Board of Commissioners

2. g.

Meeting Date: 10/18/2021

Lake Lease

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Lake Lease Transfer:

TRANSFER:

Lot 6 Eckel Tract, 15305 Eckel Road

From: Patrick and Judith Henderson

To: Patrick and Judith Henderson, Levi Cain Weems

Attachments

Lake Lease

Community
Development
Department



222 N Broadway
Shawnee, OK
74801
405-878-1666

**SHAWNEE TWIN LAKES CABIN SITE LEASES
SUMMARY / INSPECTION REPORT – FOR RENEWLS / TRANSFERS**

Date: 10/18/2021	License No. 2226
Type	☒ Renewal ☐ Transfer
Commission Meeting Date	10/18/2021
Property Address	15305 Eckel Rd
Lake Site Location	Eckel Tract / Lot 6
Lease Dates	10/18/2021 - 10/18/2051
Lease Fee (changes annually)	746.00
Inspection Fee	\$75.00 Applicable: ☒ Yes ☐ No
Lessee (Transfer To)	
Name(s)	Patrick & Judith Henderson, Levi Cain Weems
Address	7501 NW 38th St, Bethany, OK 73008
Phone	405.641.3705, 405.202.7568, 405.820.1669
Current Lessee (Transfer From)	
Name(s)	Patrick & Judith Henderson
Address	7501 NW 38th St, Bethany, OK 73008
Phone	405.641.3705, 405.202.7568
Inspection Information	
Inspection Required	☒ Yes ☐ No
DEQ Report on File	☒ Yes ☐ No
Type of Septic	☒ Conventional ☐ Aerobic
Last Inspected/Pumped	09/08/2017
Miscellaneous Comments:	Current Lease - \$746.00 Inspection Fee - \$75.00
Fees Collected	\$821.00 Check 16232, Rec #673



Cabin Site Lease

PLEASE READ CAREFULLY

THIS LEASE IS NOT TRANSFERABLE AND IS SUBJECT TO CANCELLATION BY THE CITY FOR ANY VIOLATIONS OF THE TERMS THEREOF AS MORE SPECIFICALLY SET FORTH IN SECTION 16-326 OF THE SHAWNEE MUNICIPAL CODE:

LEASE # 2226 TRACT NAME Eckel LOT # 6

STATE OF OKLAHOMA, POTTAWATOMIE COUNTY, SS:

This Lease was made and entered into in duplicate this date of 10/18/2021 by and between the CITY OF SHAWNEE, a municipal Corporation, PARTY OF THE FIRST PART, and

PATRICK H & JUDITH HENDERSON, LEVI CAIN WEEMS,
7501 NW 38TH ST
BETHANY, OK 73008

PARTY OF THE SECOND PART.

WITNESSETH: That the first party in consideration of the sum of \$746.00 dollars for 2021, does hereby acknowledge receipt of the applicable rental fee, and other good and valuable considerations, does by these presents demise, lease and let unto the second party the following described real estate situated on, and part of the site, owned by the first party as a City Reservoir and known as Shawnee Twin lake No. 1, in the County of Pottawatomie State of Oklahoma, to-wit:

15305 ECKEL RD

TO HAVE AND TO HOLD SAME UNTO the second party for a term of thirty (30) years from the date hereof.

IT IS FURTHER mutually understood and agreed by and between the parties hereto as follows:

The said party of the second part shall and will and does hereby agree to pay to the first party annual lease payments as set forth in "Exhibit A", payable yearly in advance. The City shall retain the right to adjust the lease rate schedule at the termination of the original 30-year lease or at such time that a transfer is approved in accordance with Section 16-321 of the Shawnee Municipal Code (hereafter "SMC").

That at the expiration of the primary term hereof, the lessee shall have the right and option to renew said lease for an additional period of thirty (30) years under the terms and conditions set forth in Section 16-321 SMC. There is no limit to the number of times a lease can be renewed.

The premises of all lots leased by the City shall at all times be kept clean and maintained in a sanitary condition by the lessee. There is a 25-foot lakeshore buffer that extends landward of the ordinary high water mark on all leased lots for the purpose of watershed protection. This area shall not be used by the general public, except during an emergency situation. Within this buffer, leaseholders are encouraged to preserve existing native vegetation. Docks and other approved structures may be located within the buffer area. Fertilizers and other chemicals shall not be used within the buffer area. All other applicable City regulations and rules apply.

That in addition to the possession of the property so leased, the lessee shall have the right and privilege of a site for a boat house and boat dock on the land owned by the City adjoining and immediately in front of a lot leased, which said boat house shall be erected and maintained by and at the cost of the lessee on ground not to exceed

an area of thirty (30) feet by thirty (30) feet, which said boat house shall never be used as a place of human habitation, and which said boat house or boat dock shall conform to the provisions of Section 16-325 SMC, and that said boat dock or boat house shall be the private property of the lessee, who shall have the right of ingress and egress to and from the same, subject to the rights of the public as set forth herein. The lessee shall agree to keep said lot and boat house and dock in a clean and sanitary condition, and to maintain the same in a safe condition, and the City as lessor shall in no manner be liable to lessee for any damages suffered by lessee to said lot or boat house or dock, or the improvements thereon on account of the rise and fall of the water line of said lake, or for the enlargement or decrease by the City of the size of said lake, or on account of any rules or regulation that may hereafter be adopted by lessor, governing the regulations of said lake, and lessee agrees to hold the lessor free and harmless from all damages suffered by him or by any other person, on account of personal injuries or loss of property that may incur upon said lot, boat house, or boat dock.

That the lessee agrees to lease the premises **AS IS** from the lessor with the knowledge and understanding that the lessor does not guarantee access to lots. Should the Lessee determine that an access road is necessary to reach his/her lot from a road already in existence, lessee agrees to use his/her own funds to create said access road. Lessee further agrees that upon access road completion it shall not be a private road, but rather, will be available for public use, including, but not limited to, allowing neighbor lots to connect to it to improve access to their lots or to allow joint access to bordering lots upon the one access road. The location of any access road to be constructed by the lessee must be approved by the City Engineer of the City of Shawnee prior to the beginning of construction.

That should the lessee construct any building or other structure, said construction will be in accordance with City of Shawnee development regulations. Lessee agrees that prior to commencing construction on any structure on the leased premises he/she will obtain an approved building permit from the City.

That lessee is solely responsible for determining the flood elevation on the leased premises and is required to satisfy lessor that prior to any construction on the leased premises the determination of the flood elevation has been done correctly and that any structure or building to be constructed on the leased premises be above the flood elevation. **LESSOR EXPRESSLY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO SAFETY FROM FLOODING ON THE LEASED PREMISES AND LESSEE EXPRESSLY RELEASES THE LESSOR FROM ANY LIABILITY DUE TO FLOOD DAMAGE, BOTH PERSONAL AND PROPERTY, OCCURRING ON THE LEASED PREMISES FROM ANY CAUSE OR CONDITION.**

That all sanitary facilities to be constructed on the premises shall be wholly contained on the leased premises. Sanitary facilities, include, but are not limited to, septic tanks and lateral lines.

All septic systems and waste disposal systems on leased lake lots shall be inspected and subject to the standards set forth in Chapter 16 SMC. The leaseholder shall have sixty (60) days to correct any defects found in the system. Corrections not made within the allotted time shall be grounds for the City to cancel the lease of the leaseholder.

That no lease shall be assigned or sublet, but lessee may at any time during the term of his/her lease, sell and transfer to other parties the improvements on the lot leased by him/her.

That in the event of the sale of the improvements by the lessee, the transfer shall not become effective until approved by the Board of Commissioners of the City of Shawnee at a regular or adjourned meeting held for that purpose and the City as lessor reserves the right to reject and disapprove any transfer when in its opinion it would be to the best interests of the City and its inhabitants to do so. If the transfer is approved, a new lease shall be entered into between the purchaser and the City, and a transfer charge is hereby fixed and established in the sum of one-thousand dollars (\$1000.00) to be paid to the City prior to said transfer in accordance with Section 16-322 SMC.

That the lessee shall be the owner of all improvements which may be placed by him or her, said improvements including cabins or other buildings and boat houses constitute personal property and lessee shall have the right to remove same from the lot at the termination of the lease, subject to the following: whenever a lease has been cancelled by the City as provided herein or by ordinance, the lessee or owner of said improvements shall remove the same within sixty (60) days of the date of the said cancellation of the lease and upon failure to do so, said improvements shall revert to and become the property of the City of Shawnee. And it shall have the right, without further notice or demand to take immediate possession of all said improvements and these will belong to the first party or its assigns, as liquidated damages for the non-fulfillment of the lease by the lessee and for the use and rental thereof.

That the said second party does hereby release the City of Shawnee of any claim or claims for damages by reason of the cancellation of the said lease aforesaid.

That the second party shall at all times during the term of this lease be subject to and does hereby agree to abide by and conform to any rules, regulations or ordinances now in force, or that may hereafter be adopted by the City of Shawnee, governing the regulation of said lake and within the described premises, as to fishing, hunting, boating and other recreational activities upon and around said water reservoir, and to conform to and abide by all further rules, regulations and ordinances now in force, or that hereafter may be adopted by the City of Shawnee, Oklahoma, governing the regulations of said premises and lake.

The City Commission may upon a showing of intentional disregard for the terms of the lease and this division of other city ordinance pertaining to the lake, cancel the city lease upon 30 days notice to the lessee by mailing a copy of such notice to the lessee at his/her last known address. If a lease is cancelled either by the city or the lessee of a city-owned lot prior to the expiration of the lease term, the lessee shall pay the city an early termination fee of \$1,000 in exchange for a release of liability from the remaining term.

That this lease shall be binding upon the representatives, heirs, and assigns and successors in interest of the parties hereto.

It is understood by the parties hereto that a failure to comply with the terms of said Cabin Site Lease shall constitute a misdemeanor and any person, firm, or corporation convicted of such violation shall be punished by a fine not exceeding five hundred dollars (\$500.00) plus costs, or imprisonment for a term not exceeding thirty (30) days, or by such fine and imprisonment.

IN WITNESS WHEREOF, party of the first part has caused its name to be affixed hereto by the Mayor of the City of Shawnee, Oklahoma, and attested by the City Clerk, and the party of the second part hereunto affixed his/her name the day and year first above written.

CITY OF SHAWNEE, OKLAHOMA
A Municipal Corporation,

BY:

MAYOR
PARTY OF THE FIRST PART

ATTEST:

CITY CLERK

Justith B. Henderson

PARTY OF THE SECOND PART

Arthur Munk

PARTY OF THE SECOND PART

Leni Weems

Regular Board of Commissioners

5.

Meeting Date: 10/18/2021

Contract

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of a Contract with Latham Consulting Group and Dunnington Consulting for governmental and community affairs.

Attachments

Contract

CONSULTING AGREEMENT

THIS AGREEMENT is made and entered into as of ___October 1st_____, 2021, by and between Dunnington Consulting, and Latham Consulting an Oklahoma limited liability company, (“Consultant”) and the City of Shawnee, Oklahoma (“Client”).

RECITALS

A. Client is an Oklahoma Municipal Corporation, and Consultant has expertise related to the State of Oklahoma and its laws, regulations, and governmental agencies.

B. Client desires to retain the services of Consultant, and Consultant desires to render those services to Client.

In consideration of the mutual covenants contained in this agreement, the parties agree as follows:

1. Retention of Services. Client hereby appoints and retains the services of Consultant to provide the consulting services set forth on Exhibit A (the “Services”). Consultant accepts such appointments.

