

**Minutes of July 5, 2006**  
**Mayor and Board of Aldermen**

Be it remembered that a recess meeting of the Mayor and Board of Aldermen of the City of Long Beach, Mississippi, was begun and held at 5:30 o'clock p.m. on Wednesday the 5<sup>th</sup> day of July, 2006, at the Long Beach School District Central Office, 19148 Commission Road, in said City and the same being the time, date and place fixed by order of the Mayor and Board of Aldermen recessing the meeting from June 20, 2006.

There were present and in attendance on said Board and at the meeting the following named persons: Mayor William Skellie, Jr., Aldermen Charles Boggs, Richard Notter, Richard Burton, Joseph McNary, Mark Lishen, Richard Bennett, City Clerk Rebecca E. Schruoff, and City Attorney Frank R. McCreary, III.

Alderman Allen D. Holder, Jr., was out of town and absent the meeting.

There being a quorum present sufficient to transact the business of this recess meeting, the following proceedings were had and done.

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The meeting was called to order and there were no bid openings, announcements, presentations or proclamations.

\*\*\*\*\*

Alderman Boggs made motion seconded by Alderman Notter and unanimously carried to suspend the rules and amend the Municipal Docket to include the following:  
Item X.5. UNFINISHED BUSINESS – Sign Ordinance.

\*\*\*\*\*

Alderman Bennett made motion seconded by Alderman McNary and unanimously carried to approve the public hearing and regular meeting minutes of the Mayor and Board of Aldermen dated June 20, 2006, as submitted.

\* \* \* \* \*

Alderman Notter made motion seconded by Alderman Bennett and unanimously carried to approve the special meeting minutes of the Mayor and Board of Aldermen dated June 22, 2006, as submitted.

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Alderman Notter made motion seconded by Alderman Bennett and unanimously carried to approve the special meeting minutes of the Mayor and Board of Aldermen dated June 23, 2006, as submitted.

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Alderman Lishen made motion seconded by Alderman McNary and unanimously carried to approve the June 22, 2006, Planning Commission minutes, as submitted.

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Alderman Bennett made motion seconded by Alderman Lishen to approve payment of invoices as listed in Docket of Claims number 070406.

Due to the potential for litigation, Alderman Boggs made substitute motion seconded by Alderman Notter and unanimously carried to approve payment of said docket 070406, upon the availability of funds, with exception to invoice number 10-1757-II in the amount of \$328,536.60 as submitted by Alabama Emergency Response and Recovery in order to consider the matter in executive session later during the course of this meeting.

\*\*\*\*\*

Based upon the recommendation of Deputy Chief Mike Brown and certification by the Civil Service Commission, Alderman Notter made motion seconded by Alderman McNary and unanimously carried to approve the Fire Department personnel matter, Step Increase, Firefighter 1<sup>st</sup> Class Richard Scott, PS-II, effective June 1, 1006.

\*\*\*\*\*

Alderman Bennett made motion seconded by Alderman Boggs and unanimously carried to extend the Proclamation of Civil Emergency to protect and preserve the public health and safety of the community.

\*\*\*\*\*

There came on for consideration a letter with attachments from City Engineer John Campton, as follows:

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**A. GARNER RUSSELL & ASSOCIATES, INC. / CONSULTING ENGINEERS**

520 33<sup>RD</sup> STREET, GULFPORT MS 39507  
P.O. BOX 1677 GULFPORT, MS 39502

TEL (228) 863-0667  
FAX (228) 863-5232



*AGENDA*

June 20, 2006

City of Long Beach  
P O Box 929  
Long Beach, MS 39560

Re: **Final Acceptance –  
Mold Remediation Contract– City Hall Annex**

Gentlemen:

This is to advise and certify that the above referenced contract has been satisfactorily performed by Coastal Restoration & Cleaning dba as Servpro. Evidence of satisfactory performance is in the form of a Mold Inspection Report by Barclay Assessment Services L L C which the Contractor furnished (copy is attached). We therefore now recommend final settlement with this contractor in accordance with the attached invoice, in the amount of \$31,900.00

Sincerely,

John Campton, P.E.

JC:it:k308  
Enclosure

cc: Frank Palazzolo



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City of Long Beach 201 Jeff Davis Avenue Long Beach, MS 39560	City of Long Beach Mold Remediation, City Hall Annex	Date 6/16/2006	Invoice No. 1202608   SERVPRO of Pearl River/Hancock/SW Harrison Co./Hattiesburg  106 Redus Street Hattiesburg, MS 39401 FEIN 82-0583641																
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:25%;">JOB DATE</th> <th style="width:25%;">REP</th> <th style="width:50%;">SOURCE</th> </tr> </thead> <tbody> <tr> <td>6/13/2006</td> <td></td> <td></td> </tr> </tbody> </table>		JOB DATE	REP	SOURCE	6/13/2006			<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:80%;">Services</th> <th style="width:20%;"></th> </tr> </thead> <tbody> <tr> <td>Commercial mold remediation: Hurricane Katrina</td> <td align="right">31,900.00</td> </tr> <tr> <td>Purchase Order #00000631-00</td> <td></td> </tr> <tr> <td colspan="2" style="text-align: right;"><b>TOTAL</b></td> </tr> <tr> <td></td> <td align="right"><b>\$31,900.00</b></td> </tr> </tbody> </table>		Services		Commercial mold remediation: Hurricane Katrina	31,900.00	Purchase Order #00000631-00		<b>TOTAL</b>			<b>\$31,900.00</b>
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<b>TOTAL</b>																			
	<b>\$31,900.00</b>																		
<small>Qualifying Statements: The customer acknowledges that permanently discolored, faded and/or bleached areas on carpet, upholstery, drapery or other types of material sometimes make it impossible to restore the original color or condition. Spot Removal is not guaranteed. PLEASE SEE THE ADDITIONAL TERMS AND CONDITIONS OF SERVICE ON THE REVERSE SIDE.</small>																			

I have read the Terms and Conditions of Service on the reverse side hereof and agree to same.

(X) \_\_\_\_\_  
Authorized Signature

I hereby acknowledge the satisfactory completion of the above-described work.

(X) \_\_\_\_\_  
Customer Signature

I No One Home

TERMS OF PAYMENT: Unless otherwise specified on this invoice, payment is due in full upon completion of service. Interest will be charged at the maximum allowable by law, or at 1.5% per month whichever is lesser on accounts over 30 days past due

Thank you for choosing SERVPRO!

29502 05/02 Office - Original Invoice Yellow - Billing Copy Green - Reporting Copy Pink - Customer Copy 2<sup>nd</sup> White - Trainer Back Sheet - Recall File

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**Mold Inspection Report**

**Summary**

On June 9<sup>th</sup> and 13<sup>th</sup> Michael Barclay, CIH, did a mold clearance inspection and testing at the Long Beach City Hall – Annex Building located behind the Mayor's office at 201 Jefferson Davis Avenue in Long Beach, Ms. The inspection was in follow-up to mold remediation that was done by Servpro - Hattiesburg. A preliminary inspect was done per the request of Mr Niel Gray, Servpro, on May 17<sup>th</sup>, 2006 (Reference report # 2808-06 to Mr. Niel Gray dated June 6<sup>th</sup>).

The purpose of the inspection was to identify the presence of mold contamination.

To complete the assessment an inspection was done of the accessible areas. Also, indoor air samples were obtained from two representative and central areas including the front service counter and Court Room. Also, an outdoor air sample was obtained for comparison and reference.

In addition, a tape lift sample was obtained from a representative stud that had been blasted with dry ice to determine the presence and identification of mold contamination. All the samples were analyzed for mold.

The indoor relative humidity was measured and moisture checks were made on affected surfaces with a Protimeter MMS moisture detector.

**Results**

The results of the moisture readings indicated 'Dry' conditions were present on selected surfaces such as wood framework and exterior walls. Also, the indoor relative humidity levels were within the recommended limits. Therefore, the ambient conditions were not conducive to mold growth. However, the HVAC system was not operating at the time of the inspection. We advise that proactive measures be taken to ensure the relative humidity is maintained within recommended limits.

The visual inspection did not discover any presence of suspect mold contamination on exposed materials including wood furnishings, wood framework, walls or ceilings. Also, the source sample results for a representative stud did not indicate any presence of detectable mold contamination (Attachment A).

The indoor air sampling results obtained on June 9<sup>th</sup> indicated the presence of marginally elevated concentrations of mostly *Aspergillus-Penicillium* like mold spores. However, fresh was introduced through the building that effectively improved the indoor air quality, as demonstrated by repeat indoor air sampling results for samples obtained on June 13<sup>th</sup>, 2006.

Consequently, it appears that the mold remediation was effective in restoring a normal fungal ecology to the routinely occupied areas of the building.

**Ambient test results**

The ambient test results obtained during the inspection on June 13<sup>th</sup> are provided in the following table:

Area	Relative Humidity <sup>1 2</sup> (%)	Air Temp <sup>2</sup> (° F)	Surface Moisture <sup>2 3</sup>
Front Service Office	36.7	92.5	Dry

*Continued on next page*

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**Mold Inspection Report, Continued**

**Ambient test results (continued)**

Area	Relative Humidity <sup>1,2</sup> (%)	Air Temp <sup>2</sup> (° F)	Surface Moisture <sup>2,3</sup>
Court Room	49.3	90.7	Dry
Rest room – East side of building	48	91.8	Dry
Outdoors (Clear)	39.7	96.7	

<sup>1</sup>The American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), the indoor relative humidity should be less than 60 percent to ensure good indoor air quality with respect to mold.

<sup>2</sup>Moisture, relative humidity, and temperature measurements were obtained with a Protimeter MMS moisture survey meter.

<sup>3</sup>Surface moisture readings indicating "Wet" and "At Risk" conditions may be conducive to further mold growth. Sources of moisture intrusion or causes of high humidity should be identified and abated to control mold growth and maintain good indoor air quality

**Sample  
summary table**

The following table is a summary of all representative samples that were collected and analyzed (Attachment A).

Sample Number	Date	Sample Type	Sample Description
585397	6/9	Air	Outdoors
585442	6/9	Air	Water Department Counter
585398	6/9	Air	Court Room
B183088	6/9	Source	Representative Stud
585408	6/13	Air	Outdoors - Back of Building by Air Exchange
584401	6/13	Air	Water Department Counter
584439	6/13	Air	Court Room

**Picture  
summary table**

The following table is a summary of pictures that were taken during the inspection and testing:

Picture Number	Date	Picture Description
P6130014	6/13	Outdoor air sample by air exchanger
P6130015	6/13	Courtroom Air Sampling
P6130016	6/13	East end restroom Air Sampling
P6130017	6/13	Water Dept Counter Air Sampling
P6130018	6/13	Southwest office area
P6130019	6/13	Cleaned Studs S. Office Area
P6130020	6/13	Cleaned wood framework Service Area on South side

*Continued on next page*

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**Mold Inspection Report, Continued**

Picture summary table (continued)

Picture Number	Date	Picture Description
P6130021	6/13	Cleaned wood counter areas on South side
P6090036	6/9	Water Dept Counter Air Sampling
P6090037	6/9	Cleaned studs Water Dept Area
P6090038	6/9	Cleaned studs in Front Restroom
P6090039	6/9	Cleaned evaporator Coil Front Utility Closet
P6090040	6/9	Cleaned wood framework Kitchen Area
P6090041	6/9	Cleaned wood framework on raised platform
P6090042	6/9	Cleaned exterior wall in Northeast office
P6090043	6/9	Cleaned metal studs in Annex
P6090045	6/9	Cleaned utility closet in East side utility room
P6090046	6/9	Cleaned return air handler in East side utility room
P6090050	6/9	Cleaned wood studs in Water Department

**Results and findings**

The following is a summary of sample results (Attachment A) for mold, and other findings obtained at the time of the inspection and testing:

- The moisture readings indicated 'Dry' conditions were present on selected surfaces such as wood framework and walls.
- The indoor relative humidity levels were within the recommended limits; therefore, ambient conditions were not conducive to mold growth.
- The visual inspection did not indicate any presence of suspect mold contamination on accessible and exposed materials.
- The representative source sample results obtained from a treated wood stud indicated no presence of mold contamination.
- The indoor air sampling results indicated the presence of good indoor air quality with respect to mold, as compared with the outdoor reference sample.

**Methods**

The following describes the methods used to assess mold during the inspection. Sampling for fungal contaminants was done in accordance with methods derived from "Bioaerosols: Assessment and Control", published by the ACGIH, 1999

The air and source samples were analyzed via light microscopy at 600X magnification. The air samples were analyzed over 100% of the trace. These results are reported as total, meaning they include both viable and non-viable fungal spores. However, please note that the scope of the inspection was limited and not exhaustive or intrusive, and included only the specified accessible and observable areas. Consequently, sources of mold or water intrusion may be present that were not detected or identified.

*Continued on next page*

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**Mold Inspection Report, Continued**

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**Report  
Conditions**

This report is based on information available to BAS at this time. We reserve the right to revise our opinions and conclusions, if necessary and warranted by the discovery of new or additional information. This report is specific in nature and shall not be relied upon for real estate transactions.

The findings, opinions, and conclusions contained within this report are not intended to reflect all problems relative to the subject matter that made the basis of this inspection and investigation. The findings, opinions, and conclusions contained herein are solely limited to only the areas inspected and investigated by BAS as requested by the company and/or individual who requested the inspection and investigation. BAS did not undertake to expand the scope of the investigation and inspection beyond that requested and approved by the person and/or entity requesting the investigation and inspection. Accordingly, other problems may exist that are not identified in this report in the event the same were outside of the scope of the investigation and inspection requested by the person and/or entity requesting the same. The findings, opinions, and conclusions contained within this report are intended solely for the benefit of the person and/or entity who requested that BAS conduct the inspection and investigation, and the same are not intended to benefit any third party.

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**Contact**

If you have any questions or need additional support, please contact Michael Barclay at 985-626-7685.

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**ATTACHMENT A**

**MOLD SAMPLING RESULTS**



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ATTACHMENT B

THE MEANING OF SAMPLING RESULTS AND MOLD

1

**MEANING OF SAMPLING RESULTS AND MOLD**

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**Types of Mold Sampling**

The types of samples collected for indoor mold assessment will depend on the specific objective of the assessment. Source samples are generally obtained with swabs or tape lifts. An air sample is considered to be a source sample when obtained from a suspected source of mold contamination (e.g. Wall cavity). However, a positive source sample result for mold indicates that the hazard is present, but does not necessarily mean that exposure has occurred. A bulk sample is a type of source sample that is obtained directly from the source (sample of sheetrock, insulation, tiling, etc.). Source samples are obtained to identify the location and types of mold present, which if growing or disturbed could impact indoor air quality, health, and property. Source samples are analyzed via light microscopy at 1000X magnification.

Air samples involve collection of a metered amount of air through a spore trap. The results obtained indicate the types and concentration of viable and non-viable mold spores present in the air. Samples collected in indoor areas of interest are often compared with a reference or control sample, such as from an unaffected indoor or outdoor area.

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**Sample analysis**

Air samples are analyzed via light microscopy at 600X magnification. The amount of trace (sample deposit) analyzed varies 25 to 100%, depending on the laboratory. This lab analyzes 100% of the trace. The results are reported as total, meaning they include both viable and non-viable fungal spores.