2. Term. This Agreement shall commence on the date hereof and shall continue for a period of 1 year.

3. Compensation and Billing. As compensation for the Services, Client shall pay Consultant in accordance with Exhibit B.

4. Reimbursement of Expenses. Client shall reimburse Consultant for all reasonable expenses incurred by Consultant in connection with the performance of the Services, including but not limited to filing and registration costs, meals, travel, and entertainment expenses, and copies and postage.

5. Representations, Warranties, and Covenants by Consultant. Consultant represents and warrants to, and covenants with, Client as follows:

(a) Consultant has obtained all licenses, permits, and approvals necessary for Consultant to perform the Services hereunder.

(b) Consultant will comply with all applicable laws, rules, and regulations in the performance of the Services.

6. Termination.

(a) In General. This Agreement may be terminated in any of the following events.

(i) By mutual agreement of the parties;

(ii) By either party, without cause, on 45 days' prior written notice to the other party; or

(i) By reason of material breach, as provided hereafter.

(b) Termination for Material Breach. If either party defaults by the failure to comply in all material respects with the terms of this Agreement, the other party may terminate this Agreement upon fifteen (15) days prior written notice to the defaulting party, unless the defaulting party cures such default within the 15-day period. This provision shall not constitute an election of remedies by either party, and each party shall have and retain all rights to damages at law and rights to equitable relief in the event of breach by the other party.

(c) On Termination. Upon termination of this Agreement, Client shall pay Consultant for Services rendered through the date of termination. Neither party shall have any further obligation to the other except for (i) obligations accruing prior to the date of termination, and (ii) obligations contained in this Agreement that are expressly made or otherwise contemplated to extend beyond the term of this Agreement.

7. Indemnification.

(d) By Consultant. Consultant shall indemnify and hold harmless Client and its employees, directors, officers, managers, members, shareholders, agents, and affiliates from and against any and all liability, claims, demands, costs, actions, and expenses, including reasonable attorneys' fees, which may result from or arise in connection with (i) the failure by Consultant, its employees, or agents to perform their obligations in accordance with this Agreement, or (ii) the negligent or intentional acts or omissions of Consultant, its employees, or agents.

(e) By Client. Client shall indemnify and hold harmless Consultant and its employees, directors, officers, agents, and affiliates from and against any and all liability, claims, demands, costs, actions, and expenses, including reasonable attorneys' fees, which may result from or arise in connection with (i) the failure by Client, its employees, or agents to perform their obligations in accordance with this Agreement, (ii) the negligent or intentional acts or omissions of Client, its employees, or agents.

8. Relationship between Parties. Consultant will furnish the Services as an independent contractor and not as an employee of Client. Except as required by this Agreement, Consultant shall be free to dispose of such portion of Consultant's time, energy, and skill which Consultant is not requested to devote hereunder to Client in such manner as Consultant sees fit to such persons, firms, or corporations as Consultant deems advisable. Consultant has no power or authority to bind Client in any manner. Consultant shall not by virtue of this Agreement be deemed to be partners or joint venturers.

9. Disclaimer of Warranties. Consultant agrees to put forth a good faith effort as it relates to time and talent to accomplish the stated legislative and governmental objectives of Client. It is mutually agreed and understood that Consultant cannot and does not either expressly or impliedly guarantee or warrant the results of Client's efforts.

10. Notices. Any and all notices, consents, or other communications by one party intended for the other shall be deemed to have been properly given if in writing and personally delivered, transmitted by electronic means, or deposited in the United States first class mails, postpaid, to the addresses or numbers set forth below the signatures of the parties.

2. General. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. Neither party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective legal representatives, successors and permitted assigns. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oklahoma. No right or remedy conferred in this Agreement upon or reserved to either Client or Consultant is intended to be exclusive of any other right or remedy. Each and every right and remedy shall be cumulative and in addition to any other right or remedy provided in this Agreement. The failure of Client or Consultant to insist upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. This Agreement is not intended to confer any right or benefit upon, or permit enforcement of any provision by, any patient or any person other than the parties to this Agreement.

11. Entire Agreement. This Agreement and its exhibits constitute the entire understanding and agreement of the parties with respect to its subject matter and cannot be changed or modified except by another agreement in writing signed by all parties.

[SIGNATURE PAGE FOLLOWS]

CONSULTANT:

DUNNINGTON CONSULTING, LLC

By _____
Name: _____ Jason Dunnington _____



Title: _____ President _____

Address: _____ 220 NW 13th St Suite #6
Oklahoma City, OK 73103 _____

Email: _____ jason@dunningtonconsulting.com _____

Fax: _____

CLIENT:

THE CITY OF SHAWNEE

By _____
Name: _____ Andrea Weckmueller-Behringer _____

Title: _____ City Manager

Address: _____ 16 W. 9th Street
Shawnee, OK 74801 _____

Email: _____
Andrea.Weckmueller-Behringer@shawneeok.org _____

Fax: _____

EXHIBIT A

Services

- Assist, inform, and advise Client regarding Client's legislative agenda in Oklahoma
- Work with Client on legislation during the 2022 OK Legislative Session as well as track bills and work against legislation deemed harmful to Client's cause.
- Help with managing coalitions and long term planning.
- Assist and develop strategic relationships between The City of Shawnee and legislative and community leaders
- Periodically meet with representatives and update representatives of Client to discuss Client's objectives and progress on legislation or other strategic plans

EXHIBIT B

Compensation

Dunnington Consulting will charge a monthly retainer of \$5,000 per month or \$15,000 per quarter depending on the desired billing of the client.

Regular Board of Commissioners

6.

Meeting Date: 10/18/2021

Ordinance

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of amendment to an ordinance regulating safe turning movements; signals required for turning, stopping, or decreasing speed.

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 19 (MOTOR VEHICLES AND TRAFFIC), ARTICLE IV. – (OPERATION OF VEHICLES) OF THE CODE OF ORDINANCES OF THE CITY OF SHAWNEE, SO AS TO FURTHER COMPORT WITH STATE LAW 47 O.S. 11-606; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, a proposal has been presented to the City Commission of the City of Shawnee, Oklahoma to amend Chapter 19 of the Code of Ordinances of the City of Shawnee, Oklahoma, and,

WHEREAS, the City Commission has determined that such modification and amendment is necessary and in the best interest of the health and safety of the citizens of the City of Shawnee, and for the efficient operations of municipal governance.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA, THE FOLLOWING:

SECTION 1. That section 19-169 of the Shawnee City Code is hereby amended to read follows:

Section 19-169: Safe turning movements; signals required for turning, stopping or decreasing speed.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway, as required in Section 19-167, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway, until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner provided in this section if any other traffic may be affected by such movement.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in this section to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(d) Any stop or turn signal when required in this section shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (e) of this section.

(e) Any motor vehicle in use on a street shall be equipped with and the required signal shall be given by signal lamps when the distance from the center to the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

(f) All signals required in this section to be given by hand and arm shall be given from the left side of the vehicle in the following manner, and such signals shall indicate as follows:

(1) Left turn, hand and arm extended horizontally.

(2) Right turn, hand and arm extended upward. A person operating a bicycle may extend his or her right hand and arm horizontally to his or her right; and

(3) Stop or decrease speed, hand and arm extended downward. A person operating a bicycle may extend his or her right hand and arm downward to his or her right side.

SECTION 2. Severability:

If any one or more of the sections, sentences, clauses or part of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Commission of the City of Shawnee that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 3. Emergency Clause:

It being immediately necessary for the preservation of public health, peace, and safety, an emergency is hereby declared to exist, by reason whereof this Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED AND APPROVED this ____ day of _____, 2021

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

PASSED AND APPROVED and the emergency clause voted on separately this ____ day
of _____, 2021.

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

Approved as to form and legality this _____ day of _____, 2021.

JOSEPH M. VORNDRAN,
CITY ATTORNEY

Regular Board of Commissioners

7.

Meeting Date: 10/18/2021

Ordinance

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of creation of an ordinance providing regulations and certain exceptions for bicyclists at traffic-control devices within city limits.

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE VIII OF CHAPTER 19, AND PROVIDING REGULATIONS AND CERTAIN EXCEPTIONS FOR BICYCLISTS AT TRAFFIC-CONTROL DEVICES WITHIN CITY LIMITS, WHICH SHALL BE ADDED TO CHAPTER 19 [MOTOR VEHICLES AND TRAFFIC] OF THE CITY CODE; AND ALSO PROVIDING FOR SEVERABILITY, CODIFICATION, AND REPEALER; AND DECLARING AN EMERGENCY.

WHEREAS, the Code of Ordinances of the City of Shawnee must be amended from time to time to comply with the laws of the State of Oklahoma and the Charter of the City of Shawnee; and

WHEREAS, it is the intent of the City Commission in enacting this ordinance, to provide for, and protect the public health, safety, and welfare of the City of Shawnee, Oklahoma;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION FOR THE CITY OF SHAWNEE, POTTAWATOMIE COUNTY, STATE OF OKLAHOMA, THAT CHAPTER 19 “MOTOR VEHICLES AND TRAFFIC” OF THE CITY CODE BE AMENDED TO ADD THE FOLLOWING SECTIONS THAT PROVIDE CERTAIN EXCEPTIONS FOR BICYCLISTS AT TRAFFIC-CONTROL DEVICES WITHIN CITY LIMITS, AS DEFINED BELOW:

SECTION I: Chapter 19 [“Motor Vehicles and Traffic”] is amended by adding Section 19-331, which shall include, and place into effect, the following language:

Section 19-331. – BICYCLES APPROACHING OR ENTERING AN INTERSECTION.

A. For the purposes of this section:

1. "Bicycle" means a device as defined in subsection A of Section 1-104 of Title 47 of the Oklahoma Statutes; and ENR. H. B. NO. 1770 Page 2

2. "Immediate hazard" means a vehicle approaching a person operating a bicycle at a proximity and rate of speed sufficient to indicate to a reasonably careful person that there is a danger of collision or accident.

B. 1. A person operating a bicycle approaching a stop sign shall:

a. slow down,

b. if required to avoid an immediate hazard, stop at the stop sign before entering the intersection, and

c. cautiously enter the intersection and yield the right of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

2. If a person operating a bicycle determines there is no immediate hazard, he or she may cautiously make a right or left turn or proceed through the intersection without stopping at the stop sign.

C. 1. A person operating a bicycle approaching a steady red traffic-control signal shall:

a. make a complete stop at the steady red traffic-control signal before entering the intersection, and

b. yield the right-of-way to all oncoming traffic that constitutes an immediate hazard during the time that he or she is moving across or within the intersection.

2. If a person operating a bicycle determines there is no immediate hazard, he or she may proceed through the steady red traffic-control signal with caution.

3. A person operating a bicycle may make a:

a. right-hand turn at a steady red traffic-control signal without stopping after slowing to a reasonable speed and yielding the right-of-way, if required, to oncoming traffic that constitutes an immediate hazard, or

b. left-hand turn onto a one-way street at a steady red traffic-control signal after stopping and yielding to oncoming traffic that constitutes an immediate hazard.

State Law Reference: 47 O.S. § 11-202.1. (EFFECTIVE November 1, 2021)

SECTION II: Statutory Construction. It is the intent of the City Commission of the City of Shawnee, Oklahoma to supplement applicable state and federal law and not to duplicate or contradict such law.

SECTION III: Severability. The provisions of this Ordinance are severable and, if any sentence, provision, or other part of this Ordinance shall be held invalid, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Ordinance.

SECTION IV: Codification. This Ordinance shall be codified in the City Municipal Code, and the codifier is authorized to set out the Ordinance, as a whole, as appropriate

SECTION V: Repealer. All sections, subsections, clauses, and sentences of existing law in conflict with this ordinance, are repealed.

SECTION VI: Emergency. It being immediately necessary for the preservation of the peace, health, safety and public good of the City of Shawnee, Oklahoma and the inhabitants thereof that the provisions of this Ordinance be put into full force and effect, an emergency is hereby declared to exist, by reason whereof, this ordinance shall take effect and be in full force and effect after its passage, as provided by law.

PASSED AND APPROVED this ____ day of _____, 2021

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

PASSED AND APPROVED and the emergency clause voted on separately this ____ day of _____, 2021.

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

Approved as to form and legality this _____ day of _____, 2021.

JOSEPH M. VORNDRAN,
CITY ATTORNEY

Regular Board of Commissioners

8.

Meeting Date: 10/18/2021

Ordinance

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of creation of an ordinance providing certain prohibitions for the safety of bicyclists within city limits.

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE VIII of CHAPTER 19, PROVIDING CERTAIN PROHIBITIONS FOR THE SAFETY OF BICYCLISTS WITHIN CITY LIMITS, WHICH SHALL BE ADDED TO CHAPTER 19 [MOTOR VEHICLES AND TRAFFIC] OF THE CITY CODE; AND ALSO PROVIDING FOR SEVERABILITY, CODIFICATION, AND REPEALER; AND DECLARING AN EMERGENCY.

WHEREAS, the Code of Ordinances of the City of Shawnee must be amended from time to time to comply with the laws of the State of Oklahoma and the Charter of the City of Shawnee; and

WHEREAS, it is the intent of the City Commission in enacting this ordinance, to provide for, and protect the public health, safety, and welfare of the City of Shawnee, Oklahoma;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION FOR THE CITY OF SHAWNEE, POTTAWATOMIE COUNTY, STATE OF OKLAHOMA, THAT CHAPTER 19 “MOTOR VEHICLES AND TRAFFIC” OF THE CITY CODE BE AMENDED TO ADD THE FOLLOWING SECTIONS THAT PROVIDE CERTAIN PROHIBITIONS FOR THE SAFETY OF BICYCLISTS WITHIN CITY LIMITS, AS DEFINED BELOW:

SECTION I: Chapter 19 [“Motor Vehicles and Traffic”] is amended by adding Section 19-332, which shall include, and place into effect, the following language:

Section 19-332. – Throwing Objects at Bicyclists.

It shall be unlawful for any person to maliciously throw an object at or in the direction of any person riding a bicycle, equine or animal-drawn vehicle. Any person convicted of the provisions of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a term of not more than one (1) year, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

State Law Reference: 47 O.S. § 11-1210. (EFFECTIVE November 1, 2021)

SECTION II: Statutory Construction. It is the intent of the City Commission of the City of Shawnee, Oklahoma to supplement applicable state and federal law and not to duplicate or contradict such law.

SECTION III: Severability. The provisions of this Ordinance are severable and, if any sentence, provision, or other part of this Ordinance shall be held invalid, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Ordinance.

SECTION IV: Codification. This Ordinance shall be codified in the City Municipal Code, and the codifier is authorized to set out the Ordinance, as a whole, as appropriate

SECTION V: Repealer. All sections, subsections, clauses, and sentences of existing law in conflict with this ordinance, are repealed.

SECTION VI: Emergency. It being immediately necessary for the preservation of the peace, health, safety and public good of the City of Shawnee, Oklahoma and the inhabitants thereof that the provisions of this Ordinance be put into full force and effect, an emergency is hereby declared to exist, by reason whereof, this ordinance shall take effect and be in full force and effect after its passage, as provided by law.

[Signature page to follow.]

PASSED AND APPROVED this ____ day of _____, 2021

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

PASSED AND APPROVED and the emergency clause voted on separately this ____ day
of _____, 2021.

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

Approved as to form and legality this _____ day of _____, 2021.

JOSEPH M. VORNDRAN,
CITY ATTORNEY

Regular Board of Commissioners

9.

Meeting Date: 10/18/2021

Ordinance

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of an ordinance amending Section 19-219 of the Municipal Code governing horns and warning devices.

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 19 (MOTOR VEHICLES AND TRAFFIC), ARTICLE V. – (EQUIPMENT), SECTION 19-219 OF THE CODE OF ORDINANCES OF THE CITY OF SHAWNEE, SO AS TO FURTHER COMPORT WITH STATE LAW 47 O.S. 12-401; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, a proposal has been presented to the City Commission of the City of Shawnee, Oklahoma to amend Chapter 19 of the Code of Ordinances of the City of Shawnee, Oklahoma, and,

WHEREAS, the City Commission has determined that such modification and amendment is necessary and in the best interest of the health and safety of the citizens of the City of Shawnee, and for the efficient operations of municipal governance.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA, THE FOLLOWING:

SECTION 1. That section 19-219 of the Shawnee City Code is hereby amended to read as follows:

Section 19-219: Horns and Warning Devices.

- (a) Every motor vehicle, when operated upon a street or highway, shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall, when reasonably necessary to ensure safe operation, give audible warning with his horn, but shall not otherwise use such horn when upon a street or highway. No driver of any vehicle shall use a horn when passing a person riding a bicycle, equine or animal-drawn vehicle under normal conditions if no imminent danger of a collision exists.
- (b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell, except as otherwise permitted in this section.
- (c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.
- (d) Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the state department of public safety, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which event the driver of such vehicle shall sound such siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

SECTION 2. Severability:

If any one or more of the sections, sentences, clauses or part of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Commission of the City of Shawnee that this ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein.

SECTION 3. Emergency Clause:

It being immediately necessary for the preservation of public health, peace, and safety, an emergency is hereby declared to exist, by reason whereof this Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED AND APPROVED this ____ day of _____, 2021

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

PASSED AND APPROVED and the emergency clause voted on separately this ____ day
of _____, 2021.

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

Approved as to form and legality this _____ day of _____, 2021.

JOSEPH M. VORNDRAN,
CITY ATTORNEY

Regular Board of Commissioners

10.

Meeting Date: 10/18/2021

Ordinance

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of an ordinance amending Section 19-184 of the Municipal Code regulating license plate displays.

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 19 (MOTOR VEHICLES AND TRAFFIC), ARTICLE IV. – (OPERATION OF VEHICLES), SECTION 19-184 OF THE CODE OF ORDINANCES OF THE CITY OF SHAWNEE, SO AS TO FURTHER COMPORT WITH STATE LAW 47 O.S. 1151; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, a proposal has been presented to the City Commission of the City of Shawnee, Oklahoma to amend Chapter 19 of the Code of Ordinances of the City of Shawnee, Oklahoma, and,

WHEREAS, the City Commission has determined that such modification and amendment is necessary and in the best interest of the health and safety of the citizens of the City of Shawnee, and for the efficient operations of municipal governance.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA, THE FOLLOWING:

SECTION 1. That section 19-184 of the Shawnee City Code is hereby amended to read as follows:

Section 19-184: License Plate Display.

(a) No person shall operate a motor vehicle on the streets, roadways or thoroughfares unless such vehicle displays a current and appropriate identification number plate as required by the State of Oklahoma. No citation may be issued for violation hereof during the thirty-day period immediately succeeding the last day of the month during which a vehicle registration should have been renewed and a current license plate decal obtained and displayed on the license plate of the vehicle.

(b) It shall be unlawful and an offense for any person to display upon any vehicle owned by such person within Oklahoma, any license plate issued by any state or country other than Oklahoma, unless there shall be displayed upon such vehicle at all times a current license plate and decal assigned to it by the Oklahoma Tax Commission or the vehicle shall display evidence that the vehicle is registered as a nonresident vehicle pursuant to rules promulgated by the Oklahoma Tax Commission. A violation of this section shall be presumed to have occurred if a person who is the holder of an Oklahoma Driver's License operates a vehicle owned by such person and there is not displayed on the vehicle a current Oklahoma license plate and decal, unless the vehicle is owned by a member of the armed forces of the United States assigned to duty in Oklahoma in compliance with official military or naval orders or the spouse of such member of the armed forces.

(c) It shall be unlawful and an offense for any person to operate any vehicle registered as a commercial vehicle and displaying a commercial vehicle license plate issued by the Oklahoma Tax Commission, without the name of the commercial establishment or the words "Commercial Vehicle" permanently and prominently displayed upon the outside of the vehicle in letters not less two inches high and two inches wide. Such letters shall be in sharp contrast to the background and shall be of sufficient shape and color to be readily legible during daylight hours from a distance of 50 feet while the vehicle is not in motion.

(d) License plates shall be placed and fastened securely to the rear of the vehicle and the numbers and letters of such plate shall be upright reading from left to right and clearly visible at all times.

SECTION 2. Severability:

If any one or more of the sections, sentences, clauses or part of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Commission of the City of Shawnee that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 3. Emergency Clause:

It being immediately necessary for the preservation of public health, peace, and safety, an emergency is hereby declared to exist, by reason whereof this Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED AND APPROVED this ____ day of _____, 2021

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

PASSED AND APPROVED and the emergency clause voted on separately this ____ day
of _____, 2021.

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

Approved as to form and legality this _____ day of _____, 2021.

JOSEPH M. VORNDRAN,
CITY ATTORNEY

Regular Board of Commissioners

11.

Meeting Date: 10/18/2021

Ordinance

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of an ordinance amending Section 19-292 of the Municipal Code regulating persons soliciting rides, donations, employment, or business.

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 19 (MOTOR VEHICLES AND TRAFFIC), ARTICLE VII. – (PEDESTRIANS), SECTION 19-292 OF THE CODE OF ORDINANCES OF THE CITY OF SHAWNEE, SO AS TO FURTHER COMPORT WITH STATE LAW 47 O.S. 11-507; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, a proposal has been presented to the City Commission of the City of Shawnee, Oklahoma to amend Chapter 19 of the Code of Ordinances of the City of Shawnee, Oklahoma, and,

WHEREAS, the City Commission has determined that such modification and amendment is necessary and in the best interest of the health and safety of the citizens of the City of Shawnee, and for the efficient operations of municipal governance.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA, THE FOLLOWING:

SECTION 1. That section 19-292 of the Shawnee City Code is hereby amended to read follows:

Section 19-292: Soliciting rides, donations, employment or business.

No person shall stand in a roadway for the purpose of soliciting a ride, donation, employment or business from the occupant of any vehicle; provided, that persons shall not be prohibited from soliciting pursuant to this section if performed on a roadway maintained by the City of Shawnee in compliance with a permit and regulations adopted by ordinance herein.

SECTION 2. Severability:

If any one or more of the sections, sentences, clauses or part of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Commission of the City of Shawnee that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 3. Emergency Clause:

It being immediately necessary for the preservation of public health, peace, and safety, an emergency is hereby declared to exist, by reason whereof this Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED AND APPROVED this ____ day of _____, 2021

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

PASSED AND APPROVED and the emergency clause voted on separately this ____ day of _____, 2021.

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

Approved as to form and legality this _____ day of _____, 2021.

JOSEPH M. VORNDRAN,
CITY ATTORNEY

Regular Board of Commissioners

12.

Meeting Date: 10/18/2021

Ordinance

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of an ordinance amending portions of Chapter 8 of the Municipal Code regulating businesses, permits, and licenses within the city limits of the City of Shawnee.

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING PORTIONS OF CHAPTER 8 (BUSINESSES, PERMITS AND LICENSES), OF THE CODE OF ORDINANCES OF THE CITY OF SHAWNEE, SO AS TO FURTHER COMPORT WITH STATE LAW 47 O.S. 11-507; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, a proposal has been presented to the City Commission of the City of Shawnee, Oklahoma to amend Chapter 8 of the Code of Ordinances of the City of Shawnee, Oklahoma, and,

WHEREAS, the City Commission has determined that such modification and amendment is necessary and in the best interest of the health and safety of the citizens of the City of Shawnee, and for the efficient operations of municipal governance.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA, THE FOLLOWING:

SECTION 1. That section 8-221 of the Shawnee City Code is hereby amended to read as follows:

Section 8-221: Required; appeal of denial.