The microscopic techniques applicable to air samples do not always allow for the differentiation between *Aspergillus* and *Penicillium* spores. Small (~1-3 micron) spherical fungal spores that cannot be identified and which may include *Aspergillus*, *Penicillium*, *Trichoderma* or other genera, are grouped together as *Aspergillus/Penicillium*-like spores. Additionally, depending on morphology, other non-distinctive spores will be reported in categories such as ascospores (produced in an ascus) or basidiospores (including the mushrooms and other microfungi). Genera with greater than 200 spores on a slide are difficult to count and are therefore estimations. Similarly, excessive non-microbial particulates (overloading) can mask the presence of fungal spores, thereby reducing counting accuracies. All air samples are ranked against the reference sample for the amount of particulate (debris) observed, provided that the sample collection method used is comparable to the reference sample.

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**Meaning of air sampling results**

When the total mold spore count is comparable or lower than the outdoor or reference total mold spore count, then the quality of the indoor air would appear to be good with respect to mold spores (conidia). If the indoor level exceeds the outdoor or reference levels, a possibility exist that indoor sources of mold and conditions conducive to mold growth are present. Excessive indoor mold growth can impact the air quality by causing odors and potential health effects. It can also cause property damage and diminish its aesthetic value and utility.

Indoor mold spore counts that appear to be elevated in comparison to the reference are boldfaced and italicized for emphasis. Similarly, the genus is emphasized when elevated with respect to the identical genus in the reference sample. Care must be used in interpreting the indoor results when they exceed the reference results by a margin of less

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**MEANING OF SAMPLING RESULTS AND MOLD, Continued**

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**Meaning of air sampling results (Cont.)**      than 10 fold. In any case, the significance of the results will depend on the judgment of a qualified professional.

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**Debris rank**      Another useful measure is the "Debris Rank" parameter found near the top of the column. This indicator is intended to provide a qualitative measure of the amount of airborne debris (i.e. particulates), as compared to the reference sample. The Debris Rank is available for air samples (not source samples) that are collected with the same media and air volume as the reference sample. This indicator may have relevance in assessing the effectiveness of the air filtration and relative cleanliness of the heating, ventilation, and air-conditioning (HVAC) system. A qualified professional should be consulted to interpret these results and assess the affect of the HVAC system on air quality.

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**Water indicator mold**      Certain authorities have recognized that selected mold found indoors indicates the presence of excessive moisture. The presence of a few spores of these indicator mold should be interpreted with caution. Additionally, it should be recognized that the following mold (Table I) are not necessarily the only ones of potential significance. Although a potential health effect has been published does not infer that a significant health risk exists.

**Table I: Summary of Specific Mold Characteristics**

Spore Name	Growth Indoors
<i>Alternaria</i>	Reported to be allergenic. <i>Alternaria</i> can grow indoors on a variety of substrates. Commonly found growing in carpets and on indoor textiles. This fungus has been indicated as a potential cause of hypersensitivity Pneumonitis. Rare species known to produce tenuazonic acid and other toxic metabolites that may cause disease in humans.
<i>Acremonium</i>	Has been involved in localized disease, such as nail infections and corneal or endophthalamic infections.
<i>Arthrinium</i>	Widespread fungus found on plants. It is rarely found growing indoors.
Ascospores	A general classification for spores produced by sexual reproduction and formed in an ascus. Frequently found growing on damp substrates.
<i>Aspergillus</i>	Reported to be an opportunistic pathogen, allergenic, and mycotoxic. Tends to colonize continuously damp materials such as damp wallboard and fabrics.
<i>Aspergillus/Penicillium</i> -like	<i>Aspergillus</i> and <i>Penicillium</i> spores in air samples are mostly indistinguishable via direct microscopic examination. Small (~1-3 micron) spherical fungal spores that cannot be identified and which may include <i>Aspergillus</i> , <i>Penicillium</i> , <i>Trichoderma</i> or other Small (~1-3 micron) spherical fungal spores are grouped together as <i>Aspergillus/Penicillium</i> -like spores.
<i>Aureobasidium</i>	Reported to be allergenic. It is found in a variety of soils. Indoors, it is commonly found where moisture accumulates, especially bathrooms and kitchens, on shower curtains, tile grout, windowsills, textiles, and liquid waste materials.
Basidiospores	Basidiospore is a general classification of spore that is commonly found in gardens, forests and woodlands. They are also agents of dry, white and brown rot.

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**MEANING OF SAMPLING RESULTS AND MOLD, Continued**

Water indicator mold (continued)

Spore Name	Growth Indoors
<i>Bipolaris/Dreschlera</i>	<i>Bipolaris</i> reported to be a cause of mycotic infections and is recognized as an allergen. <i>Dreschlera</i> has been reported to cause eye infections.
<i>Botrytis</i>	A mold that can be found associated with indoor plants.
<i>Cercospora</i>	No information regarding the health effects of this genus is available at this time. All mold should be treated as potential allergens.
<i>Chaetomium</i>	Reported to be allergenic. Some species may be associated with disease in humans. Commonly found on damp sheetrock paper.
<i>Cladosporium</i>	Reported to be allergenic. Most commonly identified spore in outdoor samples. Highly seasonal. Indoor <i>Cladosporium</i> is a common outdoor mold that can colonize continuously damp materials such as damp wallboard and fabrics but also found on air.
<i>Curvularia</i>	Reported to be allergenic. <i>Curvularia</i> can grow on a variety of substrates.
<i>Epicoccum</i>	Reported to be allergenic. Commonly found on plants, textiles and products made of paper. <i>Epicoccum</i> tends to colonize continuously damp materials such as damp wallboard and fabrics.
<i>Fusarium</i>	<i>Fusarium</i> have been reported to be causative agents of superficial and systemic infections in humans. <i>Fusarium</i> colonizes continuously wet materials such as soaked wallboard and water reservoirs for humidifiers and drip pans.
<i>Memmoniella</i>	<i>Memmoniella</i> can be found growing on a variety of cellulose-containing materials.
<i>Nigrospora</i>	<i>Nigrospora</i> is rarely found growing indoors.
<i>Oidium / Peronospora</i>	Both of these organisms are plant pathogens and cannot grow on indoor surfaces.
<i>Penicillium</i>	<i>Penicillium spp.</i> Have been reported to cause infection in humans and the resulting disease is known generically as penicilliosis. Tends to colonize continuously damp materials such as damp wallboard and fabrics.
<i>Pithomyces/Ulocladium</i>	Both reported to be allergenic. Some species of <i>Pithomyces</i> may, in rare instances, produce the toxin sporidesmin. <i>Pithomyces</i> are rarely found indoors. <i>Ulocladium</i> colonize continuously damp materials such as wallboard and fabrics.
Rusts	Rusts are plant pathogens and only grow on host plants.
Smuts / Myxomycetes	Smuts do not usually grow indoors. They are parasitic plant pathogens that require a living host. Myxomycetes are occasionally found indoors.
<i>Stachybotrys</i>	Reported to be toxigenic. Also recognized as an allergen. Typically a fungus of dark green/black coloration, it grows readily on building materials with a high cellulose content but low in nitrogen, and is rarely observed in outdoor samples. Certain strains of <i>Stachybotrys</i> may produce the mycotoxin, trichothecene under appropriate conditions which has been documented to cause problems associated with the circulatory, alimentary, skin and nervous systems. Absorption of trichothecene into the tissues of the human lung may cause a condition known as pneumomycosis. Although there have been conflicting studies concerning the toxicity of this fungi, it still appears that extreme caution should be practiced when dealing with this mold.

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**MEANING OF SAMPLING RESULTS AND MOLD, Continued**

**Water indicator mold (continued)**

Spore Name	Growth Indoors
<i>Stemphylium</i>	Reported to cause mycotic infections characterized by the presence of dematiaceous (dark-walled) septate hyphae and sometimes yeast or a combination of both in tissue. <i>Stemphylium</i> is rarely found growing indoors.
<i>Torula</i>	<i>Torula</i> can grow indoors on cellulose containing materials.
Fungal fragment	A fungal spore or vegetative fungal component that does not lend itself to classification via direct microscopy.

**Descriptions of the hazardous properties of mold**

The following provides descriptions of the hazardous properties associated with mold, although all mold may or may not have one or more of these hazardous properties:

**Allergenic** mold can cause allergic or asthmatic symptoms such as wheezing or runny nose, and rashes.

**Mycotoxic** mold have been reported by some authorities to cause health effects in humans and animals. Health effects range from short-term irritation to more serious health effects.

**Pathogenic** mold can cause serious health effects in susceptible persons. For example, those with suppressed immune system from undergoing chemotherapy, or who are affected with HIV/AIDS, or have an impaired or underdeveloped immune system or other auto-immunity disorder can be at risk from exposure to mold

Although fungi have hazardous properties, the likelihood that a health effect will occur depends on many factors requiring professional judgment. None of the information contained in this section should be construed as medical advice or a call to action for evacuation or remediation. Any decision relative to medical significance should be made by a qualified health professional or physician.

**What causes mold?**

Mold naturally grow in the indoor environment. Mold spores may also enter your building through open doorways, windows, heating, ventilation, and air conditioning systems. Spores in the air outside also attach themselves to people and animals, making clothing, shoes, bags, and pets convenient vehicles for carrying mold indoors. When mold spores drop on places where there is excessive moisture, such as where leakage may have occurred in roofs, pipes, walls, plant pots, or where there has been flooding, they will grow. Many building materials provide suitable nutrients that encourage mold to grow. Wet cellulose materials, including paper and paper products, cardboard, ceiling tiles, wood, and wood products, are particularly conducive for the growth of some mold.

Other materials such as dust, certain paints, wallpaper, insulation materials, drywall, carpet, fabric, and upholstery, commonly support mold growth.

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**MEANING OF SAMPLING RESULTS AND MOLD, Continued**

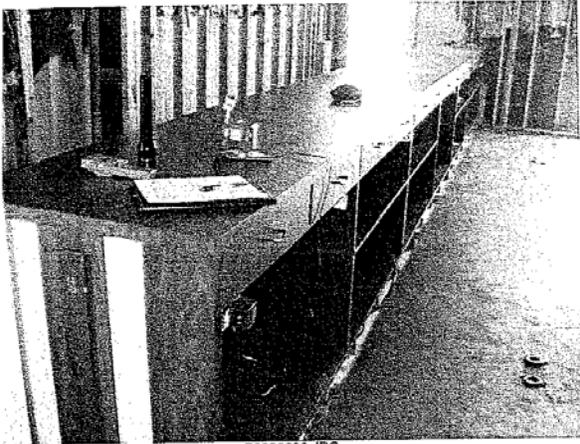
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<b>What causes mold? (Cont.)</b>	Excessively moldy buildings generally have a consistent and/or significant source of moisture leading to unusually elevated levels of mold growth. The source of moisture may be a leaky basement, a dripping pipe, a roof in need of repair, poor ventilation or air circulation, a recent flood or water infiltration event, or some other less obvious cause. In most cases the mold can be seen growing on walls or other materials in contact with the moisture, but sometimes the moisture can occur inside walls and not be apparent. Wall cavities are especially suited to mold growth when damp because they provide nutrients (cellulose from wood) and a dark environment favorable to mold growth.
<b>What are the potential health effects from exposure to mold</b>	<p>People become exposed to mold and their products either by direct contact on surfaces, or through inhalation should mold spores or mold products become airborne. Mold can have an impact on human health, depending on the nature of the mold involved, the metabolic products it produces, the amount and duration of exposure, and the specific susceptibility of those exposed.</p> <p>Health effects from exposures to mold in indoor environments can result from allergy, infection, mucous membrane and sensory irritation or in combination. Some people may have more severe reactions to mold. People with allergies may be more sensitive to mold. People with immune suppression or underlying lung disease are more susceptible to fungal infections. Severe reactions may include fever and shortness of breath. People with chronic illnesses, such as obstructive lung disease, may develop mold infections in their lungs. Although substantial research is still needed to develop a database which reflects typical microbial levels in a variety of indoor air environments, if mold are present, potential exposure concerns through direct contact or inhalation of airborne spores exist. When excess mold growth occurs, exposure of individuals and remediation of the moisture problem must be addressed. It is not the purpose, nor intent of this report to define your particular health risk, based upon these test results. Anyone who may be experiencing adverse health effects should consult their medical advisor.</p>
<b>Can mold cause other impacts</b>	Mold are organisms whose natural purpose in life is to decompose organic matter. Consequently, they can have an impact on many materials found in a building. For example, cellulose is an organic material found in many products such as paper products and wood studs that bear the load of the walls, ceilings, and roof. Consequently, mold can cause significant structural damage to a building and render it unsafe. Besides causing damage to building components and furnishings, it can also impact the indoor air quality by producing objectionable odors.
<b>Additional information and references</b>	For additional information about the assessment and control of mold in occupied buildings, please refer to the following authoritative guidance: The Environmental Protection Agency (EPA), Building Air Quality: a Guide for Building Owners and Facility Managers available at <a href="http://www.epa.gov/iaq/largebdgs/baqtoc.html">http://www.epa.gov/iaq/largebdgs/baqtoc.html</a> ; the American Conference of Governmental Industrial Hygienist (1999), Bioaerosols: Assessment and Control. ISBN:882517-29-1; and, the New York City Department of Health (2000), Guidelines on Assessment and Remediation of Fungi in Indoor Environments. New York City Department of Health.

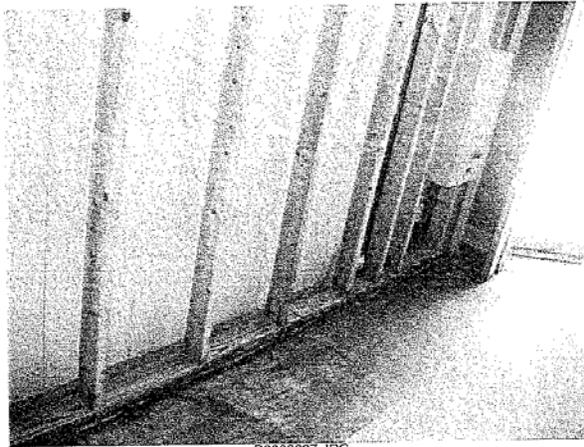
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Minutes of July 5, 2006  
Mayor and Board of Aldermen

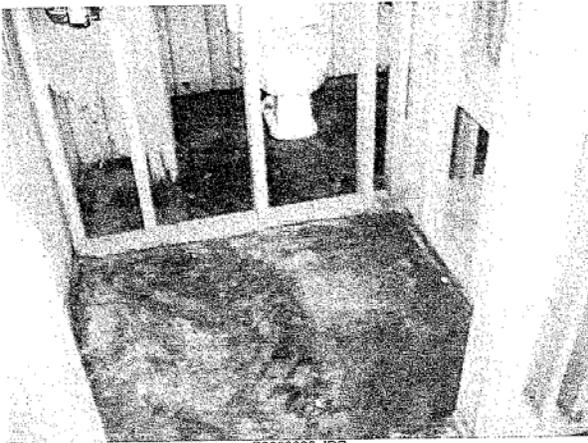
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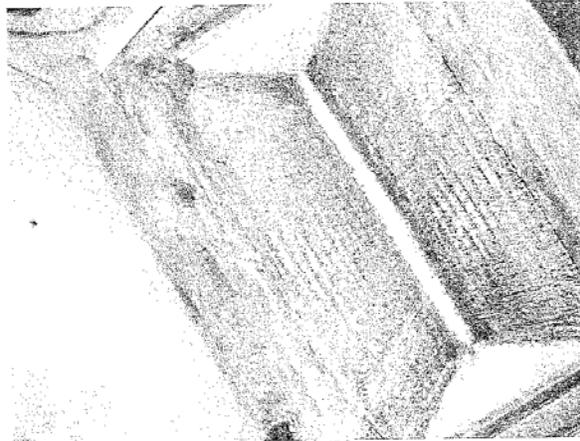
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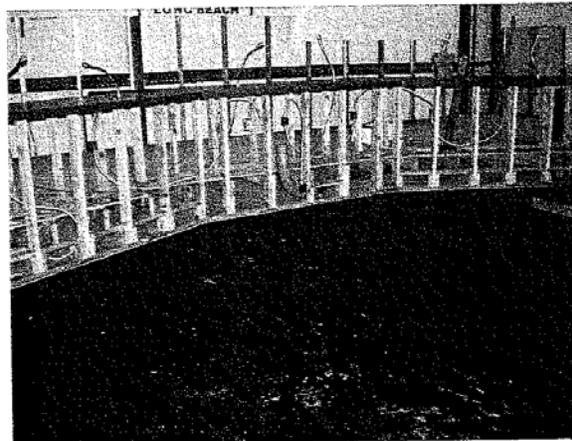
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CITY HALL ANNEX L.B.