- (a) No person shall engage in the business of solicitor, peddler, itinerant merchant/transient street vendor or coupon book seller without first having obtained a license, except persons soliciting on behalf of newspapers of general circulation; public schools; or educational, religious, disabled veterans', farmers' or eleemosynary institutions located or affiliated within the city.
- (b) Any persons soliciting for charitable purposes, including but not limited to those named above, shall obtain a license pursuant to Section 8-292 et seq. of this Code.
- (c) Any person denied a license may appeal to the city commission by filing notice thereof with the city clerk within five days of the denial. The city commission shall render a decision at its next regular meeting.

SECTION 2. That section 8-293 of the Shawnee City Code is hereby amended to read as follows:

Section 8-293: License prerequisites and issuance.

No license required under this division shall be issued by the city clerk until the applicant has provided proof of the applicant's 501(c)(3) status, which must be current, and has made application in which the names of the solicitors shall be given, and it shall be stated therein the purpose for which such solicitor is authorized to solicit donations. If so approved, the city clerk is authorized to issue to such person a license as provided in this article. Such license shall be issued without any charge.

SECTION 3. Severability:

If any one or more of the sections, sentences, clauses or part of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Commission of the City of Shawnee that this ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

SECTION 4. Emergency Clause:

It being immediately necessary for the preservation of public health, peace, and safety, an emergency is hereby declared to exist, by reason whereof this Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED AND APPROVED this ____ day of _____, 2021

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

PASSED AND APPROVED and the emergency clause voted on separately this ____ day
of _____, 2021.

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

Approved as to form and legality this ____ day of _____, 2021.

JOSEPH M. VORNDRAN,
CITY ATTORNEY

Regular Board of Commissioners

13. a.

Meeting Date: 10/18/2021

Bid Award

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement Project Heart of Oklahoma Exposition Center Project No. C-21-03D (Award)

Attachments

Memo

Specs

Bid Tabulation



Date: October 18, 2021
To: Mayor and Commissioners
From: Katy Fleming, General Manager
RE: **HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement Project**

On September 3, 2021, the Expo General Manager advertised the RFQ for the HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement Project at the Heart of Oklahoma Expo Center. The RFQ was advertised in the newspaper, Expo web site, and multiple phone calls were placed to several roofing and general contracting companies. The RFQ was due back in on September 20, 2021 at 4:00 pm.

Staff received 1 qualified RFQ:
Draper Construction and Commercial Roofing, Oklahoma City, OK

The General Manager has reviewed the RFQ and has determined that Draper has the qualifications to conduct the roof and insulation removal and replacement project.

The Heart of Oklahoma Expo Center is a hub for activities in this area and constantly growing. The need for this project's completion is long overdue for various reasons – one being client retention, the second being growth. The magnitude of this project is extensive. Draper is a diamond certified applicator for Everest Systems (roof coating) and accreditation with the Spray Polyurethane Foam Alliance. He offered warranty options of 10, 15, and 20 years.

The metal restoration bid was priced at \$496,862.07. The foam and coatings option is more beneficial than a standard metal restoration due to condensation among other details. The coating will decrease the temperature in the barns up to 30 degrees in the summer and the spray foam will be added to our current insulation, covering the current condition, and saving up to 35% in utilities in the winter.

Although the original bid amount was \$782,208.56 for foam and coatings with a 10-year warranty, Spectra is requesting authorization to award the HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement Project to Draper Construction of Oklahoma City, Oklahoma, in the amount of \$872,002.91 which includes a 15-year warranty through the manufacturers.

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement Project Heart of Oklahoma Expo Center Project No. C-21-03D

CITY OF SHAWNEE,
POTTAWATOMIE COUNTY, OKLAHOMA

Prepared By
Katy Fleming

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NOTICE TO BIDDERS

Notice is hereby given that the City of Shawnee will receive sealed bids at the City Hall, 16 West 9th, Shawnee, Oklahoma, 74801, up to 4:00 p.m. on Monday, September 20, 2021 and publicly read aloud at the Commission Meeting being held at 6:00 p.m. on Monday, September 20, 2021 for furnishing all labor and materials and performing all work necessary for:

Project No. C-21-03D

HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement Project - Heart of Oklahoma Expo Center

This work will be done under the Oklahoma Building Codes, except as modified herein.

The proposal will include a special provision with reference to Contractor's Non-Collusion Affidavit and a 5% bid bond in a certified or cashier's check or surety bond shall accompany the sealed proposal of each bidder. Evidence of having proper workmen's compensation coverage for employees as provided by Title 85 of the Oklahoma Statutes Section 61 shall be required prior to issuance of a work order.

Examination of plans, specifications, special provisions, and site of work is required. Plans, forms of proposals, contracts and specifications may be examined at the following locations:

ShawneeExpo.org
www.shawneeexpo.org

Published in the Shawnee News-Star
Weeks of September 9 & 16

IMPORTANT: ALL CONTRACTORS SUBMITTING A BID FOR THIS CONTRACT MUST HAVE DOWNLOADED PROJECT PLANS AS SET FORTH BELOW. THIS IS A MATERIAL REQUIREMENT OF THIS BID NOTICE. FAILURE TO COMPLY WILL CAUSE THE BID TO BE CONSIDERED NONRESPONSIVE. A complete set of Plans and Specifications to prospective bidders must be obtained on the Heart of Oklahoma Expo Center's website. Any prospective bidders must join the plan holder's email list upon downloading the documents to receive addendums and submit a bid. Contact Katy Fleming at katy.fleming@spectraxy.com to inquire about the project. Upon award of contract to a successful bidder, the contract will be completely executed within ten (10) working days from the date of award by the successful bidder and the City of Shawnee.

The City of Shawnee hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

The City of Shawnee reserves the right to reject any or all bids. The City of Shawnee reserves the right to accept the bid determined to best serve the needs of the City.

CITY OF SHAWNEE, POTTAWATOMIE COUNTY, OKLAHOMA

DocuSigned by:

Eric Benson 1024DAB8FE3C4B1... City Manager

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INSTRUCTIONS TO BIDDERS

EXAMINATION OF SITE: Each bidder by making his bid represents that he had visited the site(s) and familiarized themselves with all the conditions under which the work is to be performed. No extra compensation will be allowed by reason of any matters or things concerning which the bidder did not inform themselves prior to bidding.

EXAMINATION OF BIDDING DOCUMENTS: Each bidder by making their bid represents they have read and understand the bidding documents. The bidder shall include in his bid prices any and all costs that may be necessary to complete the work in accordance with the requirements of the contract documents.

INTERPRETATION OF CONTRACT DOCUMENTS: Questions regarding documents, discrepancies, omissions, or intent of the specifications or drawings shall be submitted in writing to Katy Fleming at least seven days prior to opening of bids to provide time for issuing and forwarding an addendum. Any interpretation of the contract documents will be made only by addendum duly issued or delivered by the Owner to each person receiving a set of documents. The Owner will not be responsible for any other explanations or interpretation of the contract documents.

MATERIAL SUBSTITUTION: Each bidder shall base their bid upon the materials and equipment as described in the bidding documents. The successful contractor will not be allowed to make any substitutions on their own initiative, but in each instance will be required to obtain authorization from the Owner before installing any work in variance with the requirements of the contract documents.

QUALIFICATIONS OF BIDDERS: In determining the lowest responsible bid, the following elements will be considered: whether the bidder involved (a) maintains a permanent place of business; (b) has adequate equipment to do the work properly and expeditiously; (c) has a suitable financial status to meet obligations incident to the work; and (d) has appropriate technical experience.

Each bidder must complete the attached "Qualification Statement of Bidders & Qualifications Statement of Bidder's Surety".

Each bidder may be required to show that former work performed by them has been handled in such a manner that there are no just, or proper claims pending against such work. No bidder will be acceptable if they are engaged on any other work which impairs their ability to finance this contract or provide proper equipment for the proper execution of the same. Each bidder shall demonstrate their ability by meeting all requirements herein stipulated, if asked of them.

BID SECURITY. No bid will be considered unless accompanied by a cashier's check, a certified check or a bidder's bond in the amount of five percent (5%) of the bid, as a guarantee that if the

bid is accepted, the bidder will execute the agreement and file bonds and insurance as required by the contract documents within ten (10) days from the date of the award of the contract.

RETURN OF BID SECURITIES. The security of all bidders will be returned after the execution of the agreement with the successful bidder and the approval of his bonds and insurance. If all bids are rejected, the securities will be returned at the time of rejection.

AGREEMENT, BONDS, AND INSURANCE. The attention of bidders is specifically directed to the forms of agreement and bonds to be executed and the type of insurance to be taken out in the event a contract award is made.

BID SUBMITTAL. Each bid, properly signed, together with the bid security and all documents bound herewith, shall be enclosed in a sealed envelope addressed and entitled as specified in the Invitation to Bid. All addenda issued shall be included with the documents at the time of bid submittal.

WITHDRAWAL OF BID. Any bid may be withdrawn at any time prior to the hour fixed in the Invitation to Bid for the opening of bids, provided that a request in writing, executed by the bidder, or his duly authorized representative, for the withdrawal of such bid is filed with the Owner prior to the time specified for opening of bids. The withdrawal of such bid will not prejudice the right of a bidder to file a new bid.

PENALTY FOR COLLUSION. If at any time it shall be found that the person, firm or corporation to whom the contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the contract so awarded shall be null and void, and the contractor and his sureties shall be liable to the Owner for all loss or damage which the Owner may suffer thereby, and the Owner may advertise for new bids for said work.

LICENSE. Each bidder shall possess State and local licenses as are required by law and shall furnish satisfactory proof to the Owner upon request that the licenses are in effect during the entire period of the contract.

LATE BIDS. Any bid received by the awarding public agency or an officer or employee thereof more than ninety-six (96) hours excluding Saturdays, Sundays and holidays before the time set for the opening of bids, or any bid so received after the time set for opening of bids, shall not be considered by the awarding public agency and shall be returned unopened to the bidder submitting same.

BID OPENING. Bids will be opened and recorded at the time and place indicated in the Notice to Bidders. Bidders or their agents are invited to be present.

AWARD OF CONTRACT. The award of any contract or contracts will be made to the lowest responsible bidder or bidders. The Owner reserves the right to reject any or all bids, or to waive irregularities or informalities at its discretion.

It is anticipated that approval will be received within thirty (30) days of opening of bids. In the event that the approvals are not received, or the Owner cannot award or reject said proposals within sixty (60) days from the date of opening of bids, bidders shall have the right to withdraw their bids on written notice to the Owner.

EFFECTIVE DATE OF AWARD. If a contract is awarded by the Owner, such award shall be effective when formal notice of such award, signed by the authorized representative of the Owner, has been delivered to the intended awardee, or mailed to him at the main business address shown on his bid, by some office or agent of the Owner duly authorized to give such notice.

EXECUTION OF AGREEMENT. Copies of the agreement in the number stated in the form of agreement, shall be executed by the successful bidder, and returned, together with the required bonds and insurance, within ten (10) days from and after the date of the award of the contract. Effective date of bonds shall be the same or later than the date of the agreement.

FAILURE TO EXECUTE AGREEMENT AND FILE BONDS AND INSURANCE. Failure of a successful bidder to execute the agreement and file required bonds and insurance within the required time shall be just cause for the annulment of the award. On failure of a successful bidder to execute the agreement and file the required bonds and insurance within the required time, he shall forfeit his bid security as agreed herein before. Upon annulment of an award as aforesaid, the Owner may then award the contract to the next lowest responsible bidder.

PAYMENT FOR EXCESS COSTS AND LIQUIDATED DAMAGES. The successful bidder will be required to pay for the excess cost of field engineering and inspection and liquidated damages as defined in the Special Provisions, if extensions of time are not granted by Owner because of avoidable delays as therein defined.

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Owner and Contractor hereby agree as follows:

Project No. C-21-03D
HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement
Project - Heart of Oklahoma Expo Center

The work described above is part of the HOOEC's Capital Improvement Plan.

3.01 The Project has been designed by the HOOEC's General Manager, which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

A. The Work will be substantially completed as described in the Special Provisions and as provided in Paragraph 14.04 of the General Conditions and completed and ready for final

payment as described in the Special Provisions and in accordance with Paragraph 14.07 of the General Conditions.

4.03 Liquidated Damages

Reference the Special Provisions

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Owner as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

a. 10 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner's Representative, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage; and

- b. 5 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Owner's Representative shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

- 7.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Section 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Section 4.02 of the General Conditions as containing reliable "technical data."
 - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of

construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. Instructions to Bidders
 - 2. This Agreement
 - 3. Maintenance Bond
 - 4. Performance Bond
 - 5. Special Provisions
 - 6. Standard General Conditions of the Construction Contract
 - 7. Qualification Statement of Bidders
 - 8. Qualification Statement of Bidder's Surety
 - 9. Bid Proposal
 - 10. Bid Form
 - 11. Bid Affidavits
 - 12. Certificate of Nondiscrimination

13. Status Verification Systems Affidavit

14. Specifications

15. Plan Drawings

16. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed
- b. Work Change Directives.
- c. Change Orders.

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

9.06 *Other Provisions*

- A. None.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

City of Shawnee

By: _____

Title: _____

Attest

. _____

Title: _____

Address for giving notices:

16 West 9th

Shawnee, OK 74801

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR

By: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

License No.: _____

(Where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

Agent for service of process:

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MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That We, _____, as principal, and _____, as Surety, are held and firmly bound unto the CITY OF SHAWNEE, of the State of Oklahoma, in the full and just sum of _____ Dollars (\$ _____), such sum being equal to the contract price for a period of one (1) year, such sum being not less than 100% of the contract price, for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, and assigns, themselves, and its successors and assigns, joint and severally, firmly by these presents.

Dated this _____ day of _____, 20 _____. The conditions of this obligation are such that whereas, said Principal has by a certain contract between _____, and the CITY OF SHAWNEE, dated this _____ day of _____, 20- _____. Agreed to construct in the CITY OF SHAWNEE:

all in compliance with the plans and specifications therefore, make a part of said contract and on file in the Office of the City Clerk of the CITY OF SHAWNEE; and to maintain the said improvement in the amounts set forth above against any failure due to workmanship or material for a period of 1 year from the date of acceptance of the project by the City of Shawnee.

NOW THEREFORE, if said Principal shall pay or cause to be paid to the City, all damage, loss, and expense which may result by reason of defective materials and/or workmanship in connection with said work occurring within a period 1 year for all projects for the construction of roads, streets, highways, and utilities from and after acceptance of said project by the City of Shawnee, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further agreed that if the said Principal or Surety herein shall fail to maintain said improvements against failure due to defective workmanship and/or material for a period of 1 year and at any time repairs shall be necessary that the cost of making said repairs shall be determined by the CITY OF SHAWNEE, or some person or persons designated by them to ascertain the same, and if, upon thirty (30) days notice, the said amount ascertained shall not be paid by the Principal or Surety herein, or if the necessary repairs are not made, the said amount shall become due upon the expiration of thirty (30) days and suit may be maintained to recover the amount so determined in any Court of competent jurisdiction. And that the amount so determined shall be

conclusive upon the parties as to the amount due on this bond for the repair or repairs included therein, and that the cost of all repairs shall be so determined from time to time during the life of this bond as the condition of the improvements may require.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said contract and no deviations from the pals or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of the, from the obligations of this bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers; and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

ATTEST:

Secretary/Witness

BY _____
Principal

Surety

ATTEST:

Secretary/Witness

BY _____

APPROVED as to form this _____ day of _____, 20 _____

Title:

REVIEWED and APPROVED by the CITY OF SHAWNEE this _____ day of _____, 20 _____.

Title:

ATTEST:

Title:

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That We, _____, s Principal, and _____ as Surety, are held and firmly bound unto the CITY OF SHAWNEE, of the State of Oklahoma, in the full and just sum of _____ DOLLARS (\$ _____), such sum being equal to 100% of the contract price for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and assigns, themselves, and its successors and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20 _____. The conditions of this obligation are such, that whereas, said Principal is the lowest and best bidder for the making of the following improvement:

_____ and has entered into a certain written contract with the CITY OF SHAWNEE on the ____ day of _____, 20 ____, for the erection and construction of said work and improvement all the compliance with the plans and specifications therefore, make a part of said contract and on file in the Office of the City Clerk of the CITY OF SHAWNEE, and said contract is hereby made a part of parcel of this bond as it literally written herein.

NOW, THEREFORE, if the said _____, Principal, shall fully and faithfully execute the work and perform said contract according to it terms, conditions, and covenants, and in exact accordance with the bid of said Principal, and according to certain plans and specifications heretofore made, adopted, and placed on file in the Office of the City Clerk of the CITY OF SHAWNEE, and shall promptly pay or cause to be paid, all labor, material and/or repairs and all bids for labor performed on said work, whether by subcontract or otherwise, and shall protest and save harmless the said City and all interested property owners against all claims, demands, causes of action, losses or damage, and expense to life or property suffered or sustained by any person firm, or corporation by reason of negligence of the Contractor or his or its agents, servants, or employees in the construction of said work, or by or in consequence of any improper execution of the work or act of omission or use of inferior materials by said Contractor or his or its agents, servants, or employees, and shall protect and save the City harmless from all suits and claims of infringement or alleged infringement of patent rights or processes, then this obligation shall be void; otherwise, this obligation shall remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes alterations in said contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of the, from the obligations of this bond.

In witness whereof, THE SAID principal has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its duly authorized officer, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

ATTEST:

Secretary/Witness

BY _____
Principal

Surety

ATTEST:

Secretary/Witness

BY _____

APPROVED as to form this _____ day of _____, 20 _____.

Title:

REVIEWED and APPROVED by the CITY OF SHAWNEE this _____ day of _____, 20 _____.

Title:

ATTEST:

Title:

SPECIAL PROVISIONS

These Special Provisions are included in and are part of the Bidding Documents and Agreement/Contract Documents for this project.

0100 Definitions

The following words and phrases, when used in the Special Provisions, shall have the meanings respectively ascribed to them throughout this Agreement:

Liquidated Damages –or– Liquidated Damages Rate: A dollar value that will be charged to CONTRACTOR for each calendar day that the CONTRACTOR requires to achieve a specific milestone in excess of the Contract Times.

0200 - Liquidated Damages

CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work and Milestones are not completed within the times specified. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by OWNER if the Work is not completed on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall be assessed the rate(s) stipulated in Table 1 for each day that expires in excess of the Contract Times until each milestone, Substantial Completion, and Final Completion is achieved.

Liquidated Damages may be charged against each Pay Application.

0300 - Rates

Liquidated damages will be assessed at the following rates (reference Table 1).

TABLE 1	
Liquidated Damage Rates	
Milestone	Rate
Final Completion	\$1,000.00/calendar day

0400 - Project Milestones

The following project milestones shall apply for computation of Liquidated Damages:

TABLE 2	
Project Milestones – Base Bid Only	
Milestone Description	Calendar Days
Substantial Completion	30 calendar days from NTP
Final Completion	14 calendar days from Substantial Completion
Project Milestones – Base Bid + Add Alternate	
Milestone Description	Calendar Days
Substantial Completion	60 calendar days from NTP
Final Completion	14 calendar days from Substantial Completion

0500 – Insurance Requirements

Commercial General Liability in the minimum amount of \$1,000,000/\$2,000,000.

Automobile Liability in the minimum amount of \$1,000,000.

Workers Compensation as required by the laws of the State of Oklahoma.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *Final Completion* – Achieved after all punchlist items provided by the City of Shawnee have been completed.
22. *General Requirements*—See Specifications.
23. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

24. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
27. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the condition's precedent listed therein, Owner will sign and deliver the Agreement.
29. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
30. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
31. *PCBs*—Polychlorinated biphenyls.
32. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
33. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
34. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
37. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
38. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
39. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
40. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
41. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
42. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
43. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
44. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
45. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
46. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
49. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
50. *Unit Price Work*—Work to be paid for on the basis of unit prices.
51. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
52. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or

determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the Specifications), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 Initial Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress

of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 Reference Standards

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 - 3. Engineer's written interpretation or clarification.

3.05 Reuse of Documents

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 - 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 Electronic Data

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees

that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and

drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. Possible Price and Times Adjustments:

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground

Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in

Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible

for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the

scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide

another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

- A. Contractor shall deliver to Owner, with copies to each additional insured and lost payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor's Insurance

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier,

or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 Owner's Liability Insurance

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and

equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction

equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the Specifications applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 Substitutes and "Or-Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole

discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is

subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
 - 1. *Shop Drawings:*
 - a. Submit number of copies specified in the Specifications or as directed by the Owner.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.
 - 2. *Samples:*
 - a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Submittal Procedures:*
 - 1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible;
or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- i. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 Insurance

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 Inspections, Tests, and Approvals

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 Limitations on Owner's Responsibilities

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 Evidence of Financial Arrangements

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 Compliance with Safety Program

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

9.01 *Owner’s Representative*

- A. Engineer will be Owner’s representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner’s representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

1.04 Authorized Variations in Work

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 Shop Drawings, Change Orders and Payments

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
 - ii. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
 - iii. In connection with Engineer's authority as to Change Orders, See /articles 10, 11 and 12.
 - iv. In connection with Engineer's authority as to Applications for Payment see Article 14.

9.07 Determinations for Unit Price Work

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 Compliance with Safety Program

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 Unauthorized Changes in the Work

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 Claims

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The

opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part.
2. Approve the claim in whole; or
3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05 D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the

Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly,

dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 Delays

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor,

then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
 - D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
 - E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
 - F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the

Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by

Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

- d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or

- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14

days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer' issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of

the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 Final Inspection

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other

indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty (30) days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, 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 to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to

the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 Owner May Terminate For Convenience

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

QUALIFICATION STATEMENT OF BIDDERS

SUBMITTED TO:

Katy Fleming

Reviewed by: _____

Date

Date Received: _____

CONTRACTOR: _____

CIRCLE ONE: Sole Proprietor Partnership Corporation Joint Venture

NAME: _____ PARTNER: _____

ADDRESS: _____ ADDRESS: _____

CITY: _____ CITY: _____

PHONE: _____ PHONE: _____

PRINCIPAL PLACE OF BUSINESS: _____ PRINCIPAL PLACE OF BUSINESS: _____

COUNTY STATE COUNTY STATE

IF THE CONTRACTOR IS A CORPORATION, FILL OUT THE FOLLOWING:

STATE OF INCORPORATION: _____

LOCATION OF PRINCIPAL OFFICE: _____

CONTACT PERSONS AT OFFICE: _____

PERSON EXECUTING CONTRACTS ON BEHALF OF CORPORATION: _____

NAME: _____ ADDRESS: _____

TITLE: _____

CITY STATE ZIP

PHONE: _____

NAMES OF OFFICERS: (IF APPLICABLE) _____

LIST NUMBER OF EMPLOYEES WORKING FOR CONTRACTOR: _____

LIST ALL EQUIPMENT TO BE USED ON THIS PROJECT: (PLEASE USE ATTACHMENT)

NUMBER OF YEARS IN BUSINESS AS A GENERAL CONTRACTOR ON PROJECTS SIMILAR TO THIS PROJECT:

TYPE(S) OF WORK DONE: (CIRCLE)

Clay Tile	Slate Tile	Concrete Tile	Metal	Wood Shingles/Shakes
Spanish Tile	Asphalt Shingle	Rolled Roof	PVC	Restoration

Other:
COMMENTS:

GREATEST NUMBER OF THIS TYPE CONSTRUCTION CONTRACTS IN EXCESS OF \$100,000.00 UNDER CONSTRUCTION AT ONE TIME IN COMPANY'S HISTORY: _____

GREATEST NUMBER OF THIS TYPE CONSTRUCTION CONTRACTS IN EXCESS OF \$200,000.00 UNDER CONSTRUCTION AT ONE TIME IN COMPANY'S HISTORY: _____

APPROXIMATE AVERAGE OF DOLLAR VOLUME OF INCOMPLETE WORK OUTSTANDING UNDER CONTRACT AT ANY ONE TIME: _____

A LIST OF RECENTLY COMPLETED PROJECTS OF THE TYPE OF WORK QUALIFYING FOR OR SIMILAR WORK, PLUS THE FOLLOWING INFORMATION FOR EACH PROJECT:

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

(USE ATTACHMENTS IF NECESSARY)

LIST INCOMPLETE PROJECTS, PLUS THE FOLLOWING INFORMATION FOR EACH PROJECT LISTED:

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

(USE ATTACHMENTS IF NECESSARY)

IF COMPANY IS UNDER NEW MANAGEMENT, PLEASE LIST NAMES OF STAFF AND QUALIFICATION AND/OR EXPERIENCE OF SAID PERSONS. (PLEASE USE ATTACHMENT.)