BAS LLC

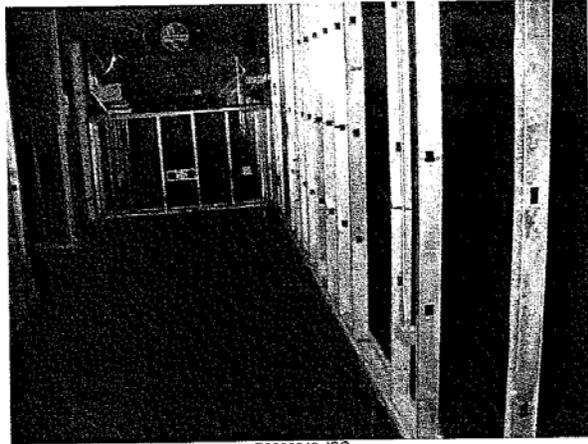
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Minutes of July 5, 2006  
Mayor and Board of Aldermen

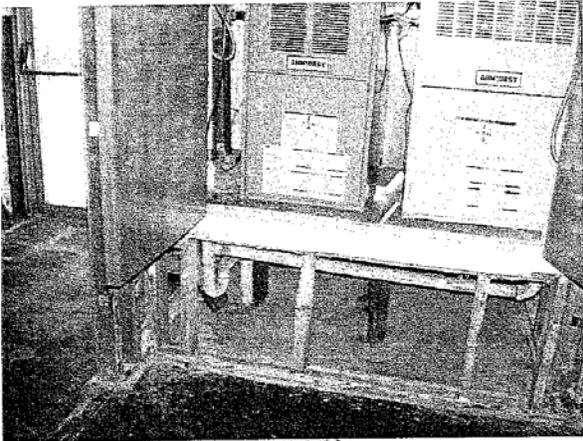
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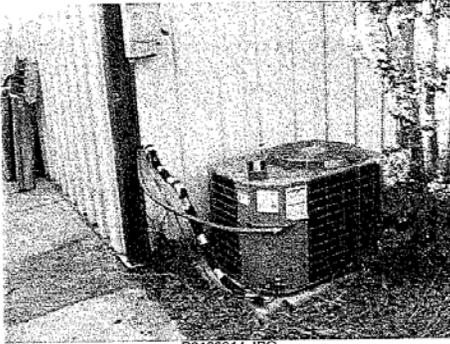
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BAS LLC

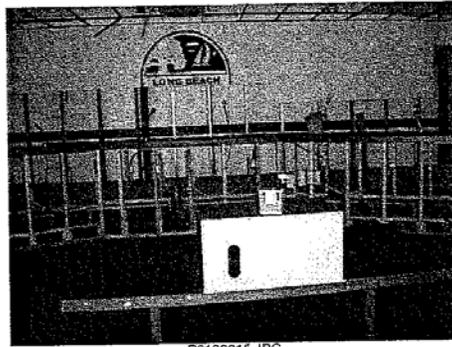
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Minutes of July 5, 2006  
Mayor and Board of Aldermen

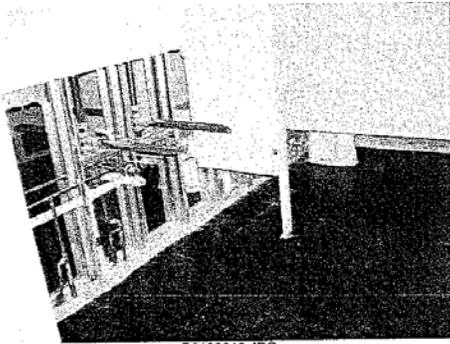
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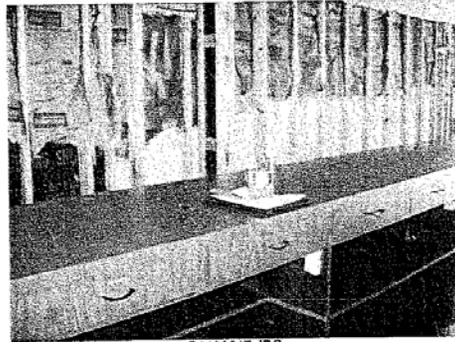
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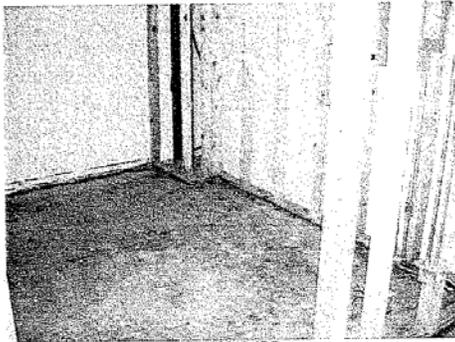
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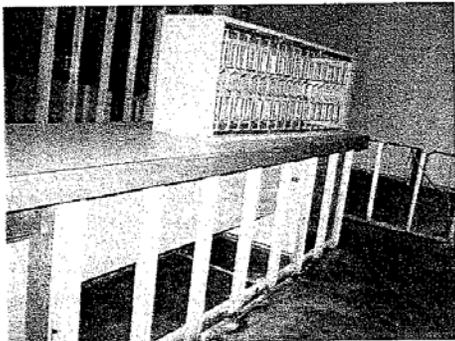
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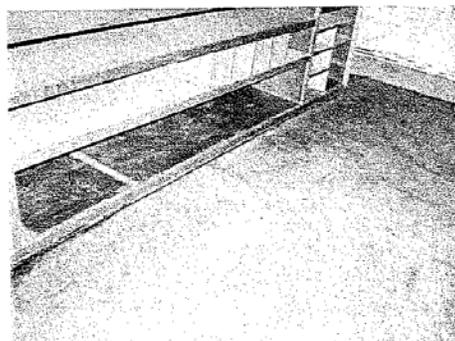
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CITY HALL ANNEX L.B.

BAS LLC

JUNE 13 20

# Minutes of July 5, 2006 Mayor and Board of Aldermen

**Michael T. Barclay, M.S., CIH, CSP, REPA**  
3011 Pine Place  
Mandeville, La. 70448  
Ph: 985-628-7685

**Barclay Assessment Services, L.L.C.**  
IHLAB.COM

June 19, 2006

## Vitae for Michael T. Barclay

### Summary

Michael Barclay is a Certified Industrial Hygienist (CIH) by the American Board of Industrial Hygiene (ABIH), and a Certified Safety Professional by the Board of Certified Safety Professionals (BCSP). These certification programs are accredited by the Council of Engineering & Scientific Specialty Boards. He has practiced in these fields for over 25 years. He is the managing member of Barclay Assessment Services, L.L.C., and the provider of quality analytical support for indoor air quality (IAQ) service providers. Michael's specialized and advanced training in fungal spore identification and analysis was received at the McCrone Research Institute in Chicago. Also, he actively participates in the Environmental Microbiology Proficiency and Analytical Testing (EMPAT) program for quality assurance offered by the American Industrial Hygiene Association (AIHA).

Michael has provided expert testimony in depositions and in courts related to industrial hygiene and mold, and has been qualified as an expert in his field by the State of Louisiana judicial system. As an environmental resource and service provider, he consults with and provides ongoing technical and laboratory support to a diverse group of clients, including indoor air quality investigators, health care providers, insurers, property managers and owners. Michael has served as a senior safety engineer and system safety specialist with Martin Marietta Aerospace on the Space Shuttle External Tank Project. His responsibilities included assessing health, safety, and environmental risks associated with advanced thermal-chemical insulation systems, hazardous wastes, and manned-spacecraft manufacturing operations.

As an educator, Michael has taught college level courses in hazardous material handling and industrial hygiene at Delgado College at New Orleans City Park Campus. He continues to provide instruction in mold remediation techniques and hazard assessment. His course on mold in real estate transactions has been approved by the Louisiana's Real Estate Commission for continuing educational credits.

As a researcher, Michael Barclay has co-authored "Morbidity Prevalence Study of Workers with Potential Exposure to Epichlorohydrin", British Journal of Industrial Medicine, 1990:47:pp. 392-399.

### Academic Background

- Michael received a M.S. Degree in Occupational and Environmental Health from Wayne State University, School of Medicine in 1978; B.S. Degree with a major in Experimental Biology from the University of Michigan in 1976.

# Minutes of July 5, 2006

## Mayor and Board of Aldermen

**Michael T. Barclay, M.S., CIH, CSP, REPA**  
3011 Pine Place  
Mandeville, La. 70448  
Ph: 985-626-7685

**Barclay Assessment Services, L.L.C.**  
IHLAB.COM

### Recent Post Graduate School Training

- Attended Fungal Spore Identification and Enumeration at the McCrone Research Institute, in Chicago, IL.;
- Advanced Fungal Spore Identification at the McCrone Research Institute;
- Clinical Mycology Methods, American Society for Microbiology, New Orleans, La.;
- Mold Contamination: A Hands-On Workshop Addressing Inspection, Remediation Specifications, Project Oversight and Post-Remediation Assessment, Anaheim, CA.

### Experience

Michael Barclay is a certified industrial hygienist with over 25 years of practical experience in assessing health, safety, and environmental risks in most industrial, commercial, and residential settings. His capabilities include the recognition and evaluation of health hazards and methods of hazard control for biological, physical, and chemical agents. Also, Michael is an environmental aerobiologist and microscopist, specially trained in the identification and enumeration of fungal spores, pollen and other allergens.

### Certifications, Registrations, and Licenses

- Certified Industrial Hygienist (CIH #2316) by the American Board of Industrial Hygiene (ABIH);
- Certified Safety Professional (CSP #14839) by the Board of Certified Safety Professionals (BCSP);
- Accredited Asbestos Inspector by the Department of Environmental Quality, State of Louisiana Asbestos (# 5100969);
- Registered Environmental Property Assessor (REPA #6007)
- Registered Environmental Manager (REM #9942) by the National Registry of Environmental Professionals;
- Licensed Home Inspector (#10152) granted by the Louisiana State Board of Home Inspectors.

### Professional Affiliations

- American Industrial Hygiene Association (AIHA);
- Diplomate in the American Board of Industrial Hygiene (ABIH);
- Secretary of the Biosafety and Environmental Microbiology Technical Committee (AIHA), and participant in drafting of the AIHA publication, Assessment, Remediation, and Post-Remediation Verification of Mold in Buildings;
- Member of the American Society for Microbiology (ASM);
- Member of the Indoor Air Quality Advisory Board, New Orleans Louisiana Chapter

**Michael T. Barclay, M.S., CIH, CSP, REPA**  
3011 Pine Place  
Mandeville, La. 70448  
Ph: 985-626-7685

**Barclay Assessment Services, L.L.C.**  
IHLAB.COM

### Publications

Co-authored "Morbidity Prevalence Study of Workers with Potential Exposure to Epichlorohydrin", British Journal of Occupational Medicine, 1990:47: pp. 392-399

**Minutes of July 5, 2006  
Mayor and Board of Aldermen**

Based upon the recommendation of Mr. Campton as set forth above, Alderman Bennett made motion seconded by Alderman Boggs and unanimously carried to approve final acceptance, Mold Remediation Contract – City Hall Annex, authorizing payment to Coastal Restoration & Cleaning, dba Servpro, in the amount of \$31, 900.00.

\*\*\*\*\*

There came on for consideration a letter with attachment from City Engineer John Campton, as follows:

*AGENDA*



**A. GARNER RUSSELL & ASSOCIATES, INC. / CONSULTING ENGINEERS**  
520 33<sup>RD</sup> STREET, GULFPORT, MS 39507      TEL (228) 863-0667  
P O BOX 1677 GULFPORT MS 39502      FAX (228) 863-5232



June 26, 2006

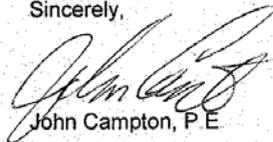
City of Long Beach  
P.O. Box 929  
Long Beach, MS 39560

**Re: Remove Derelict Boats from Harbor**

Gentlemen:

This is to advise and certify that the above referenced project has been satisfactorily completed in substantial conformance with the specifications. We therefore recommend final settlement with the contractor, in accordance with the enclosed Application for Payment Number 1 (Final), in the amount of \$34,600.00.

Sincerely,



John Campton, P.E.

JC:lt:K301-IX  
Enclosure

**Minutes of July 5, 2006  
Mayor and Board of Aldermen**

APPLICATION FOR PAYMENT NO. 1

To: City of Long Beach (OWNER)  
Contract for Remove Derelict Boats from Harbor Dated: April 20, 2006

OWNER'S Project No --- ENGINEER'S Project No K301-IX

For Work accomplished through the date of: \_\_\_\_\_

ITEM	CONTRACTOR'S Schedule of Values			Work Completed	
	Unit Price	Quantity	Amount	Quantity	Amount
COMPLETED WORK					\$34,600 00
Total (Orig Contract) C O No 1 C O No 2					\$34 600 00

Accompanying Documentation:	GROSS AMOUNT DUE . . . . .	\$ 34,600.00
_____	LESS 0% RETAINAGE . . . . .	\$ 0.00
_____	AMOUNT DUE TO DATE . . . . .	\$ 34,600.00
_____	LESS PREVIOUS PAYMENTS . . . . .	\$ 0.00
_____	AMOUNT DUE THIS APPLICATION. . . . .	\$ 34,600.00

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with Work covered by prior Applications for Payment numbered 1 thru 0 inclusive; and (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to OWNER)

Dated \_\_\_\_\_ 20 \_\_\_\_\_

Anchor Service & Sales  
CONTRACTOR

By: 

ENGINEER'S Recommendation:

This Application (with accompanying documentation) meets the requirements of the Contract Documents and payment of the above AMOUNT DUE THIS APPLICATION is recommended

Dated 6/26 1906

A. GARNER RUSSELL & ASSOCIATES, INC.  
ENGINEER

By: 

\* \* \* \* \*

Based upon the recommendation of Mr. Campton as set forth above, Alderman Notter made motion seconded by Alderman Boggs and unanimously carried to approve final acceptance, "Remove Derelict Boats from Harbor Contract", authorizing payment in the amount of \$34,600.00 to Anchor Sales & Service, as listed in Docket of Claims number 070406.