HAVE YOU OR ANY PRESENT PARTNER(S) OR OFFICER(S) FAILED TO COMPLETE A CONTRACT?

_____. IF SO, NAME OF OWNER AND/OR SURETY: _____
CONTACT PERSON: _____ PHONE: _____

ARE THERE ANY UNSATISFIED DEMANDS UPON YOU AS TO YOUR ACCOUNTS PAYABLE?

IF SO, GIVE NAMES, AMOUNTS, AND EXPLANATIONS: _____

BANK REFERENCE: Bank: _____
Address: _____
City: _____ State: _____ Zip: _____
Contact Person: _____ Phone: _____

MUNICIPALITY REFERENCE: City: _____
Contact Person: _____ Position: _____

Address: _____ Phone: _____

OTHER CREDIT REFERENCES:

Name: _____	Name: _____
Address: _____	Address: _____
_____	_____
Phone: _____	Phone: _____
_____	_____

_____ In compliance with Notice to Bidders for above mentioned types of projects, the undersigned is submitting the information as required with the understanding that the purpose is only to assist in determining the qualifications for this organization to perform the type and magnitude of work designated, and further, guarantee the truth and accuracy of all statements made, and will accept your determination of qualifications without prejudice. The surety herein named, any other bonding company, bank, sub-contractor, supplier, or any other person(s), firm(s) or corporation with whom I (we) have done business, or who have extended any credit to me (us) are hereby authorized to furnish you with any information you may request concerning performance on previous work and my (our) credit standing with any of them; and I (we) hereby release any and all such parties from any legal responsibility whatsoever on account of having furnished such information to you.

Signed: _____	Title: _____
Company: _____	Date: _____

COPY TO LOCAL UNDERWRITING OFFICE OF PROPOSED SURETY

Name: _____	Phone: _____
Address: _____	City: _____ State: _____

QUALIFICATION STATEMENT OF BIDDER'S SURETY

SUBMITTED TO: _____
BIDDER: _____
ADDRESS: _____

- 1. Has this surety furnished contract bonds on contracts now complete? _____
- 2. Has this surety furnished contract bonds on contracts now incomplete? _____
- 3. What is the maximum bonding capacity of this Contractor? _____
- 4. Is the current financial information on this Contractor satisfactory? _____
- 5. Does information obtained indicate accounts are paid when due? _____. If not, give details: _____

- 6. Is it your opinion that the bidder has sufficient experience and financial resources to satisfactory perform the contract? _____
- 7. Provided this bidder does not assume the commitments or that you do not acquire further information that in your opinion will materially affect the bidder's capacity to perform this contract, will you furnish the bonds as specified? _____

REMARKS:

SURETY: _____
SIGNED: _____
BY: _____

TITLE: _____
ADDRESS: _____
CITY STATE ZIP

(IN DUPLICATE)

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BID PROPOSAL

PLACE: City of Shawnee, Pottawatomie County, Oklahoma

DATE: _____

PROJECT NO.: HOOEC Metal Roof Restoration and Insulation
Removal and Spray Foam Replacement Project - Heart of
Oklahoma Expo Center

Proposal of _____
(hereinafter called "BIDDER") a corporation/a partnership/and individual (strike out inapplicable terms) doing
business in the State of _____.

To: The City Manager, City of Shawnee, Pottawatomie County, Oklahoma

The undersigned, as the Bidder, declares that before preparing his bid, he read carefully the notice to bidder, instructions to bidders, the general conditions, special provisions, and the specifications, examined the form of the Contract and the several bonds and the information blanks to be submitted, and that he is familiar with all the provisions of the same and with all the requirements of the complete Contract to be entered into, and the necessary bonds to be executed; that he has carefully examined the specifications for the proposed work on file with the City Clerk that he/she has visited the site of the work, has examined carefully all local conditions, has informed himself by his independent research and soundings of all the difficulties to be encountered, has judged for himself of the accessibility of the work, and the quantities and character of the materials to be encountered or excavated and all attending circumstances affecting the cost of doing the work and the time required for its completion and that this bid is made with full knowledge of the difficulties that may be encountered and the kinds, quantity, and quality of the plant work, and materials required or to be encountered, and with full knowledge of all specifications and estimated and all provisions of the Contract and bonds, gained by the independent research of the Bidder.

Said Bidder proposes and agrees that if his proposal is accepted, he will enter into a Contract with the City of Shawnee, within ten (10) days after the acceptance of his bid, for the furnishing of all necessary machinery, equipment, tools, labor, and materials of construction and to perform all work necessary to erect, construct and install the structure and appurtenances complete in place in the manner and under conditions required by the Contract and by the specifications therefore, on file in the Office of the City Clerk of the City of Shawnee, for the following amounts of:

Total Base Bid: _____ Dollars (\$ _____)
(In words)

The Contractor hereby agrees to commence work within five (5) days following issuance of a written NOTICE-TO-PROCEED from the Engineer and to complete Project No. C-21-03D HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement Project - Heart of Oklahoma Expo Center within 60 calendar days.

If partnership, give name and address of each member. Signed: _____
(Contractor)

By: _____
(Agent)

Address: _____

Incorporated under the laws of _____
(State)

STATE OF _____)

CITY OF _____)

_____ lawful age, being first duly sworn, upon his oath deposes and says: That he executed the accompanying bid on behalf of the Bidder therein named for the construction of the above improvement in the CITY OF SHAWNEE, Oklahoma, and that he had lawful authority to do so and said Bidder has not directly nor indirectly entered into any agreement, expressed or implied, with any Bidder or Bidders, having for its object the controlling of the price or amount of such bid or bids, the paying to anyone any money for promotion out to any Bidder or Bidders or other persons of any part of the Contract or any part of the subject matter the bid or bids of the profits thereof, and that he has not and will not divulge the sealed bid on such public improvements to any persons whatsoever, except those having partnership or other financial interest with him in said bid or bids, until after the said sealed bid or bids are opened.

SIGNED: _____

Subscribed and sworn to before me, a Notary Public, in and for the State of _____, County of _____ this _____ day of _____, 2021.

Notary Public

My Commission Expires: _____

BID FORM

Project No. C-21-03D

HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement
Project - Heart of Oklahoma Expo Center**Base Bid**

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>UNIT PRICE (NUMERALS)</u>	<u>QUANTITY</u>	<u>TOTAL PRICE</u>
REMOVAL OF INSULATION IN FRED HUMPHREY BARN	SQ FT		104,800.00	
REMOVAL OF INSULATION IN OTTO KRAUSSE BARN	SQ FT		73,500.00	
INTERIOR SPRAY FOAM IN FRED HUMPHREY BARN	SQ FT		104,800.00	
INTERIOR SPRAY FOAM IN OTTO KRAUSSE BARN	SQ FT		73,500.00	
		—		
METAL RESTORATION PERFORMED ON FRED HUMPHREY BARN ROOF WITH TOP COATING – SEEKING CLASS A FIRE RATING AND CLASS 4 HAIL RESISTANCE + WARRANTY	SQ FT	—	104,800.00	
METAL RESTORATION PERFORMED ON OTTO KRAUSSE BARN ROOF WITH TOP COATING – SEEKING CLASS A FIRE RATING AND CLASS 4 HAIL RESISTANCE + WARRANTY	SQ FT		73,500.00	
METAL RESTORATION PERFORMED ON BOTH SHOPS' ROOFS WITH TOP COATING – SEEKING CLASS A FIRE RATING AND CLASS 4 HAIL RESISTANCE + WARRANTY	SQ FT	—	8,000.00	

METAL RESTORATION PERFORMED ON OUT BUILDINGS AND SHED ROOFS WITH TOP COATING – SEEKING CLASS A FIRE RATING AND CLASS 4 HAIL RESISTANCE + WARRANTY	SF		9,350.00	

Total Base Bid \$_____

Total Base Bid in words \$_____

Name and Address of Responsible Bidder: _____

Contact Person:_____ Telephone No: _____

BID AFFIDAVITS

The following affidavits are to accompany the bid:

A. Non-Collusion Affidavit

STATE OF _____)

CITY OF _____)

_____, of lawful age, being first duly sworn on oath says that (s)he is the Agent authorized by the Bidder to submit the attached bid. Affiant further states that the Bidder has not been a party to any collusion among Bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any government official or employee as to quantity, quality, or price in the prospective Contract, of any other terms of said prospective Contract; or in any discussions between Bidders and any City official concerning exchange of money or other thing of value for special consideration in the letting of a Contract.

SIGNED: _____

Subscribed and sworn to before me this _____ day of _____, 2021.

Notary Public (or Clerk of Judge)

My Commission Expires:

(SEAL)

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B. Business Relationships Affidavit

STATE OF _____)

CITY OF _____)

_____, of lawful age, being first duly sworn, on oath says that (s)he is the Agent authorized by the Bidder to submit the attached bid. Affiant further states that the nature of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the architect, engineer, or other party to the project is as follows:

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project is as follows:

Affiant further states that the names of all persons having any such business relationships and the positions they hold with their respective companies or firms are as follows:

(If none of the business relationships hereinabove mentioned exist, Affiant should so state.)

Subscribed and sworn to before me this _____ day of _____, 2021.

Notary Public (or Clerk of Judge)

My Commission Expires:

(SEAL)

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CERTIFICATE OF NONDISCRIMINATION

In connection with the performance of work under this contract, the Contractor agrees as follows:

- A. The Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, or ancestry. The Contractor shall take affirmative action to ensure that employees are treated without regard to their race, creed, color, sex, national origin, or ancestry. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor and Sub-Contractor shall agree to make this information to all employees and applicants for employment notices and to post in a conspicuous place where required by law.
- B. In the event of the Contractor's noncompliance with this nondiscrimination clause, the contract may be canceled or terminated by the City. The Contractor may be declared by the City ineligible for further contracts with the said agency until satisfactory proof of intent to comply shall be made by the Contractor.
- C. The Contractor agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this agreement.

I have read the above stated clause and agree to abide by its requirements.

(seal)

(Contractor)

Secretary

(Signature)

(Title)

STATE OF _____)
CITY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the City and State aforesaid, personally appeared _____, to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its _____ and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Notary Public

My Commission Expires: _____

My Commission No.: _____

STATUS VERIFICATION SYSTEM AFFIDAVIT

STATE OF _____)
) SS:
CITY OF _____)

I, _____, of lawful age, and having been first duly sworn, on oath states:

1. That I am the agent authorized by the Contractor to submit the attached contract to the State of Oklahoma. I am fully aware of the facts and circumstances surrounding the making of the contract to which this statement is attached and have been personally and directly involved in the procurement of this contract.
2. That the Contractor has registered and fully participates in the Status Verification System, as required by Title 25 O.S. § 1313(B)(1), to verify the work eligibility status of all new employees of the Contractor.

FURTHER AFFIANT SAITH NOT.

AFFIANT _____

Subscribed and sworn before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

My Commission Number: _____

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BID TABULATION SHEET

HOOEC Metal Roof Restoration and Insulation Removal
and Spray Foam Replacement Project
Heart of Oklahoma Exposition Center
Project No. C-21-03D

September 20, 2021

BIDDER

AMOUNT

Draper Construction

\$ 496,862.07
10 yr. Metal Restor.

\$ 782,208.56
10 yr. Foam + Coatings

\$ _____

Regular Board of Commissioners

14.

Meeting Date: 10/18/2021

Sales Tax and Budget Reports

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acknowledge monthly Sales Tax and Budget Reports.

Attachments

Sales Tax Report

Budget Report



Date: October 18, 2021
To: Honorable Mayor and City Commissioners
From: Jacob Bussell, Asst. Finance Director
Subject: August Sales and Use Tax Deposit

Sales and Use Tax Collections: The Oklahoma Tax Commission (the “OTC”) collects and enforces collection of sales and use taxes, including special earmarked taxes such as alcohol and tobacco, for the entities responsible for remitting taxes to the City of Shawnee. Entities with monthly tax liabilities exceeding \$2,500 are required to remit tax estimates each month by the 20th; in addition, entities are required to report their final tax collections for the previous month along with a final payment of taxes for the previous month on the 20th. To summarize, tax collections remitted to the City of Shawnee by the OTC in October consists of September estimates and August final reported collections. Any taxes collected for months prior to August will include accrued late penalties and interest.

Sales Tax Collection Allocated by Fund:

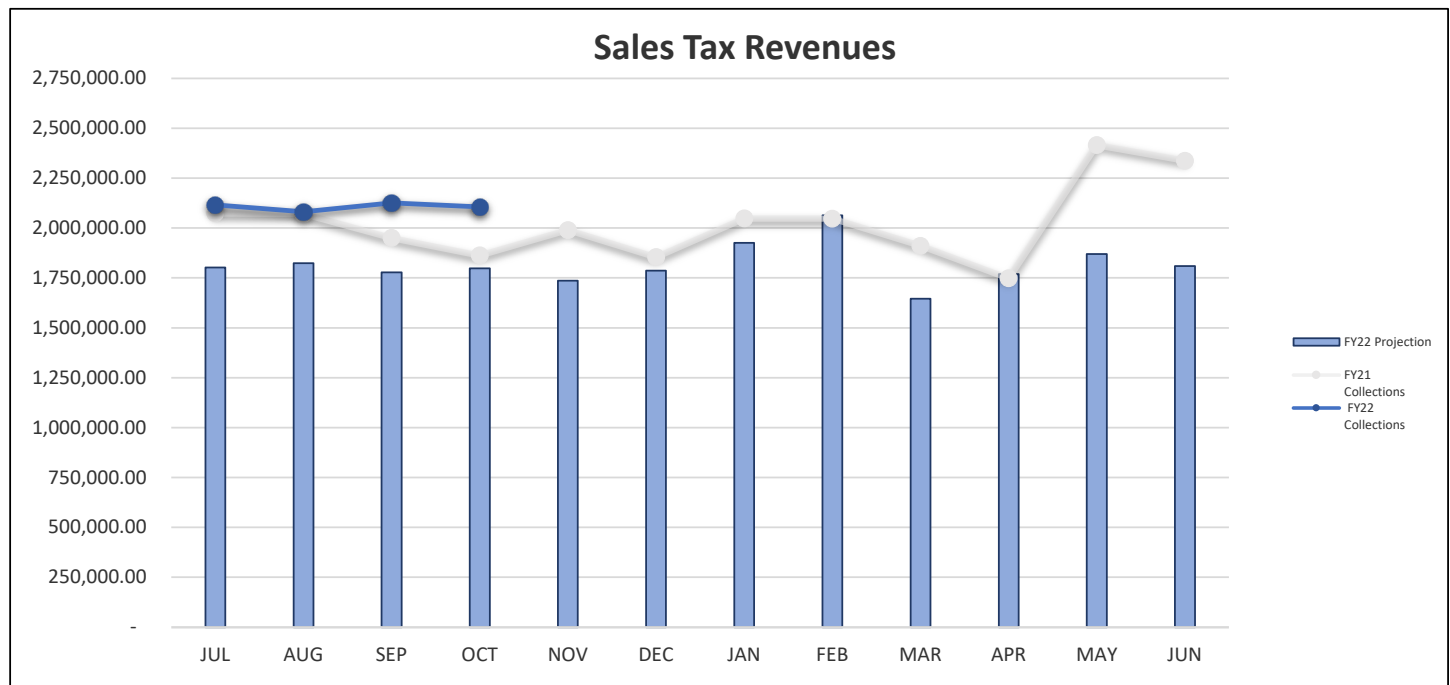
The October sales tax deposit was \$2,105,358.07, including interest of \$1,013.97, to be allocated as follows:

<u>Fund</u>	<u>Allocation</u>
General Fund	\$ 1,203,641.17
2018 Capital Improvements Fund	300,910.29
Capital Improvements Fund	233,205.48
Street Improvements Fund	263,296.50
Economic Development Fund	30,091.04
Police Sales Tax Fund	37,613.78
Fire Sales Tax Fund	37,613.78
Total Sales Taxes Collected	<u>\$ 2,106,372.04</u>

Finance Department Report:

Sales and use tax collections totaled \$2,369,227.85 for October 2021. It should be noted the current sales tax estimate for FY 21-22 is based on a 2% increase compared to the prior year budget. For the year, sales tax collections are up \$1,225,972 or 17.02%, over the projected budget year-to-date. Use tax collections are up approximately \$232,022, or 29.30%, over the projected budget year-to-date.

Fiscal Year 2021 Sales Tax Collections and Performance:

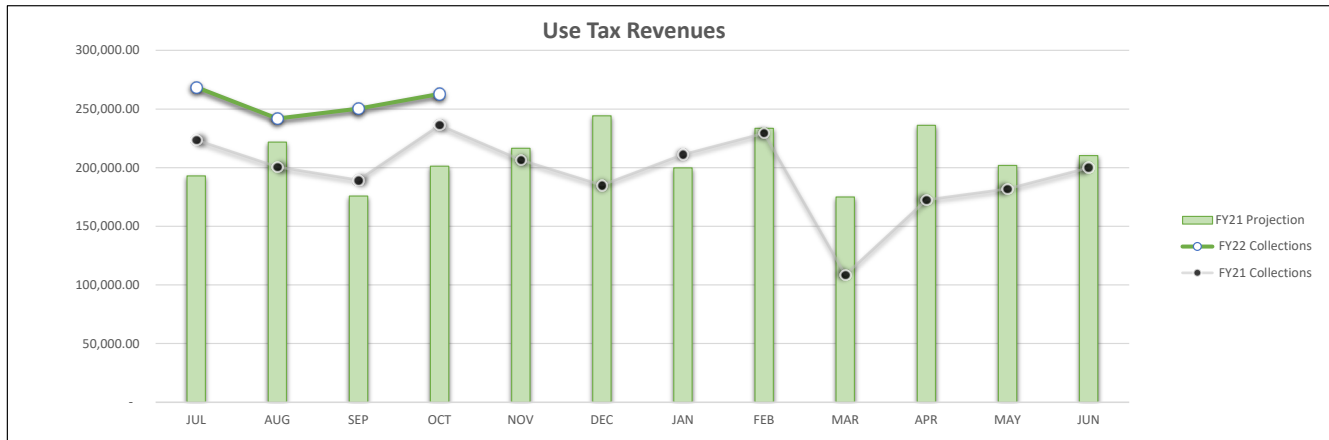


	Projected Budget	Actual	Amount Variance	Percentage Variance
Sales Tax Receipts (October 2021):	\$ 1,798,675	\$ 2,106,372	\$ 307,697	17.11%
Sales Tax Receipts (year-to-date):	\$ 7,204,097	\$ 8,430,069	\$ 1,225,972	17.02%

	October 2020	October 2021	Amount Variance	Percentage Variance
Sales Tax Receipts (vs Prior Year):	\$ 1,862,577	\$ 2,106,372	\$ 243,795	13.09%

	Year To Date FY 2021	Year To Date FY 2022	Amount Variance	Percentage Variance
Sales Tax Receipts (vs Prior Year):	▲ \$ 7,954,775	\$ 8,430,069	\$ 475,293	5.97%

Fiscal Year 2021 Use Tax Collections and Performance:



	Projected Budget	Actual	Amount Variance	Percentage Variance
Use Tax Receipts (October 2021):	\$ 201,240	\$ 262,856	\$ 61,616	30.62%
Use Tax Receipts (year-to-date):	\$ 791,771	\$ 1,023,792	\$ 232,022	29.30%

	October 2020	October 2021	Amount Variance	Percentage Variance
Use Tax Receipts (vs Prior Year):	\$ 214,808	\$ 262,856	\$ 48,048	22.37%

	Year To Date FY 2021	Year To Date FY 2022	Amount Variance	Percentage Variance
Use Tax Receipts (vs Prior Year):	\$ 821,967	\$ 1,023,792	\$ 201,825	24.55%

How to Navigate the City of Shawnee's Online Budget to Actuals

This year, the City of Shawnee implemented OpenGov which allows for an interactive experience with the city's budget. The Budget to Actuals report is laid out in four sections: Revenue vs Expenditure Summary YTD, Revenue by Source, Breakdown by Account Group, and Breakdown by Department.

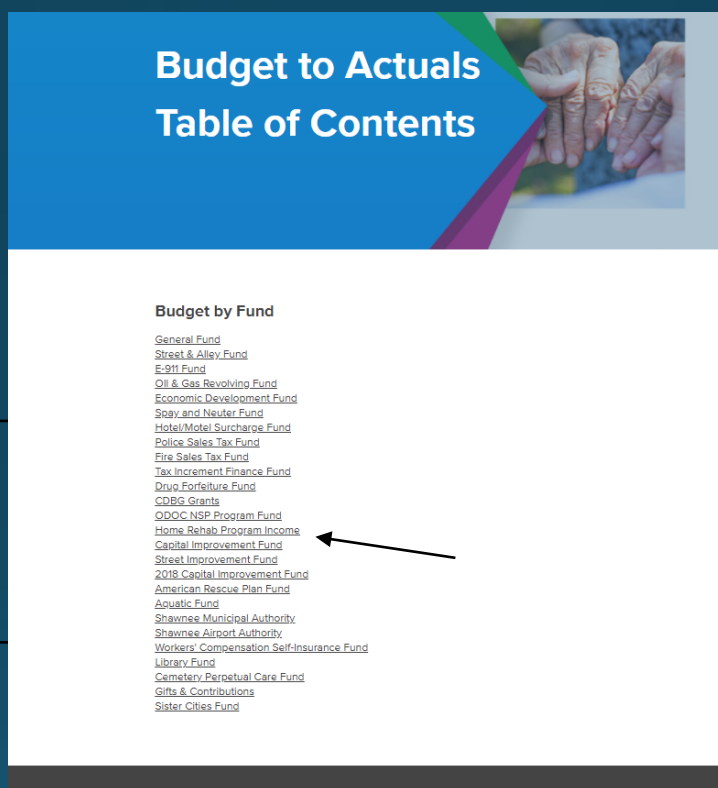
Please Note: *OpenGov works best with Google Chrome.*

Table of Contents

The link below will take you to the City of Shawnee Online Budget to Actuals.