\* \* \* \* \*

Alderman McNary made motion seconded by Alderman Notter and unanimously carried to approve placement of a FEMA mobile home, 219 East 4<sup>th</sup> Street,

**Minutes of July 5, 2006  
Mayor and Board of Aldermen**

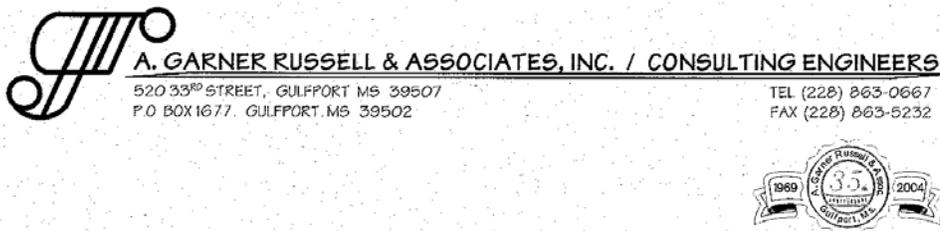
Long Beach, Mississippi, as submitted by Terry Long-Oehmichen and Mark R. Oehmichen.

\*\*\*\*\*

Alderman McNary made motion seconded by Alderman Notter and unanimously carried to approve placement of a FEMA mobile home, 215 Buena Vista Drive, Long Beach, Mississippi, as submitted by Brenda Valles.

\*\*\*\*\*

There came on for consideration a letter with attachments from City Engineer John Campton, as follows:



June 29, 2006

City of Long Beach  
P.O. Box 929  
Long Beach, MS 39560

**Re: Mold Remediation – Main Long Beach Library Building**

Gentlemen:

This is the last Mold Remediation contract to handle mold in City Buildings which are to be repaired. The same project was bid twice previously. The first solicitation was sent out April 18, 2006, with bids due on April 26. No bids were received. The second solicitation called for bids on May 31. One bid was received, but the amount of \$42,300 seemed out of proportion with the previous mold contracts, and I feared that it would not meet the FEMA criteria for being "reasonable." A third solicitation was made, with the following results:

Coastal Restoration & Cleaning Services dba "Servpro":	\$38,700.00
Specialty Abatement Services:	\$77,750.00
Wilson's Termite and Environmental:	No Bid

The low bid still seems somewhat high, but it does not appear fruitful to try a fourth time. We therefore now recommend an Award of Contract to Coastal Restoration & Cleaning Services for this contract, as lowest and best bidder.

Sincerely,

John Campton, P.E.

JC:It:K308  
Enclosure

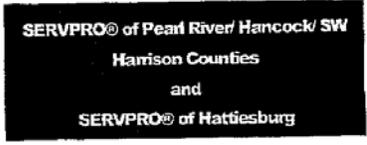
cc: Frank Palazzolo

O:\K308 Bldgs\K308C - Library\Rec Mold 062906 doc

Page 1 of 1

Minutes of July 5, 2006  
Mayor and Board of Aldermen

106 Redus Street  
Hattiesburg, MS 39401  
228-467-4450/601-544-0512  
888-467-0448/888-543-0512  
601-544-0299 Fax  
228-332-1721 Neil's Cell  
228-332-1722 Debbie's Cell



**Fax**



To:	Office of the City Engineer, A. Garner Russell & Associates, Inc.	From:	Deborah Gray, President, Coastal Restoration and Cleaning Services, Inc. dba SERVPRO®
Fax:	228-863-5232	Pages:	5
Phone:	228-863-0667	Date:	6/28/06
ATTN:	John Campton, P.E.	Re:	Proposal for "Mold Remediation - Long Beach Main Library Building"

Urgent     For Review     Please Comment     Please Reply     Please Recycle

• **Comments:**

Our proposal for the above referenced project follows this fax transmittal. If you have any questions concerning this bid, please feel free to call Neil or me.

Thank you for giving us the opportunity to submit our bid. If our bid is chosen, we look forward to working with you and the City of Long Beach on this project.

**Please note: Bid does not exceed \$50,000.00.**

*Rec 6/28/06  
12:23*

p 1

228-467-4255

Debbie Gray

Jun 28 06 01:27p

Minutes of July 5, 2006  
Mayor and Board of Aldermen

06/16/2006 12:31

2288635232

AGR ASSOC

PAGE 02

"Mold Remediation -  
Long Beach Main Library Building"  
(June 2006)

MAYOR AND BOARD OF ALDERMEN  
LONG BEACH, MISSISSIPPI

Gentlemen:

Pursuant to your request for quotes, receivable until 4:00 P.M. on Wednesday June 28, 2006,  
*Coastal Restoration and Cleaning Services, Inc.*  
we *dba SERVICE of Pearl River/Hancock and SW* (Name of Company) residing  
*Harrison County and SERVICE of Hattiesburg*  
at *106 Redus Street, Hattiesburg, MS 39401* do hereby submit this  
our proposal for furnishing all labor, tools, equipment, insurance and material required to  
perform remediation of growths of mold within the hurricane-damaged Long Beach City Main  
Library Building located on Jefferson Davis Avenue and 2<sup>nd</sup> Street.

**GENERAL REQUIREMENTS:**

- (1) In order to be considered, all proposals should be returned to the office of the City Engineer, A. Garner Russell & Associates, Inc., at 520 33rd Street, Gulfport, MS, not later than the date and time shown above.
- (2) Owner intends to issue a purchase order to the lowest and most qualified Contractor for this project, as provided for under State Law for procurements of construction contracts under emergency conditions.
- (3) Contractor must furnish to the Owner proof of vehicular and public liability insurance in the amount of not less than \$1,000,000, prior to commencement of the work.
- (4) For any proposal over \$50,000, Bidder shall indicate on the outside of the bid envelope their current and valid Certificate of Responsibility Number obtained from the State of Mississippi. If the Bidder does not have a valid Certificate of Responsibility Number and the total amount of the bid does not exceed \$50,000, then Bidder shall write on the outside of the bid envelope, "Bid does not exceed \$50,000." Failure to comply will result in the Bid not being opened.
- (5) Failure of the contractor to commence work under the terms of this contract within ten (10) calendar days from the purchase order issue date, shall be justification for the cancellation of the contract without penalty to either party.
- (6) All work under this contract must be fully completed within thirty (30) calendar days from the date when OWNER delivers purchase order to contractor. If contractor

Page 1 of 4  
Mold Remediation- Main Library Building

p 2

228-467-4255

Debbie Gray

Jun 28 06 01:27p

**Minutes of July 5, 2006  
Mayor and Board of Aldermen**

06/16/2006 12:31

2288635232

AGR ASSOC

PAGE 03

fails to complete the work within this time without cause or reason satisfactory to OWNER, the payment for the completed work shall be reduced by the sum of \$500.00 for each and every calendar day that the work remained incomplete after expiration of the allowed time.

- (7) Payment for the completed work will be made in one lump sum, after approval by the Board of Aldermen at the next Board Meeting subsequent to the completion of work. No partial payments will be allowed.
- (8) The price bid shall include any and all applicable taxes or fees, and shall be in full consideration of all expenses incurred in performing the work.

**SCOPE OF WORK – SPECIFICATIONS**

- (1) The intent of having this work done is to abate mold from the Main Library Building so as to present a safe environment for occupancy with assurance that the existing mold will not return. All work performed shall be done in accordance with OSHA Standards specifically covering the use of personal protective equipment.
- (2) Final assessment, determination of tearout required, and abatement procedures required to remediate mold are the responsibility of the contractor.
- (3) Work to be performed shall include, but not necessarily be limited to:
  - Tearout as required by contractor and his procedures to obtain desired results. Any material removed as a result of tearout is to be transported to the street area adjacent to that building. Hauling material to a waste site is not required as part of this contract.
  - Provide all material required to perform mold abatement per contractor's own procedures.
  - Performing mold abatement/decontamination in air ventilation ducts. Removal of any duct work that cannot be abated, such as flex fiberglass ducting.
  - Remove all remaining damaged suspended ceiling tiles and associated water damaged fiberglass insulation. Suspended ceiling grid work shall be left in place as required to help support lighting fixtures.
  - Perform mold abatement on ground floor area around and below the elevator.
  - Perform Mold abatement in restroom areas including walls on both the first and second floor levels. (May require removing wall tile).
  - The underground ventilation duct around the perimeter of the library will be filled or otherwise sealed off by others. No mold abatement in this underground air duct is included in this contract.
  - Remove carpeting from the stairway.

s d

9979-196-977

Uebble Gray

Jun 28 06 07:27 p

**Minutes of July 5, 2006  
Mayor and Board of Aldermen**

06/16/2006 12:31 2288635232

AGR ASSOC

PAGE 24

- (4) Prior to mold abatement, provide visual mold evaluation and conduct air quality tests (background samples) utilizing non-viable collection and analysis techniques to be done by an independent industrial hygiene firm. At the conclusion of the mold abatement, the independent industrial hygiene firm will perform a visual mold evaluation to ensure all mold contaminated materials have been removed. Additionally, the Industrial Hygienist will perform air quality tests to ensure that mold counts are below background levels. Owner reserves the right to also employ it's own Industrial Hygienist to verify the results of Contractor's Hygienist. If air sample results and the visual survey indicate additional remedial work to be done, that work will be done by the contractor at no additional cost.
- (5) Power may not be available in the main library building, but is presently available in the adjoining Children's Wing, which is separated from the main library by a temporary wood wall.

**Site Visit**

To arrange a site visit, call Max Ray (cell 219-671-0510 or city hall 228-863-1556) or John Campton (cell 228-860-0536 or office 228-863-0667)

Minutes of July 5, 2006  
Mayor and Board of Aldermen

06/16/2006 12:31 2286535232

AGR ASSOC

PAGE 05

Proposal for Mold Remediation - Long Beach Main Library Building

PRICE:

For all materials, labor, tools, and equipment to accomplish the work specified herein, a LUMP SUM AMOUNT OF:

( \$ 38,700.00 ) Lump Sum Numerical

( \$ Thirty-eight Thousand, Seven Hundred Dollars and 00/100 ) Lump Sum Written

RESPECTFULLY SUBMITTED:

DATE 6/22/06

FIRM NAME OF BIDDER Coastal Restoration and Cleaning Services, Inc.  
dba SERVPRO of Pearl River/Hancock and  
SW Harrison Counties and SERVPRO of Hattiesburg

SIGNED BY (Name & Title) Deborah Page, President

ADDRESS OF FIRM 106 Redus Street

CITY AND STATE Hattiesburg, MS 39401 TELEPHONE (228) 467-4450  
(601) 544-0512

Page 4 of 4  
Mold Remediation- Main Library Building

p 5

228-467-4255

Debbie Gray

Jun 28 06 01:28p

\*

\*

Upon discussion, Alderman Notter made motion seconded by Alderman McNary and unanimously carried to accept the recommendation of Mr. Campton as set forth above, awarding the contract, "Mold Remediation - Main Long Beach Library Building" to Coastal Restoration & Cleaning Services dba "Servpro", as lowest and best bidder.

\*\*\*\*\*

There came on for consideration a letter with attachments from City Engineer John Campton, as follows:

M.B. 55

REC:07.05.06

Minutes of July 5, 2006  
Mayor and Board of Aldermen



**A. GARNER RUSSELL & ASSOCIATES, INC. / CONSULTING ENGINEERS**

520 33<sup>RD</sup> STREET, GULFPORT, MS 39507  
P O BOX 1677 GULFPORT, MS 39502

TEL (228) 863-0667  
FAX (228) 863-5232



June 30, 2006

City of Long Beach  
P.O. Box 929  
Long Beach, MS 39560

Re: **Final Acceptance –  
Extend Temporary Water and Sewer**

Gentlemen:

This is to advise and certify that the above referenced contract has been satisfactorily completed in substantial conformance with the contract requirements, including Change Order Number 1, which added the extension of water and sewer service on ten streets in addition to the 13 which were part of the original contract. We therefore now recommend final settlement with the contractor, ~~Necaise Brothers Construction~~ in accordance with the following enclosed documents: ~~KAPPA DEVELOPMENT & GENERAL CONTRACTING, INC.~~

- 1 Change Order Number 2, which adds the relocation of the temporary sewer pump on Ocean Wave Avenue per order of the Board, and also adjusts all contract quantities to conform with the completed work. The net effect of the Change Order is a cost decrease of \$64,849.20, for a final contract amount of \$817,654.80.
- 2 Application for Payment Number 4 (Final), in the amount of \$44,085.95.
- 3 Contractor's Affidavit.

We appreciate the cooperation extended by this Contractor on this difficult project.

Sincerely,

John Campton, P.E.

JC:It:K402-V  
Enclosures

**Minutes of July 5, 2006  
Mayor and Board of Aldermen**

CHANGE ORDER

No. 2

Dated 6/26/2006

---

Owner's Project No. \_\_\_\_\_ Engineer's Project No. K302-V  
Project Extend Temporary Water & Sewer - Hurricane Katrina Recovery  
Owner City of Long Beach, Mississippi

---

Contractor Kappa Development & General Contracting, Inc. Contract Date 2/8/2006  
Contract For Entire Project

---

To: Kappa Development & General Contracting, Inc. Contractor:  
You are directed to make the changes noted below in the subject contract:  
Owner City of Long Beach, Mississippi  
By \_\_\_\_\_  
Date \_\_\_\_\_

---

Nature of the Change  
Adjust final contract quantities to conform with completed work.

Enclosures:

---

The changes result in the following adjustment of Contract Price and Contract Time:

Contract Price Prior to This Change Order	\$ <u>883,504.00</u>
Net (Increase) (Decrease) Resulting from this Change Order	\$ <u>(65,849.20)</u>
Current Contract Price Including This Change Order	\$ <u>817,654.80</u>

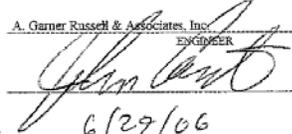
NSPE 1910-8-B (1970 Edition)  
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**Minutes of July 5, 2006**  
**Mayor and Board of Aldermen**

Contract Time Prior to This Change Order	90	Calendar Days
Net (Increase) (Decrease) Resulting From This Change Order	60	Calendar Days
Current Contract Time Including This Change Order	150	Calendar Days

The Above Changes Are Approved:

A. Garner Russell & Associates, Inc.  
ENGINEER

by 

Date 6/29/06

The Above Changes Are Accepted:

Kappa Development & General Contracting, Inc.  
CONTRACTOR

by \_\_\_\_\_

Date \_\_\_\_\_

Minutes of July 5, 2006  
Mayor and Board of Aldermen

PROJECT NO.  
Page 2 of 2

2

ATTACHMENT TO CHANGE ORDER NUMBER

NO.	DESCRIPTION	CURRENT CONTRACT QUANTITY	UNIT PRICE	CURRENT CONTRACT AMOUNT	QUANTITY THIS C.O.	EXTENSION THIS C.O.	QUANTITY TO DATE	EXTENSION TO DATE
1A.	Relocate Existing Sewer Pump	23 EA.	\$1,800.00	\$41,400.00	1	\$1,800.00	24	\$43,200.00
1B.	4" C900 Temp Force Main	20,220 L.F.	\$18.00	\$363,960.00	(987)	(\$17,766.00)	19,233	\$346,194.00
1C.	4" Sewer Force Main Valve	9 EA.	\$1,100.00	\$9,900.00	(2)	(\$2,200.00)	7	\$7,700.00
CO1-1	New Temp Pump and Controls	2 EA.	\$10,000.00	\$20,000.00	0	\$0.00	2	\$20,000.00
CO1-2	Replace bad relay in Relocated Pump Panel	1 EA.	\$150.00	\$150.00	0	\$0.00	1	\$150.00
2A.	4" C900 Water Pipe	100 L.F.	\$25.00	\$2,500.00	(100)	(\$2,500.00)	0	\$0.00
2B.	6" C900 Water Pipe	100 L.F.	\$39.00	\$3,900.00	(100)	(\$3,900.00)	0	\$0.00
2C.	8" C900 Water Pipe	100 L.F.	\$50.00	\$5,000.00	(100)	(\$5,000.00)	0	\$0.00
3A.	Repair 6" Water Main or F.M.	10 Ea.	\$110.00	\$1,100.00	2	\$2,310.00	31	\$3,410.00
3B.	Repair 6" Water Main or F.M.	5 Ea.	\$1,325.00	\$6,625.00	(2)	(\$2,650.00)	3	\$3,975.00
3C.	Repair 8" Water Main or F.M.	2 Ea.	\$1,850.00	\$3,700.00	(2)	(\$3,700.00)	0	\$0.00
3D.	Repair 10" Water Main or F.M.	1 Ea.	\$2,700.00	\$2,700.00	(1)	(\$2,700.00)	0	\$0.00
4A.	Insert 4" Valve	6 Ea.	\$2,300.00	\$13,800.00	4	\$9,200.00	10	\$23,000.00
4B.	Insert 6" Valve	2 Ea.	\$2,700.00	\$5,400.00	(2)	(\$5,400.00)	4	\$10,800.00
4C.	Insert 8" Valve	0 Ea.	\$3,300.00	\$0.00	(1)	(\$3,300.00)	1	\$3,300.00
4D.	Insert 10" Valve	0 Ea.	\$3,900.00	\$0.00	0	\$0.00	0	\$0.00
5A.	Reset Existing Fire Hydrant	3 Ea.	\$1,400.00	\$4,200.00	(1)	(\$1,400.00)	2	\$2,800.00
5B.	New Fire Hydrant	2 Ea.	\$2,700.00	\$5,400.00	0	\$0.00	2	\$5,400.00
5C.	Water Main or Force Main Fittings (per AWWA C-110 weight charts)	3,630 T.	\$8,800.00	\$31,944.00	(1,389)	(\$12,223.20)	2,241	\$19,720.80
5D.	Excavate to Locate Existing Valve	34 Ea.	\$650.00	\$22,100.00	6	\$3,900.00	40	\$26,000.00
6A.	Locate and Turn Off Service Valve	189 Ea.	\$325.00	\$61,425.00	9	\$2,925.00	178	\$57,500.00
6B.	Install new Water Service Valve	201 Ea.	\$400.00	\$80,400.00	61	\$24,400.00	262	\$104,800.00
6C.	Repair Water Service	25 Ea.	\$400.00	\$10,000.00	(18)	(\$7,200.00)	7	\$2,800.00
7A.	Repair Sewer Main, 6'-6" Deep	2 Ea.	\$1,700.00	\$3,400.00	(1)	(\$1,700.00)	1	\$1,700.00
7B.	Repair Sewer Main, 6'-10" Deep	1 Ea.	\$2,700.00	\$2,700.00	1	\$2,700.00	2	\$5,400.00
7C.	Repair Sewer Main, 10'+ Deep	0 Ea.	\$5,200.00	\$0.00	0	\$0.00	0	\$0.00
8A.	Repair Sewer Service	10,000 Ea.	\$520.00	\$5,200,000.00	(6)	(\$3,120.00)	4	\$2,080.00
8B.	Locate and Cap Sewer Service	288 Ea.	\$525.00	\$151,200.00	(73)	(\$38,325.00)	195	\$102,875.00
9	Limestone Surface	1000 S.Y.	\$25.00	\$25,000.00	0	\$0.00	1,000	\$25,000.00
TOTALS:				\$683,504.00		(\$65,849.20)		\$617,654.80

# Minutes of July 5, 2006 Mayor and Board of Aldermen

APPLICATION FOR PAYMENT NO. 4 (Final)

GR	
JC	<input checked="" type="checkbox"/>
JO	
DR	
SB	<input checked="" type="checkbox"/>
F	<input checked="" type="checkbox"/>

To: City of Long Beach (OWNER)  
 Contract for Extend Temporary Water and Sewer - Hurricane Katrina Recovery Dated: 02/08/06  
 OWNER'S Project No \_\_\_\_\_ ENGINEER'S Project No K-302-V  
 For Work accomplished through the date of: 6/26/2006

ITEM	CONTRACTOR'S Schedule of Values			Work Completed	
	Unit Price	Quantity	Amount	Quantity	Amount
COMPLETED WORK					\$817,654.80
Total	\$883,504.00				\$817,654.80
(Orig Contract)	\$605,250.00				
C O No 1	\$278,254.00				
C O No 2					

Accompanying Documentation:	GROSS AMOUNT DUE	\$ 817,654.80
_____	LESS 0% RETAINAGE	\$ 0.00
_____	AMOUNT DUE TO DATE	\$ 817,654.80
_____	LESS PREVIOUS PAYMENTS	\$ 773,568.85
_____	AMOUNT DUE THIS APPLICATION	\$ 44,085.95

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with Work covered by prior Applications for Payment numbered 1 thru 3 inclusive; and (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to OWNER)

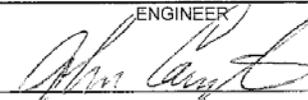
Dated                                  20           Kappa Development & General Contracting, Inc.  
CONTRACTOR

By: \_\_\_\_\_

ENGINEER'S Recommendation:

This Application (with accompanying documentation) meets the requirements of the Contract Documents and payment of the above AMOUNT DUE THIS APPLICATION is recommended

Dated                                  20           A. GARNER RUSSELL & ASSOCIATES, INC.  
ENGINEER

By: 

Minutes of July 5, 2006  
Mayor and Board of Aldermen

PROJECT NO. K-302-V  
Page 2 of 2

ATTACHMENT TO PAY ESTIMATE NO. 4

NO.	DESCRIPTION	CURRENT CONTRACT QUANTITY	UNIT PRICE	CURRENT CONTRACT AMOUNT	PREVIOUS QUANTITY	PREVIOUS EXTENSION	QUANTITY THIS EST.	EXTENSION THIS EST.	QUANTITY TO DATE	EXTENSION TO DATE	Water, this est.	Sewer, this est.	
1A.	Relocate Existing Sewer Pump	23 Ea.	\$1,800.00	\$41,400.00	23	\$41,400.00	1	\$1,800.00	24	\$43,200.00		\$1,800.00	
1B.	4" C900 Temp Force Main	20,220 L.F.	\$18.00	\$363,960.00	19,233	\$346,194.00	0	\$0.00	19,233	\$346,194.00		\$0.00	
1C.	4" Sewer Force Main Valve	9 Ea.	\$1,100.00	\$9,900.00	6	\$6,600.00	1	\$1,100.00	7	\$7,700.00		\$1,100.00	
COT-1	New Temp Pump and Controls	2 Ea.	\$10,000.00	\$20,000.00	2	\$20,000.00	0	\$0.00	2	\$20,000.00		\$0.00	
COT-2	Replace bad relay in Relocated Pump	1 Ea.	\$150.00	\$150.00	1	\$150.00	0	\$0.00	1	\$150.00		\$0.00	
2A.	4" C900 Water Pipe	100 L.F.	\$25.00	\$2,500.00	0	\$0.00	0	\$0.00	0	\$0.00		\$0.00	
2B.	6" C900 Water Pipe	100 L.F.	\$39.00	\$3,900.00	0	\$0.00	0	\$0.00	0	\$0.00		\$0.00	
2C.	6" C900 Water Pipe	100 L.F.	\$50.00	\$5,000.00	0	\$0.00	0	\$0.00	0	\$0.00		\$0.00	
3A.	Repair 4" Water Main or F.M.	10 Ea.	\$110.00	\$1,100.00	27	\$2,870.00	0	\$0.00	31	\$3,410.00		\$0.00	
3B.	Repair 6" Water Main or F.M.	5 Ea.	\$1,850.00	\$9,250.00	2	\$2,650.00	1	\$1,825.00	3	\$5,975.00		\$0.00	
3C.	Repair 8" Water Main or F.M.	2 Ea.	\$2,700.00	\$5,400.00	0	\$0.00	0	\$0.00	0	\$0.00		\$0.00	
3D.	Repair 10" Water Main or F.M.	1 Ea.	\$2,300.00	\$2,300.00	0	\$0.00	0	\$0.00	0	\$0.00		\$0.00	
4A.	Insert 4" Valve	6 Ea.	\$2,700.00	\$16,200.00	4	\$10,800.00	0	\$0.00	4	\$10,800.00		\$0.00	
4B.	Insert 6" Valve	2 Ea.	\$3,300.00	\$6,600.00	0	\$0.00	0	\$0.00	0	\$0.00		\$0.00	
4C.	Insert 8" Valve	2 Ea.	\$3,900.00	\$7,800.00	0	\$0.00	0	\$0.00	0	\$0.00		\$0.00	
4D.	Insert 10" Valve	0 Ea.	\$1,400.00	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00		\$0.00	
5A.	Reset Existing Fire Hydrant	3 Ea.	\$1,400.00	\$4,200.00	2	\$2,800.00	0	\$0.00	2	\$2,800.00		\$0.00	
5B.	New Fire Hydrant	2 Ea.	\$2,700.00	\$5,400.00	1	\$2,700.00	1	\$2,700.00	2	\$5,400.00		\$0.00	
5C.	Water Main or Force Main Fittings (per AWWA C-110 weight chart)	4 T.	\$8,800.00	\$31,944.00	1,630	\$14,344.00	0.611	\$5,378.80	2,241	\$19,720.80		\$5,378.80	
5D.	Excavate to Locate Existing Valve	34 Ea.	\$650.00	\$22,100.00	40	\$26,000.00	0	\$0.00	40	\$26,000.00		\$0.00	
6A.	Locate and Turn Off Service Valve	189 Ea.	\$325.00	\$61,425.00	175	\$56,875.00	3	\$975.00	178	\$57,850.00		\$975.00	
6B.	Install new Water Service Valve	201 Ea.	\$400.00	\$80,400.00	282	\$114,800.00	0	\$0.00	282	\$114,800.00		\$0.00	
6C.	Repair Water Service	25 Ea.	\$400.00	\$10,000.00	6	\$4,000.00	0	\$2,400.00	7	\$2,800.00		\$2,400.00	
7A.	Repair Sewer Main, 6"-8" Deep	2 Ea.	\$1,700.00	\$3,400.00	0	\$0.00	1	\$1,700.00	1	\$1,700.00		\$1,700.00	
7B.	Repair Sewer Main, 8"-10" Deep	1 Ea.	\$2,700.00	\$2,700.00	2	\$5,400.00	0	\$0.00	2	\$5,400.00		\$0.00	
7C.	Repair Sewer Main, 10"+ Deep	0 Ea.	\$5,200.00	\$0.00	4	\$20,800.00	(4)	(\$20,800.00)	0	\$0.00		(\$20,800.00)	
8A.	Repair Sewer Service	10 Ea.	\$520.00	\$5,200.00	0	\$0.00	4	\$2,080.00	4	\$2,080.00		\$2,080.00	
8B.	Locate and Cap Sewer Service	268 Ea.	\$25.00	\$6,700.00	194	\$101,950.00	1	\$525.00	195	\$102,475.00		\$825.00	
9	Limestone Surface	1,000 S.Y.	\$25.00	\$25,000.00	850	\$21,250.00	150	\$3,750.00	1,000	\$25,000.00		\$1,875.00	
				\$883,504.00					\$814,283.00	\$3,371.80	\$817,654.80	\$9,275.00	(\$5,903.20)
											\$3,371.80		



**Minutes of July 5, 2006**  
**Mayor and Board of Aldermen**

CONTRACTOR'S AFFIDAVIT OF  
PAYMENT OF DEBTS AND CLAIMS  
AND WAIVER OF LIENS

=====

TO: (Owner)		ENGINEER'S PROJECT NO	K302-V
<u>City of Long Beach</u>		CONTRACT FOR:	
_____		CONTRACT DATE:	<u>2/8/2006</u>
_____			

PROJECT: Extend Water & Sewer -  
Hurricane Katrina Recovery

State of: \_\_\_\_\_  
County of: \_\_\_\_\_

The undersigned pursuant to Article 14 of the General Conditions, hereby certifies that, except as listed below, he has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or his property might be held responsible.

EXCEPTIONS: (If none, write "None" If required by Owner, the Contractor shall furnish bond satisfactory to Owner for each exception )

None

=====

CONTRACTOR: Kappa Development & General Contracting

BY: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2000.

Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

=====

\* \* \* \* \*

Based upon the recommendation of Mr. Campton as set forth above, Alderman Notter made motion seconded by Alderman Lishen and unanimously carried to approve Change Order number 2, authorizing final acceptance and final payment in the amount of \$44,085.95, to Kappa Development & General Contracting, Inc., "Extend Temporary Water and Sewer Contract".

\* \* \* \* \*

Based upon the recommendation of the selection committee, Alderman Notter made motion seconded by Alderman Bennett and unanimously carried to award the "Engineering Services – Library, City Hall, Pell Annex Contract" to Capital Engineering as lowest and best proposal.

\* \* \* \* \*

**Minutes of July 5, 2006**  
**Mayor and Board of Aldermen**

Alderman Notter made motion seconded by Alderman Bennett and unanimously carried to approve the contract by and between the City of Long Beach and Capital Engineering, Inc., as follows:

CITY  
FILE  
(OFF SIG)

STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of June 23, 2006, (Effective Date") between the City of Long Beach, Mississippi ("OWNER"), and CAPITAL Engineering, Inc. ("ENGINEER").

OWNER intends to construct a new replacement police station building to replace the former police station which was destroyed by Hurricane Katrina (the "Project"). Primary funding will be provided by the Federal Emergency Management Agency (FEMA), and the Mississippi Emergency Management Agency (MEMA).

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

**Minutes of July 5, 2006**  
**Mayor and Board of Aldermen**

**ARTICLE 1 - SERVICES OF ENGINEER**

---

**1.01 Scope**

A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A

C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D

**ARTICLE 2 - OWNER'S RESPONSIBILITIES**

---

**2.01 General**

A. OWNER shall have the responsibilities set forth herein and in Exhibit B

**ARTICLE 3 - TIMES FOR RENDERING SERVICES**

---

**3.01 General**

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

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

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

**3.02 Suspension**

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised

**ARTICLE 4 - PAYMENTS TO ENGINEER**

---

**4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER**

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

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

C. *For Reimbursable Expenses* In addition to payments provided for in paragraphs 4.01 A and 4.01 B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

**4.02 Other Provisions Concerning Payments**

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

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

**Minutes of July 5, 2006**  
**Mayor and Board of Aldermen**

by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

*C. Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

*D. Payments Upon Termination*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

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

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

**ARTICLE 5 - OPINIONS OF COST**

---

**5.01 Opinions of Probable Construction Cost**

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

**5.02 Designing to Construction Cost Limit**

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

**5.03 Opinions of Total Project Costs**

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

**ARTICLE 6 - GENERAL CONSIDERATIONS**

---

**6.01 Standards of Performance**

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

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the

**Minutes of July 5, 2006**  
**Mayor and Board of Aldermen**

extent such action is directly attributable to deficiencies in OWNER-furnished information.

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

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

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

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

G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work", or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.

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

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

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

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

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

**6.02 Authorized Project Representatives**

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

**6.03 Design without Construction Phase Services**

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

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

**6.04 Use of Documents**

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

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

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

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

E When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer

hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

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

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

**6.05 Insurance**

A ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance"

B. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance" ~~OWNER shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project.~~

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

D. OWNER and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

E All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interested are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

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F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

**6.06 Termination**

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

1 *For cause,*

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

b. By ENGINEER:

1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform service contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the

cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice

2 *For convenience,*

a. By OWNER effective upon the receipt of notice by ENGINEER.

B The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

**6.07 Controlling Law**

A. This Agreement is to be governed by the law of the state in which the Project is located.

**6.08 Successors, Assigns, and Beneficiaries**

A OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators, and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement

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

C. Unless expressly provided otherwise in this Agreement:

1 Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them

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2. All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08 C shall appear in the Contract Documents

**6.09 Dispute Resolution**

A OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit H or other provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.

B If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in exhibit H, "Dispute Resolution"

**6.10 Hazardous Environmental Condition**

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

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

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

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

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become

an "arranger", "operator", "generator", or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

**6.11 Allocation of Risks**

**A. Indemnification**

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

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

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

4. In addition to the indemnity provided under paragraph 6.11 A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall

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indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.4 shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

5. The indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any

**6.12 Notices**

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

**6.13 Survival**

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

**6.14 Severability**

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

**6.15 Waiver**

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

**6.16 Headings**

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

**ARTICLE 7 - DEFINITIONS**

---

**7.01 Defined Terms**

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

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services", including those Exhibits listed in Article 8 thereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

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9. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents

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

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

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

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

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

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

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

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

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

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish

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services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants

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

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

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

27. *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.

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

29. *PCB's*--Polychlorinated biphenyls

30. *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.

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

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

33. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

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

35. *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.

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

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

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

39. *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 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.

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40. *Supplementary Conditions*--That part of the Contract documents which amends or supplements the General Conditions

41. *Total Project Costs*--The sum of the Construction Costs, allowances for contingencies, the total costs of services for ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages for properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement

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

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

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

**ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS**

**8.01 Exhibits Include**

A. Exhibit A, "ENGINEER's Services", consisting of \_ pages

B Exhibit B, "OWNER's Responsibilities", consisting of 3 pages.

C Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses" - Standard Hourly Rates Method of Payment, consisting of 2 pages.

- AND -

Appendix 1 to Exhibit C, "Standard Hourly Rates Schedule", consisting of 1 page.

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

E ~~Exhibit E, "Notice of Acceptability of Work", consisting of \_\_\_ pages~~

F ~~Exhibit F, "Construction Cost Limit", consisting of \_\_\_ page.~~

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

H ~~Exhibit H, "Dispute Resolution", consisting of \_\_\_ page.~~

I. ~~Exhibit I, "Allocation of Risks", consisting of \_\_\_ page.~~

J Exhibit J, "Special Provisions", consisting of \_\_\_ pages.

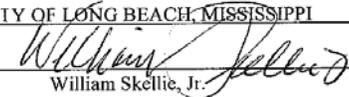
**8.02 Total Agreement**

A. This Agreement (consisting of pages 1 to 12 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument

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

OWNER:

CITY OF LONG BEACH, MISSISSIPPI  
By:   
William Skellie, Jr.

Title: Mayor

Date Signed: 7/6/06

Address for giving notices:

P. O. Box 929

Long Beach, MS 39560

Designated Representative (paragraph 6 02 A):

\_\_\_\_\_

Title: \_\_\_\_\_

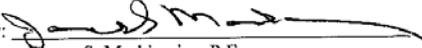
Phone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

ENGINEER:

CAPITAL ENGINEERING, INC.

By:   
James S. Markiewicz, P E

Title: President

Date Signed: 6.27.06

Address for giving notices:

6933 Indianapolis Blvd.

Hammond, IN 46324

Designated Representative (paragraph 6 02 A):

Louis A. Traina

Title: Project Manager

Phone Number 219-844-1984

Facsimile Number: 219-845-9902

E-Mail Address: ltraina@capital-eng.com

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This is EXHIBIT A, consisting of 9 pages, referred to in and  
part of the Agreement between OWNER and ENGINEER  
for Professional Services, dated June 23, 2006.

Initial: \_\_\_\_\_  
OWNER MS  
ENGINEER \_\_\_\_\_

**ENGINEER's Services**

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

**PART 1 -- BASIC SERVICES**

**A1 01 Study and Report Phase**

**A ENGINEER shall:**

- 1 Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
- 2 Advise OWNER as to the necessity of OWNER's providing data or services of the types described in Exhibit B which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.
- 3 Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.
- 4 Identify and evaluate (alternative solution available to OWNER and, after consultation with OWNER, recommend OWNER those solutions which in ENGINEER's judgement meet OWNER's requirements for the project.
- 5 Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.
- 6 Perform or provide the following additional Study and Report Phase tasks or deliverables:
- 7 Furnish 3 review copies of the Report to OWNER within 30 days of authorization to begin services and review it with OWNER.
- 8 Revise the Report in response to OWNER's and other parties' comments, as appropriate, and furnish 3 final copies of the revised Report to the OWNER within 60 days after completion of reviewing it with OWNER.

**B ENGINEER's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to OWNER.**

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### A1.02 Preliminary Design Phase

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

1. On the basis of the above acceptance, selection, and authorization, prepares Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.
- ~~2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.~~
3. Advise OWNER if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist OWNER in obtaining such reports, data, information, or services.
4. Based on the information contained in the Preliminary Design Phase documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized as provided in paragraph A1.01 A 5
5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
6. Furnish the Preliminary Design Phase documents to and review them with OWNER.
7. Submit to OWNER 3 final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within 30 days after authorization to proceed with this phase

B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to OWNER.

### A1.03 Final Design Phase

A. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any OWNER-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.
2. Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities
3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, itemized as provided in paragraph A1.01 A 5.
4. Perform or provide the following additional Final Design Phase tasks or deliverables:
5. Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other related documents.

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6. Submit 3 final copies of the Bidding Documents and a revised opinion of probable Construction Cost to OWNER within 120 days after authorization to proceed with this phase.

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

C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is 1.

D. ENGINEER's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A1.03.A.6 have been delivered to OWNER.

*A1.04 Bidding or Negotiating Phase*

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

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

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

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

4. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

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

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of this Agreement.)

C. The estimate of the Engineer's compensation for this phase is to be based on the Engineer not attending the pre-Bid conference, Bid opening, or a meeting to award the contract. These services are to be provided by the Owners Representative on site. The estimate of the Engineer's compensation for this phase is to be based on 50 man-hours to assist the Owner in obtaining Bids, documenting pre-Bid meeting notes, issuing addenda as required, tabulating Bids, consulting with the Owner on the acceptability of contractors, and assisting the Owner in evaluating proposals.

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A1.05 *Construction Phase*

The Engineer is to provide oversight services during the construction phase of the project. The on site services are to be provided by Mittal Steel to the Owner. The estimated compensation to the Engineer for the oversight services is included in the final design phase and the bidding and negotiation phase estimates. The Engineer is not required to provide on site services during construction.

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

~~1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealing with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.~~

~~2. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.~~

~~3. *Selecting Independent Testing Laboratory.* Assist OWNER in the selection of an independent testing laboratory to perform the services identified in paragraph B2.01.0.~~

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

~~5. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in ENGINEER's judgment are necessary to enable Contractor to proceed.~~

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

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

~~b. The purpose of ENGINEER's visits to, and representations by the Resident Project Representative, if any, at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have~~

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~~control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.~~

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

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

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

~~10. *Shop Drawings and Samples*—Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.~~

~~11. *Substitutes and "or equal"*—Evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.~~

~~12. *Inspections and Tests*—Requires such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.~~

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

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

~~a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to~~

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any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustment allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A1.05.A.6.a are expressly subject to the limitations set forth in paragraph A1.05.A.6.b and other express or general limitations in this Agreement and elsewhere.

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

*15. Contractor's Completion Documents.*

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

b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.10, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER's review will be limited as provided in paragraph A1.05.A.10.

c. ENGINEER shall transmit these documents to OWNER.

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

*17. Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables:

*18. Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A1.05.A.14.b) to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

*B. Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors. If the Project involves more than one prime contract as indicated in

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~~paragraph A1.05.C. Construction Phase services may be rendered at different times in respect to the separate contracts.~~

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

~~A1.06 — *Post Construction Phase*~~

~~A. — Upon written authorization from OWNER, ENGINEER, during the Post Construction Phase, shall:~~

- ~~1. Provide assistance in connection with the testing and adjusting of Project equipment or systems.~~
- ~~2. Assist OWNER in training OWNER's staff to operate and maintain Project, equipment, and systems.~~
- ~~3. Assist OWNER in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.~~
- ~~4. Together with OWNER, visit the Project to observe any apparent defects in Work, assist OWNER in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work if present.~~
- ~~5. Perform or provide the following additional Post Construction Phase tasks or deliverables:~~
- ~~6. In company with OWNER or OWNER's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.~~

~~B. — The Post Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period.~~

**PART 2 -- ADDITIONAL SERVICES**

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

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

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are

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required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

4. Services resulting from OWNER's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A1.04 A.4.
5. Services required as a result of OWNER's providing incomplete or incorrect Project Information with respect to Exhibit B
6. Providing renderings or models for OWNER's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.
8. Furnishing services of ENGINEER's Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in paragraph A1.03 C.
10. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.05 A.5, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.
17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
18. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor (See A1.05, 17.a)
19. Preparation of operation and maintenance manuals.
20. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, or other dispute resolution process related to the Project.

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21 Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01 G of the Agreement.

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

*A2.02 Required Additional Services*

A. ENGINEER shall perform or furnish, without requesting or receiving specific advance authorization from OWNER, the Additional Services of the types listed below. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.

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

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

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

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

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.

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

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This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**, dated June 23, 2006

Initial:  
OWNER *NS*  
ENGINEER *SM*

**OWNER's Responsibilities**

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Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.  
B2 01 In addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site

C. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof
5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto

D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

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

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

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

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

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests
3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid
4. Placement and payment for advertisement for Bids in appropriate publications

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

K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs

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

M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin

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

O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof

P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work
2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

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Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B2 01 O and P.

R. Perform or provide the following additional services:

This is EXHIBIT C, consisting of 2 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services, dated June 23, 2006.

Initial:  
OWNER JS  
ENGINEER \_\_\_\_\_

**Payments to ENGINEER for Services and Reimbursable Expenses**

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

**ARTICLE 4 - PAYMENTS TO THE ENGINEER**

**C4 01 For Basic Services Having A Determined Scope—Standard Hourly Rates Method of Payment**

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

2. ENGINEER's Standard Hourly Rates are attached to this Exhibit C as Appendix 1.

3. The total compensation for services under paragraph C4.01 is estimated to be \$78,000 based on the following assumed distribution of compensation:

a. Study and Report Phase	<u>\$ 9,000.</u>
b. Preliminary Design Phase	<u>\$18,000.</u>
c. Final Design Phase	<u>\$47,000.</u>
d. Bidding and Negotiating Phase	<u>\$ 4,000.</u>
e. Construction Phase	<u>\$ _____.</u>

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

5. The total estimated compensation for ENGINEER's services included in the breakdown by phases as noted in paragraph 4 01 A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and ENGINEER's Consultant's charges.

6. The amounts billed for ENGINEER's services under paragraph C4.01 will be based on the cumulative hours charged to the Project during the billing period by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER's Consultant's charges.

7. The Standard Hourly Rates will be adjusted annually (as of March 1) to reflect equitable changes in the compensation payable to ENGINEER.

8. The Standard Hourly Rates Method of Payment is conditioned on Contract Times to complete the Work not exceeding 12 months. Should the Contract Times to complete the Work be extended beyond this period, the total compensation to ENGINEER shall be appropriately adjusted.

~~9. If more prime contracts are awarded for Work designed or specified by ENGINEER for this Project than identified in Exhibit A, the ENGINEER shall be compensated an additional amount equal to \$ \_\_\_\_\_ for all Basic Services for each prime contract added.~~

**C4.02 For Basic Services Having An Undetermined Scope -- Standard Hourly Rates Method of Payment**

A. OWNER shall pay ENGINEER for Basic Services having an undetermined scope as follows:

~~1. Resident Project Representative Services: For services of ENGINEER's Resident Project Representative, if any, under paragraph A1.05A.2.a of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ \_\_\_\_\_ based upon Contract Times as set forth in paragraph C4.01.~~

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~~2. Post-Construction Phase Services. For Post-Construction Phase services under Paragraph A1.06 of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$\_\_\_\_\_.~~

**C4.03 For Additional Services**

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

1 *General.* For services of ENGINEER's employees engaged directly on the Project pursuant to paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under paragraph A2.01 A.20, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any

2 *Serving as a Witness.* For services performed by ENGINEER's employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01 A.20, at the rate of \$1,000 per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph C4.03 A.1). ~~Compensation for ENGINEER's Consultants for such services will be on the basis provided in paragraph C4.06.~~

**C4.05 Standard Hourly Rates**

A. Standard Hourly Rates are set forth in Appendix 1 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit

B. The Standard Hourly Rates will be adjusted annually (as of June 1) to reflect equitable changes in the compensation payable to ENGINEER

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This is Appendix 1 to EXHIBIT C, consisting of 2 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services, dated June 23, 2006

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

**Standard Hourly Rates Schedule**

**AUGUST 1, 2005 THRU JULY 31, 2007 (Issued 08/15/05)**

**I. ENGINEERING SERVICES**

<u>CATEGORY</u>	<u>BILLING RATE</u>	<u>OVER TIME</u>
Engineering Manager	95.00 \$/hour	- Exempt
Project Manager	86.30	- Exempt
Project Engineer/Field Engineer	76.90	- Exempt
Design Eng./CAD Operator	69.90	104.85 - Non-Exempt
Designer	59.30	88.95 - Non-Exempt
Design Draftsman	51.50	77.25 - Non-Exempt
Draftsman	46.00	69.00 - Non-Exempt
Detailer/Technical Ass't	35.00	52.50 - Non-Exempt

**II. COMPUTER EQUIPMENT**

	<u>BILLING RATE</u>
Computer equipment and Computer-Aided Design equipment	5.00 \$/hour

**III. REPRODUCTION SERVICE**

<u>CATEGORY</u>	<u>BILLING RATE</u>
Prints - Paper	35 cents/sq. ft.
Prints - Sepia, vellum, mylar	1.35 \$/sq. ft.
Plotting - black / white	1.85\$/sq. ft.
Plotting - color	2.95 \$/sq. ft.
8 5" X 11" office copies	25 cents each
8 5" X 14" office copies	30 cents each
11" X 17" office copies	40 cents each
Color Xerox Copies - 8 5" X 11"	\$1.00/each
Color Xerox Copies - 11" X 17"	\$2.00/each
Renderings (3-D or shaded)	\$6.00/sq. ft.

**IV. MISCELLANEOUS**

- 1) Travel expense - billed at cost
- 2) Meals - at cost for radius outside 150 miles from home office
- 3) Extraordinary telephone/FAX expense - billed at cost
- 4) Outside consultant and equipment rental billed at cost plus 10%.
- 5) Postage expense for special delivery services exceeding \$5.00 per delivery - billed at cost
- 6) Payment - net 45 days
- 7) Mileage is billed at 40.5 cents per mile or the current allowance as specified by the IRS.  
(No mileage charged for company cars, only employees personal cars, which is reimbursed to the employee.)
- 8) Overtime, if authorized, is billed at 1.5 times the straight time billing rate for time worked over 40 hours per week, and for Saturdays, Sundays, and/or holidays.