<https://stories.opengov.com/shawneeok/published/u84NCy36R>

The first thing which appears is the Table of Contents. This page contains links to each fund. You may look at the desired budget by clicking on the hyperlink.

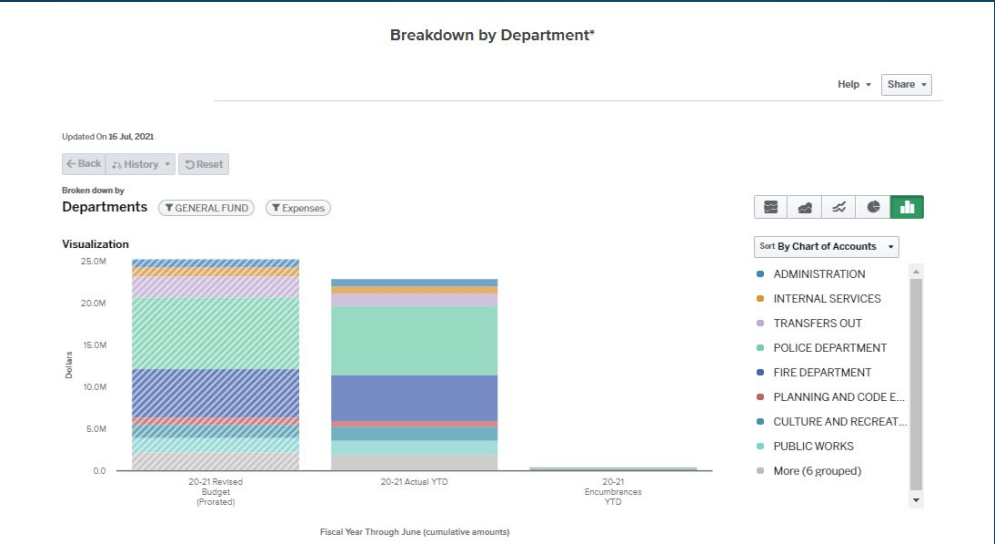


OpenGov comes with many features. The next two pages outline some of the basics of clicking through an OpenGov budget to actuals page.

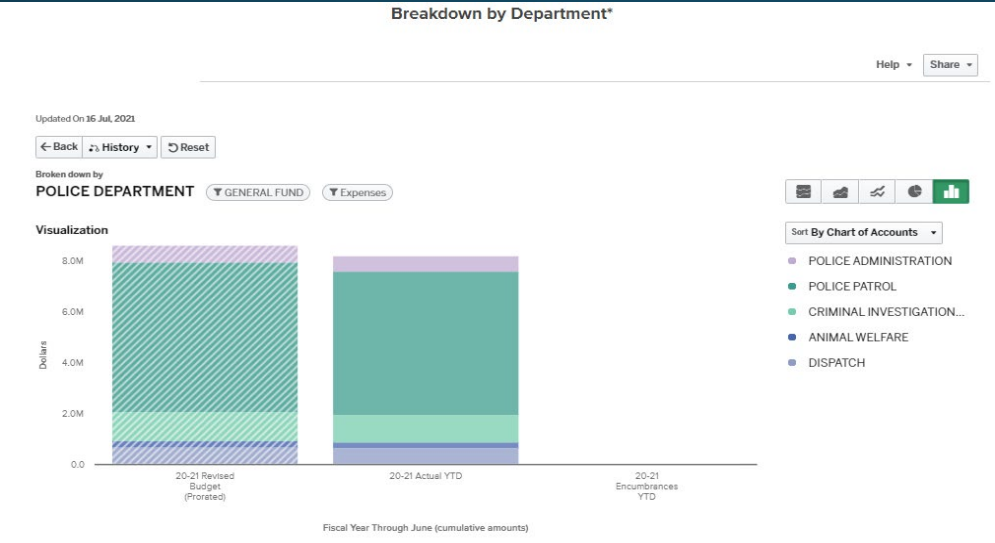
Drill-Down Capabilities

Certain graphs are dynamic and can be used to drill-down. For example, the General Fund Breakdown by Department can be limited to certain divisions. This is done by clicking on the portion of the graph which is of interest.

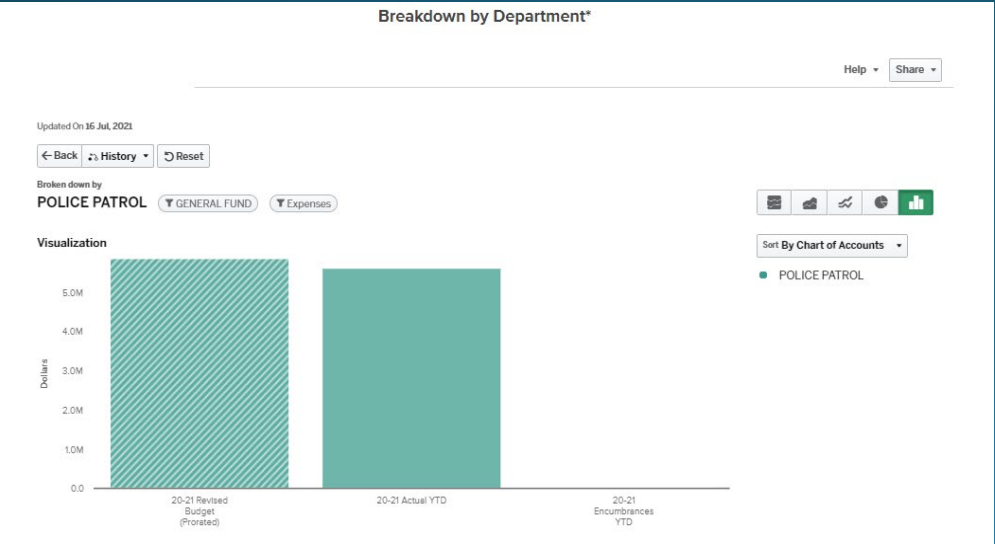
Initial View



Department Level

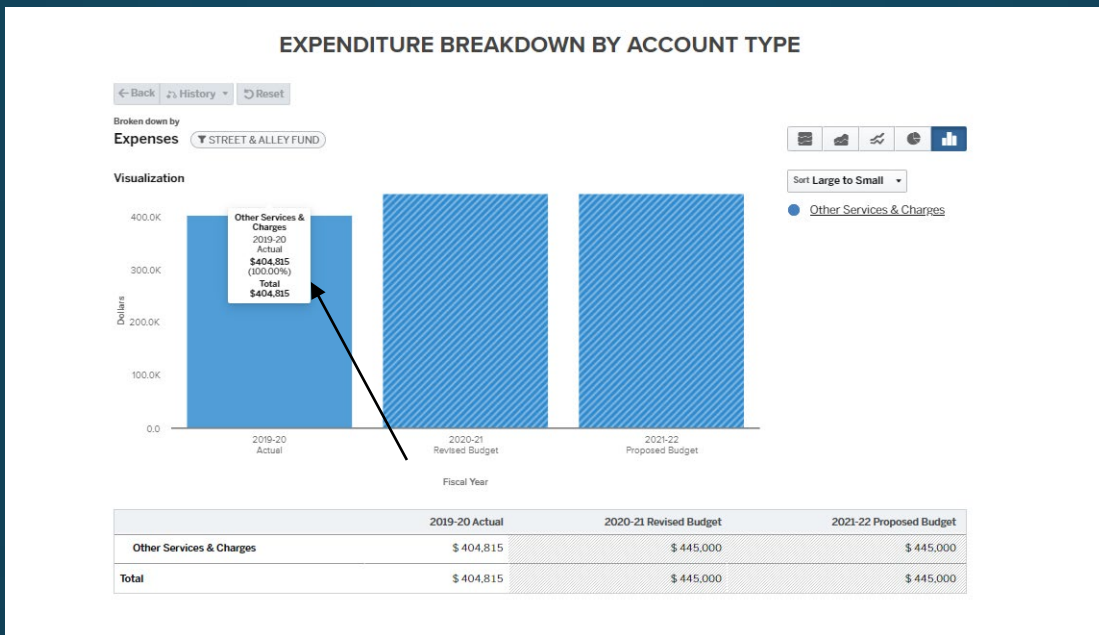


Division Level



Hovering to View Numbers

Hovering over each portion of a bar graph will show you the amount of a particular item.



Sorting

Graphs may be sorted four ways:

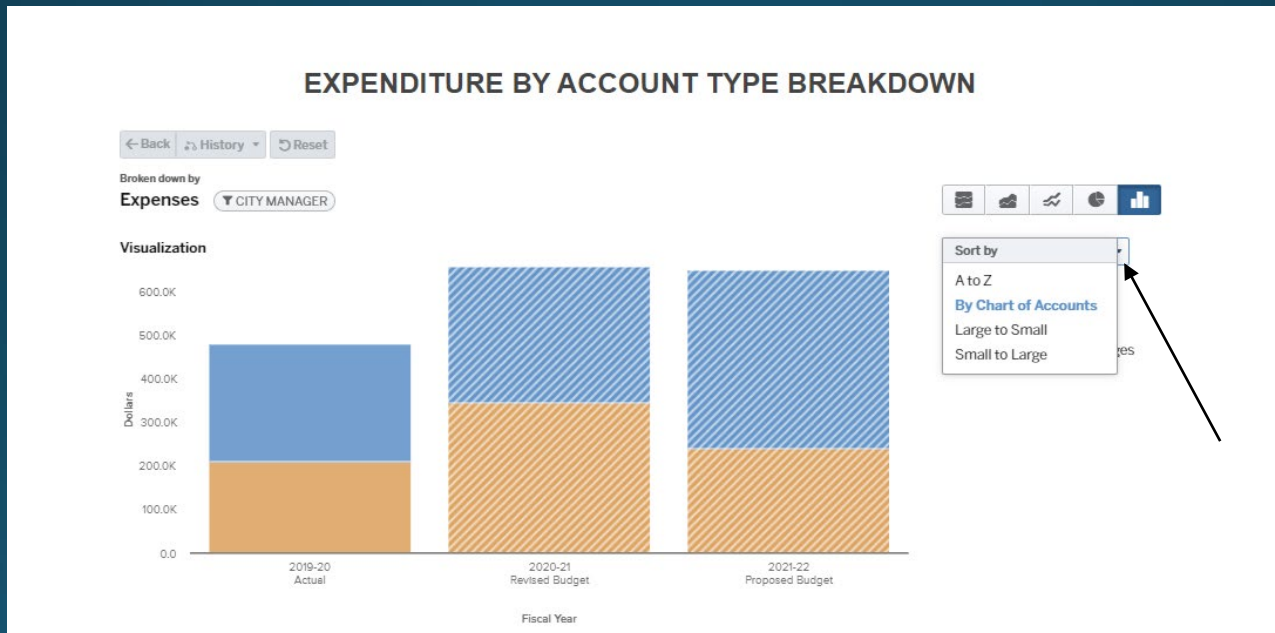
A to Z

Chart of Accounts

Smallest to Largest

Largest to Smallest

To use this feature, please use the Sort By dropdown on the top right-hand corner of the graph.



Please Note: OpenGov information updates daily with current accounting records, and therefore, is subject to change if viewed subsequent to the original presentation date.