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**SUMMARY OF ESTIMATED COSTS**

<b>Study &amp; Report Phase:</b>	Estimated Man-hours:	94	
	Estimated Cost:	\$7,500	
	Estimated Travel Expense:	<u>\$1,500</u>	
	Total:	\$9,000	
<b>Preliminary Design Phase:</b>	Estimated Man-hours:	200	
	Estimated Cost:	\$16,500	
	Estimated Travel Expense:	<u>\$ 1,500</u>	
	Total:	\$18,000	
<b>Final Design Phase:</b>	Estimated Man-hours:	525	
	Estimated Cost:	\$43,000	
	Estimated Travel Expense:	<u>\$ 4,000</u>	
	Total:	\$47,000	
<b>Bidding &amp; Negotiation Phase:</b>	Estimated Man-hours:	50	
	Estimated Cost:	\$4,000	
	Estimated Travel Expense:	<u>\$ 0</u>	
	Total:	\$4,000	
		<b><u>Grand Total</u></b>	<b><u>\$78,000</u></b>

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This is EXHIBIT D, consisting of 4 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services, dated June 23, 2006.

Initial:  
OWNER *WS*  
ENGINEER *[Signature]*

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

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

D6.02 *Resident Project Representative*

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

B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.

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

1. *General* RPR is ENGINEER's agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.
2. *Schedules*: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability
3. *Conferences and Meetings*. Attend meetings with Contractor, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison*:
  - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assistant in understanding the intent of the Contract Document
  - b. Assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-Site operations.

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5. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
6. *Interpretation of Contract Documents*: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
7. *Shop Drawings and Samples*
  - a. Record Date of Receipt of Samples and approved Shop Drawings
  - b. Receive Samples which are furnished at Site by Contractor, and notify ENGINEER of availability of Samples for examination.
  - c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.
8. *Modifications*. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
9. *Review of Work and Rejection of Defective Work*
  - a. Conduct on-Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to ENGINEER and Contractor whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval
10. *Inspections, Tests, and System Startups*:
  - a. Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work
  - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.
  - c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER
10. *Records*
  - a. Maintain at the Site orderly files for correspondence, reports for job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents,

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progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.

- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER
  - c. Record names, addresses, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment
  - d. Maintain records for use in preparing Project documentation.
  - e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.
- 11 *Reports*
- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
  - b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
  - c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports
  - d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes
- 12 *Payment requests* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 13 *Certificates, Operation and Maintenance Manuals.* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work
- 14 *Completion*
- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
  - b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
  - c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected

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- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of Work

D. Resident Project Representative shall not:

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

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This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**, dated June 23, 2006

Initial:  
OWNER *NS*  
ENGINEER *SM*

**Insurance**

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Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties

G6.05 *Insurance*

A. The limits of liability for the insurance required by paragraph 6.05 A and 6.05 B of the Agreement are as follows:

1. By ENGINEER:

a. Workers' Compensation	Statutory
b. Employer's Liability -	
1. Each Accident:	\$ 100,000
2. Disease, Policy Limit:	\$ 500,000
3. Disease, Each Employee:	\$ 100,000
c. General Liability -	
1. Each Occurrence (Bodily Injury and Property Damage):	\$ 1,000,000
2. General Aggregate:	\$ 2,000,000
d. Excess or Umbrella Liability -	
1. Each Occurrence:	NONE
2. General Aggregate:	NONE
e. Automobile Injury -	
1. Bodily Injury:	
a. Each Accident	N/A
2. Property Damage:	
a. Each Accident	N/A
(OR)	
1. Combined Single Limit (Bodily Injury and Property Damage):	\$ 1,000,000
Each Accident	
f. Other (specify):	
_____ N/A _____	\$ _____ N/A _____

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2. By OWNER:

a Workers' Compensation	Statutory
b Employer's Liability -	
1. Each Accident:	\$ 500,000
2. Disease, Policy Limit:	\$ 500,000
3. Disease, Each Employee:	\$ 500,000
c General Liability -	
1. General Aggregate:	\$ 1,000,000
2. Each Occurrence (Bodily Injury and Property Damage):	\$ 2,000,000
d Excess or Umbrella Liability -	
1. Each Occurrence:	\$ 1,000,000
2. General Aggregate:	\$ 1,000,000
e Automobile Injury -	
1. Combined Single Limit (Bodily Injury and Property Damage): Each Accident	\$ 1,000,000
f Other (specify):	
_____	\$ _____

B. *Additional Insureds*

1. The following person or entities are to be listed on OWNER's policies of insurance as additional insureds as provided in paragraph 6.05 B:

- a. NA  
ENGINEER
  
- b. N/A  
ENGINEER's CONSULTANT
  
- c. N/A  
ENGINEER's CONSULTANT

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<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		CSR AM CAPITE1	DATE (MM/DD/YYYY) 06/23/06
<b>PRODUCER</b>  Rothschild Agency, Inc 8979 Broadway Merrillville IN 46410- Phone: 219-769-6616	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
<b>INSURED</b>  Capital Engineering Inc. Jim Markiewicz 6933 Indianapolis Blvd Hammond IN 46324	<b>INSURERS AFFORDING COVERAGE</b>  INSURER A: Amerisure Companies INSURER B: <small>MULTIPLY INSURANCE COOP (CIC)</small> INSURER C: Lexington Ins Co. (BCI) INSURER D: INSURER E:	<b>NAIC #</b>  _____ _____ _____ _____ _____	

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
REF. LTN.	ADDL. INFO.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES FOR: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. SECT. <input type="checkbox"/> LOC.	CPP132535901	12/05/05	12/05/06	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000 MED EXP (any one person) \$ 5000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CA132535801	12/05/05	12/05/06	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ADD \$ ADD \$
A		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE \$ RETENTION \$	CU13253600	12/05/05	12/05/06	EACH OCCURRENCE \$ 3000000 AGGREGATE \$ 3000000 RETAINED \$ 10000 \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> If yes, describe under SPECIAL PROVISIONS below	WCX00213	12/05/05	12/05/06	<input checked="" type="checkbox"/> WC-STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500000 E.L. DISEASE - EA EMPLOYEE \$ 500000 E.L. DISEASE - POLICY LIMIT \$ 500000
C		OTHER Professional liab	1153355	12/05/05	12/05/06	Ea Claim 1000000 Aggregate 2000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
**CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED WITH RESPECT TO GENERAL LIABILITY COVERAGE ARISING OUT OF OPERATIONS PERFORMED FOR CERT HOLDER BY THE INSURED**

<b>CERTIFICATE HOLDER</b>  LOB9003  CITY OF LONG BEACH MISSISSIPPI WILLIAM SKELLIE JR. MAYOR P.O. BOX 929 LONG BEACH MS 39560	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Dean Rothschild
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Mayor and Board of Aldermen**

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Based upon the recommendation of Police Chief Harley Schinker and certification by the Civil Service Commission, Alderman Notter made motion seconded by Alderman McNary and unanimously carried to approve Police Department personnel matters, as follows:

Resignation – Detective William Calvert, effective June 30, 2006;

Resignation – Officer James Washington, effective June 30, 2006;

Hire – Recruit J. D. Zugg, PS-5, effective July 16, 2006;

Hire – 1<sup>st</sup> Class Basic Shawn Penny, PS-10-B, effective July 16, 2006;

Education Pay, Assistant Chief Wayne McDowell effective July 1, 2006.

\*\*\*\*\*

Alderman Bennett made motion seconded by Alderman Notter and unanimously carried to spread the certified election returns, Special Election, Non-Binding Referendum – Land Based Gaming, upon the minutes of this meeting in words and figures, as follows:

**CITY OF LONG BEACH, MISSISSIPPI**  
6/27/2006 - SPECIAL ELECTION - NON-BINDING REFERENDUM

"ARE YOU FOR OR AGAINST LAND BASED GAMING IN LONG BEACH NORTH OF HIGHWAY 90 ACROSS FROM THE HARBOR"

	FOR	AGAINST	TOTAL	DIFFERENCE	% FOR	% AGAINST	NO REG. VOTERS	% VOTING
WARD 1	303	181	484	122	63%	37%	1698	29%
WARD 2	334	258	592	76	56%	44%	1584	37%
WARD 3	321	295	616	26	52%	48%	1736	35%
WARD 4	367	339	706	28	52%	48%	1648	43%
WARD 5	487	464	951	23	51%	49%	2028	47%
WARD 6	377	267	644	110	59%	41%	1645	39%
TOTAL	2189	1804	3993	385	55%	45%	10339	39%
	55%	45%		100%				

LONG BEACH MUNICIPAL ELECTION COMMISSION

*Samie R. Sturge*                      6/28/06  
 \_\_\_\_\_  
 DATE

*Rosemary Pike*                      6/28/06  
 \_\_\_\_\_  
 DATE

\_\_\_\_\_  
 DATE

\*\*\*\*\*

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Item X.1. Debris Removal Contract with J. Levens Builders, Inc. and Assignment of Contract to Alabama Emergency Response and Recover, Alderman Boggs, was held in abeyance for further consideration and action in executive session later during the course of this meeting.

\*\*\*\*\*

Due to a possible conflict of interest, Alderman Lishen was recused from the public meeting.

\* \* \*

There came on for consideration the ordinance governing high density development, whereupon, Alderman Burton made motion seconded by Alderman Boggs remanding the ordinance to the Planning Commission; that the city immediately start the process to create a zone to accommodate high density residential uses according to the ruling by Judge Simpson on August 25, 2005, where he ordered and adjudged the adoption of ordinance 502 is reversed, the ordinance declared to be invalid, and the matter is remanded for proceedings consistent with his opinion, which state that the change to the zones in question is so significant that it constitutes a zoning change.

The question being put to a roll call vote by the Mayor, the result was as follows:

Alderman Richard Notter	voted	Aye
Alderman Richard Burton	voted	Aye
Alderman Charles Boggs	voted	Aye
Alderman Richard Bennett	voted	Nay
Alderman Allen D. Holder, Jr.	voted	Absent, Not Voting
Alderman Mark Lishen	voted	Absent, Not Voting
Alderman Joseph McNary	voted	Nay

The question having received the affirmative vote of a majority of the Aldermen present and voting, the Mayor declared the motion carried.

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The Clerk further reported that a BILL OF EXCEPTIONS REGARDING CONCHETTA L. FAVRE REZONING was filed in the Circuit Court of Harrison County, Mississippi, First Judicial District, on behalf of Peggy Joyce Blakeney. Due to a possible conflict of interest for City Attorney Frank McCreary, Alderman Bennett made motion seconded by Alderman Lishen and unanimously carried appointing Attorney Jim Simpson as legal counsel regarding this matter.

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**ORDINANCE NO. 525**

**AN ORDINANCE BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF LONG BEACH, MISSISSIPPI, AMENDING ORDINANCE NO. 344, AS AMENDED, ENTITLED "THE ZONING ORDINANCE OF THE CITY OF LONG BEACH, MISSISSIPPI" AMENDING THE ZONING MAP INCORPORATED IN SAID ORDINANCE TO CHANGE THE CLASSIFICATION OF CERTAIN PROPERTY HAVING AN ADDRESS AT 19185 COMMISSION ROAD, LONG BEACH, MISSISSIPPI, FROM R-1 (SINGLE FAMILY RESIDENTIAL) TO C-3 (NEIGHBORHOOD COMMERCIAL), AND FOR RELATED PURPOSES.**

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WHEREAS, application was filed with the Planning Commission of the City of Long Beach, Mississippi, for the change in the zoning classification from R-1 (single family residential) to C-3 (Neighborhood Commercial) by the owner of certain property located at 19185 Commission Road, City of Long Beach, First Judicial District of Harrison County, Mississippi, and generally described as being south of and adjacent to Commission Road and west of Royal Drive, and being more particularly described as follows:

Commencing at the NW corner of the NW  $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 11, Township 8 South, Range 12 West, Harrison County, Mississippi, and run N 89 degrees 30 minutes E along the North Line of said Section 11 a distance of 400.0 feet; thence run South 16.3 feet to the South margin of Commission Road; thence run N 89 degrees 49 minutes E along said South margin 144.9 feet; thence run N 89 degrees 38 minutes E along said South margin 150.0 feet to the Point of Beginning. Thence Continue N 89 degrees 38 minutes E along South margin 101.77 feet to the West margin of Royal Drive; thence run South along said West margin 110.66 feet; thence run West 101.77 feet; thence run North to the Point of Beginning.

and hereinafter referred to as the "Subject Property"; and

WHEREAS, the Long Beach Planning Commission reviewed said application and, after issuing notice of Public Hearing as required by the Long Beach Zoning Ordinance, did conduct a public hearing on said application on April 27, 2006 at 7:00 p.m. and upon conclusion of said public hearing did recommend approval of the application by the Mayor and Board of Aldermen as reflected in the official minutes of the April 27, 2006, meeting of the Long Beach Planning Commission; and

WHEREAS, the Mayor and Board of Aldermen of the City of Long Beach, Mississippi, having made due investigation therefore, do now find, determine, adjudicate and declare as follows, to-wit:

a. That pursuant to legal notice published and given for the time and in the manner provided by law, the Mayor and Board of Aldermen of the City of Long Beach, Mississippi, did meet at 5:30 p.m. on Tuesday, June 20, 2006 at the Long Beach School District Central Office in said City, the time, place and date fixed in said legal notice,

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and did conduct a public hearing at which hearing all parties interested in or opposed to the proposed zoning classification amendment changing the zoning classification of the aforesaid Subject Property, were given an opportunity to be heard and allowed to make oral and/or written comment to such proposed change, which proposed change was then and there on file and had been on file during the period of said notice in the office of the City Clerk at the City Hall in said City, available for public inspection and examination by any and all parties interested in or opposed to the proposed change, as more particularly hereinafter set forth in this ordinance.

b. That, as a result of the aforesaid public hearing and after consideration by the Mayor and Board of Aldermen of the testimony and evidence presented and their own knowledge and familiarity with the City, the Mayor and Board of Aldermen did then find, and do now find, determine adjudicate and declare as follows:

c. That the clear and convincing evidence establishes, based upon the examination of the municipal zoning map, the character of the surrounding neighborhood, and the minutes of the Long Beach Planning Commission that:

- 1) That Applicant and his predecessors in title, constructed a commercial building on the subject property in approximately 1980, and commenced operation of the Orkin pest control business, where such business has been in continuous operation since approximately 1980, and at which business 19 persons are presently employed;
- 2) That Ordinance No. 344, the Zoning Ordinance of the City of Long Beach, Mississippi, was adopted in 1983.
- 3) That Ordinance No. 344 was amended, reflects an R-1 zoning classification in spite of the above referenced continuous commercial use;

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4) That since 1983 or 1984, the City has received the benefit of assessment of the subject property and improvements thereon as commercial property continuously;

5) Such R-1 classification of the subject property appears to be the result of  
a. clerical mistake and, in any event, is erroneous in view of the use of and improvements situated on the subject property since approximately 1980;

6) That adjacent property is, and has been for many years, the site of a convenience store; and

7) That the best use for the subject property is commercial and the zoning classification of same should be changed from R-1 (single family residential) to C-3 (Neighborhood Commercial)

d. That the clear and convincing evidence establishes the public need for the said amendment changing the zoning classification of that part of the subject property from R-1 to C-3.

e. That the uses within the subject property will not be detrimental to the present and potential surrounding uses, but will benefit same in completion of development in accordance with the aforesaid development plan heretofore approved by the Governing Authority;

f. The proposed change is in conformance with the general intent of the Comprehensive Master Plan; and

g. That the Zoning Ordinance of the City of Long Beach should be amended by amending the Zoning Map incorporated therein to change the zoning classification of that part of the subject property from R-1 (Single Family Residential) to C-3 (Neighborhood Commercial). NOW THEREFORE,

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**BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF LONG BEACH, MISSISSIPPI, AS FOLLOWS:**

**SECTION 1.** That Ordinance No. 344, as amended, entitled the "ZONING ORDINANCE OF THE CITY OF LONG BEACH, MISSISSIPPI", be and it is hereby amended as follows:

The Zoning Classification as set forth on the Zoning Map incorporated in and being a part of Ordinance No. 344, as amended, entitled "THE ZONING ORDINANCE OF THE CITY OF LONG BEACH, MISSISSIPPI", of that part of the parcel of land located at 19185 Commission Road, Road, City of Long Beach, First Judicial District of Harrison County, Mississippi, and generally described as being south of and adjacent to Commission Road and west of Royal Drive, and being more particularly described as follows:

Commencing at the NW corner of the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 11, Township 8 South, Range 12 West, Harrison County, Mississippi, and run N 89 degrees 30 minutes E along the North Line of said Section 11 a distance of 400.0 feet; thence run South 16.3 feet to the South margin of Commission Road; thence run N 89 degrees 49 minutes E along said South margin 144.9 feet; thence run N 89 degrees 38 minutes E along said South margin 150.0 feet to the Point of Beginning. Thence Continue N 89 degrees 38 minutes E along South margin 101.77 feet to the West margin of Royal Drive; thence run South along said West margin 110.66 feet; thence run West 101.77 feet; thence run North to the Point of Beginning.

is hereby changed from R-1 (Single Family Residential) to C-3 (Neighborhood Commercial).

**SECTION 2.** Severability

If any section, subsection, sentence, clause or phrase of this Ordinance, or the application thereof, be held by any court of competent jurisdiction to be invalid or unconstitutional, such holding shall not affect the remaining portions of this Ordinance.

**SECTION 3.** Effective Date

This ordinance shall take effect and be and force thirty (30) days after its adoption, publication and enrollment thereof as provided by law.

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The above and foregoing Ordinance No. 525 was introduced in writing by Alderman Bennett who moved its adoption. Alderman Notter seconded the motion to adopt the Ordinance, and after discussion, no member of the Board of Aldermen having requested the Ordinance to be read by the City Clerk, and the question being put to a roll call vote, the result was as follows:

Alderman Richard Notter	voted Aye
Alderman Charles Boggs	voted Aye
Alderman Richard Burton	voted Aye
Alderman Richard Bennett	voted Aye
Alderman Allen D. Holder, Jr.	voted Absent, Not Voting
Alderman Joseph McNary	voted Aye
Alderman Mark Lishen	voted Aye

The question having received the affirmative vote of all the Aldermen present and voting, the Mayor declared the motion carried and said Ordinance adopted and approved this the 5th day of July, 2006.

APPROVED:

\_\_\_\_\_  
WILLIAM SKELLIE, JR., MAYOR

ATTEST:

\_\_\_\_\_  
REBECCA E. SCHRUFF, CITY CLERK

\*\*\*\*\*

Alderman Burton made motion seconded by Alderman Notter and unanimously carried remanding the sign ordinance to the Planning Commission with the following changes:

**SECTION 5. Permitted Signs According to Zoning Use Districts**

(b) Signs Permitted in C-1, C-2, C-3, and I Districts

9. Pole Sign. A pole sign may be used in unusual site conditions where a monument sign is not **reasonably accommodated**. However, such use shall require planning commission approval after receiving in writing a full explanation as to why a monument sign cannot be used. Site plans and details must accompany any request.

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**SECTION 6. Prohibited Signs.**

It shall be unlawful to erect, alter, relocate or maintain any sign in the City of Long Beach, Mississippi which;

(j) Off-Premise and Non-Accessory Sign are prohibited in the City of Long Beach **in Commercial, Industrial and Residential Zones.**

In addition to the changes as set forth above, the use of incandescent bulbs, SECTION 6. (g), shall be modified in accordance with direction from City Planning Consultant Bill Hessell.

\*\*\*\*\*

Jim W. Johnson addressed the Mayor and Board of Aldermen regarding problems with the police department, however, no formal action was required or taken.

\*\*\*\*\*

There came on for consideration again the fine imposed on Jimmy Wedworth for commencing construction on his development at 105 and 107 Cedar without proper permits. The matter was taken under advisement for review and deliberation on May 16<sup>th</sup> and June 6<sup>th</sup>. The Board recognized Mr. James Wedworth who stated that the length of time required for plan approval is unacceptable. Construction of the development commenced without proper permits, however, all inspections as required by code and city ordinances were conducted by city inspectors.

After considerable discussion, it was determined that proper inspections were conducted by city inspectors without regard for permits, hence, there was no code or ordinance violation, whereupon, Alderman Bennett made motion seconded by Alderman Notter and unanimously carried to overrule the imposition of fines as assessed to Mr. Wedworth, directing a credit for the amount of the fine toward the issuance of the next permit.

\*\*\*\*\*

Sara Jackson, Ed.D., University of Southern Mississippi, addressed the Mayor and Board of Aldermen regarding the Bear Creek Fitness Trail. No formal action was required or taken regarding this matter.

\*\*\*\*\*

Cassie Bryant addressed the Mayor and Board of Aldermen regarding the formation of a youth council to formulate and research ideas for presentation to the

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Mayor and Board of Aldermen regarding the future of the community. She will provide the Clerk with a model ordinance for review by the Mayor and Board of Aldermen at a future meeting.

\*\*\*\*\*

Alderman Lishen made motion seconded by Alderman Bennett and unanimously carried to reappoint Phil Kies to the Port Commission, May/2006-May/2011, as the representative for Ward 5.

\*\*\*\*\*

City Engineer David Ball will forward a letter to the developers of Orchard Park Subdivision regarding the condition of the retention pond.

\*\*\*\*\*

Alderman Notter made motion seconded by Alderman Bennett and unanimously carried authorizing OPTECH to provide labor for temporary sewer installations on public easements and right-of-ways in the southernmost part of the devastated area.

\*\*\*\*\*

The Mayor and Board of Aldermen took up the matter of the sale of certain trucks to the City of Pass Christian, Mississippi for less than fair market value, and for related purposes. After a discussion of the subject, Alderman Boggs offered and moved the adoption of the following resolution:

**A RESOLUTION BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF LONG BEACH, MISSISSIPPI, APPROVING AGREEMENT TO SELL CERTAIN SURPLUS PROPERTY, BEING CERTAIN TRUCKS OWNED BY THE CITY TO THE CITY OF PASS CHRISTIAN, MISSISSIPPI, FOR A NEGOTIATED PRICE WHICH IS LESS THAN FAIR MARKET VALUE, AND FOR RELATED PURPOSES.**

WHEREAS, the Governing Authorities of the City of Long Beach, Mississippi, having made due investigation, do now find and determine as follows, to-wit:

1. That the City of Long Beach owns certain trucks which have heretofore been declared by the Governing Authorities to be surplus property, which trucks are more particularly described on Exhibit "A" attached hereto and incorporated herein; and

2. That the City of Pass Christian, Mississippi, is in great need of the trucks described on Exhibit "A" attached hereto for the reason that most of its trucks were destroyed by Hurricane Katrina and it is presently without sufficient trucks to carry out the public work necessary to protect the public health and safety in Pass Christian as is

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necessary for that City to recover from the damage and destruction of Hurricane Katrina; and

3. The recovery of the City of Pass Christian is in the best interest of the taxpayers of the State of Mississippi, and is in the best interest of the citizens of the City of Long Beach, particularly, since Pass Christian is the sister city adjacent to the City of Long Beach, and her recovery will aid in and encourage the economic recovery of the City of Long Beach from the damage and destruction and economic loss caused by Hurricane Katrina; and

4. That the Governing Authorities of the City of Long Beach are authorized by the provisions of MCA §31-7-13(m)(vi), to sell the trucks listed on Exhibit "A" hereto to the City of Pass Christian, Mississippi, for a sum below the market value of same; and

5. That it is in the best interest of the taxpayers of the State of Mississippi and of the City of Long Beach, Mississippi, that the trucks listed on Exhibit "A" hereto be sold to the City of Pass Christian, Mississippi, for the sum of \$10.00, each, in accordance with the agreement attached hereto as Exhibit "B" and incorporated fully herein, upon the approval of the said agreement by the governing authorities of the City of Pass Christian and the duly authorized execution of the said agreement by the proper city official or officials as designated by the resolution or order approving same. NOW THEREFORE

**BE IT RESOLVED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF LONG BEACH, MISSISSIPPI, AS FOLLOWS:**

SECTION 1. That the proposed agreement attached hereto as Exhibit "B" and incorporated fully herein to sell those surplus trucks listed on Exhibit "A" to the City of Pass Christian for the sum of \$10.00, each, should be and is hereby approved.

SECTION 2. That the Mayor and City Clerk are hereby authorized and directed to execute and deliver a true and correct copy of this resolution and the Exhibits attached hereto, including the proposed agreement attached as Exhibit "B" to the City Clerk of the City of Pass Christian, Mississippi.

SECTION 3. That upon approval of the proposed agreement by resolution or order duly adopted by the Governing Authorities of the City of Pass Christian, Mississippi, and upon proper execution of the proposed agreement by the duly authorized officer or officers of the City of Pass Christian, Mississippi, the Mayor and City Clerk are authorized to accept on behalf of the City of Long Beach delivery of the aforesaid purchase price for the vehicles and to execute any and all documents for and

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on behalf of the City of Long Beach, Mississippi, as may be necessary to convey ownership of said vehicles to the City of Pass Christian, Mississippi, and thereafter to deposit such sales proceeds in the City's General Fund.

SECTION 3. This resolution shall take effect and be in force from and after its adoption.

Alderman Burton seconded the motion to adopt the foregoing resolution, and the question being put to a roll call vote by the mayor, the result was as follows:

Alderman Richard Burton	voted Aye
Alderman Richard Notter	voted Aye
Alderman Charles A. Boggs	voted Aye
Alderman Richard Bennett	voted Aye
Alderman Allen D. Holder, Jr.	voted Absent, Not Voting
Alderman Joseph McNary	voted Aye
Alderman Mark E. Lishen	voted Aye

The question having received the affirmative vote of all the Aldermen present and voting, the Mayor declared the motion carried and the resolution adopted and approved this the 5<sup>th</sup> day of July, 2006.

APPROVED:

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WILLIAM SKELLIE, JR., MAYOR

ATTEST:

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REBECCA E. SCHRUFF, CITY CLERK

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Exhibit "A"

**OPERATIONS  
TECHNOLOGIES, INC.**

# Memo

**To:** MAYOR SKELLIE  
**From:** DERREL WILSON, PROJECT MANAGER  
**CC:**  
**Date:** 5/16/2006  
**Re:** SURPLUS TRUCKS

---

The following vehicles may be declared surplus and may be donated to another municipality if desired:

PW 4 – 1994 GMC 1 TON 3500 SERIES (asphalt truck)

VIN# 1GOHC34K6RE526510

PW 122 – 1998 CHEVY CHEYENNE 3500 SERIES (debris truck)

VIN# 1TGBJC34J7WF046774

1

Exhibit "B"

## AGREEMENT TO SELL MOTOR VEHICLES

The City of Long Beach, Mississippi, hereby agrees to sell to the City of Pass Christian, Mississippi, the motor vehicles more particularly described on Exhibit "A" hereto, for and in consideration of the sum of \$20.00, being \$10.00 per vehicle, and on the following terms and conditions:

1. Said vehicles are sold "as is" in their present condition, without any warranty or guarantee of any kind by the City of Long Beach, Mississippi;

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2. Each and every vehicle described on Exhibit "A" hereto has been declared to be surplus property by the City of Long Beach, Mississippi;

3. The City of Pass Christian, Mississippi, accepts each and every vehicle described on Exhibit "A" hereto, in its present condition and does hereby agree to make any and all repairs necessary to make each and every such vehicle operable, safe, fit for use, compliant with applicable governmental safety regulations, and fit for the purpose or purposes for which such vehicles are to be used by the City of Pass Christian, Mississippi, such repairs to be made before such use by the City of Pass Christian, Mississippi, or its officers, contractors or employees;

4. None of the vehicles described on Exhibit "A" hereto shall be sold or conveyed within one (1) year of the execution of this agreement by all parties hereto.

5. No vehicle described on Exhibit "A" hereto will be used for private use, and all such vehicles shall be used for public purposes, only, of the City of Pass Christian, Mississippi;

6. The City of Pass Christian, Mississippi will add each and every vehicle described on Exhibit "A" hereto to its insurance policy and will insure same as property of the City of Pass Christian, Mississippi, and will hold harmless the City of Long Beach, Mississippi, from any and all damages, losses, claims, demands and/or lawsuits, including but not limited to the cost of defense of same, which damages, losses, claims demands and/or lawsuits arise from or are related to the use by the City of Pass Christian, Mississippi, of any of such vehicles, or are related to the condition of same.

This, the 5<sup>th</sup> day of July, 2006.

THE CITY OF PASS CHRISTIAN,  
MISSISSIPPI

THE CITY OF LONG BEACH,  
MISSISSIPPI

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
WILLIAM SKELLIE, JR., MAYOR

\*\*\*\*\*

There came on for consideration invoice number 10-1757-II in the amount of \$328,536.60 submitted by Alabama Emergency Response and Recovery as listed in Docket of Claims number 070406 and the debris removal contract with J. Levens Builders, Inc. and Assignment of contract to Alabama Emergency Response and Recovery.

Discussion was held to preliminarily determine whether or not to declare an executive, whereupon, Alderman Notter made motion seconded by Alderman Boggs to meet in executive session for the transaction of public business, to-wit: to discuss with

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and seek the legal advice and counsel of the City Attorney regarding potential litigation in connection with the aforesaid items.

The question being put to a roll call vote by the Mayor, the result was as follows:

Alderman Richard Notter	voted	Aye
Alderman Richard Burton	voted	Aye
Alderman Charles Boggs	voted	Aye
Alderman Richard Bennett	voted	Aye
Alderman Allen D. Holder, Jr.	voted	Absent, Not Voting
Alderman Mark Lishen	voted	Aye
Alderman Joseph McNary	voted	Aye

The question having received the affirmative vote of all the Aldermen present and voting, the Mayor declared the motion carried, whereupon, the Mayor and Board of Aldermen met in executive session.

\* \* \* \* \*

The meeting resumed in open session, and based upon discussion held and action taken in executive session, there was no further action required or taken in open session.

\* \* \* \* \*

There being no further business to come before the Mayor and Board of Aldermen at this time, Alderman Lishen made motion seconded by Alderman Notter and unanimously carried to adjourn until the next regular meeting in due course.

\* \* \* \* \*

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APPROVED:

\_\_\_\_\_  
Alderman Allen D. Holder, Jr., At-Large

\_\_\_\_\_  
Alderman Charles A. Boggs, Ward 1

\_\_\_\_\_  
Alderman Richard Notter, Ward 2

\_\_\_\_\_  
Alderman Richard Burton, Ward 3

\_\_\_\_\_  
Alderman Joseph McNary, Ward 4

\_\_\_\_\_  
Alderman Mark Lishen, Ward 5

\_\_\_\_\_  
Alderman Richard Bennett, Ward 6

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Rebecca E. Schruoff, City Clerk