

REGULAR MEETING
MONTGOMERY COUNTY COMMISSION

JUNE 3, 2013

AGENDA

INFORMATION SESSION

Call to Order Welcome at 8:00 a.m.

Prayer Led by Commissioner Williams

Reports from Staff:

County Administrator
Deputy Administrator
County Attorney
County Engineer

Comments from Scheduled Attendees:

Juvenile Court Administrator Bruce R. Howell
Sheriff D.T. Marshall
Attorney James N. Walter, Jr.
Montgomery Area Chamber of Commerce Senior Vice President of Corporate
Development Ellen McNair and CARPDC Community Development Director Sara
Byard
Chief Information and Technology Officer Lou Ialacci

Recess to Formal Session

FORMAL SESSION

Welcome at 9:30 a.m.

Invocation by Commissioner Williams

Pledge of Allegiance Led By Chairman Dean

Call of Roll to Establish Quorum

Presentation of the Minutes of the Regular Meeting of May 20, 2013

CONSENT AGENDA:

Consider Accounts Payable Checks and Payroll Checks

PUBLIC HEARING:

Public Hearing Regarding Project Agreement by and among City of Montgomery, Montgomery County, Alabama, and DAS North America, Inc., County Commission

NEW BUSINESS:

1. Consider Project Agreement by and among City of Montgomery, Montgomery County, Alabama, and DAS North America, Inc., and Related Resolution, County Commission
2. Consider Resolution Regarding 2013 “Back-to-School” Sales Tax Holiday, County Commission
3. Consider Contract Amendment Number 1 to Professional Services Contract with Goodwyn, Mills & Cawood, Inc., regarding the Industrial Park Boulevard Extension to Serve the DAS Project Site at the Montgomery Industrial Park, County Commission
4. Consider Agreement between Owner and Architect, PH&J Architects, Inc., Regarding Miscellaneous Architectural Improvements to the Department of Human Resources Building located at 3030 Mobile Highway, PH&J #1305GV, County Commission
5. Consider Addendum to March 12, 2012 Memorandum of Understanding (MOU) between the City of Montgomery and Montgomery County Commission, Regarding a Joint Management Agreement for Information Technology, Telecommunications and Radio Functions, County Commission
6. Consider Change Order Numbers 3, 4, and 5 with CannDauSon Construction, Inc., Regarding East Revenue/Probate Offices totaling \$7,756.27, County Commission
7. Consider Authorization for the County Commission to Pay a Portion of the Cost to Purchase and Install New Carpet, Personnel Department
8. Consider Agreement with Crosby Electric Company, Inc., (TEGG Service Contractor) Regarding Preventive Testing on the County’s Electrical Distribution System, Risk Management
9. Consider Miscellaneous Appropriations Reprogramming Requests, County Commission
10. Consider Budget Change Request Number 21 Regarding Funding for Tourism Development for the 2013 Buckmasters Expo, County Commission Appropriations

11. Consider Budget Change Request Number 22 Regarding Funding for Tourism Development for the AME Zion National Conference, County Commission Appropriations
12. Consider Travel/Training Requests (4)

Reports from Staff:

County Administrator
Deputy Administrator
County Engineer
County Attorney

Comments from Citizens

Discussion Items by Commissioners

Recess to Information Session

INFORMATION SESSION

Comments from Scheduled Attendees:

Reports from Staff:

County Administrator
Deputy Administrator
Manager of Public Affairs

Adjourn

CALENDAR OF EVENTS

JUNE 3, 2013

Regular County Commission Meeting
8:00 a.m. - Information Session
9:30 a.m. - Formal Session
After Conclusion of the Formal Session, an
Information Session will be conducted until 12:00 Noon.

JUNE 17, 2013

Regular County Commission Meeting
8:00 a.m. - Information Session
9:30 a.m. - Formal Session
After Conclusion of the Formal Session, an
Information Session will be conducted until 12:00 Noon.

JULY 1, 2013

Regular County Commission Meeting
8:00 a.m. - Information Session
9:30 a.m. - Formal Session
After Conclusion of the Formal Session, an
Information Session will be conducted until 12:00 Noon.

JULY 4, 2013

County Holiday (Independence Day)

JULY 15, 2013

Regular County Commission Meeting
8:00 a.m. - Information Session
9:30 a.m. - Formal Session
After Conclusion of the Formal Session, an
Information Session will be conducted until 12:00 Noon.

AUGUST 5, 2013

Regular County Commission Meeting
8:00 a.m. - Information Session
9:30 a.m. - Formal Session
After Conclusion of the Formal Session, an
Information Session will be conducted until 12:00 Noon.

AUGUST 19, 2013

Regular County Commission Meeting
8:00 a.m. - Information Session
9:30 a.m. - Formal Session
After Conclusion of the Formal Session, an
Information Session will be conducted until 12:00 Noon.

PERSONNEL ACTIONS

Fill action continues for 2 Programmer Analyst II's – Information Systems
Fill action continues for 1 Clerk Typist II – Support Services Department
Fill action continues for 3 Service Maintenance Worker I's – Support Services Department
Fill action continues for 2 Service Maintenance Worker II's – Support Services Department
Fill action continues for 1 Community Corrections Officer – Community Corrections
Fill action continues for 1 Clerk Typist II – Tax & Audit Department
Fill action continues for 1 Revenue Auditor – Tax & Audit Department
Fill action continues for 1 Assistant Revenue Manager – Tax & Audit Department
Fill action continues for 1 Clerk II – District Attorney's Worthless Check Unit
Fill action continues for 1 Clerk IV – District Attorney's Worthless Check Unit
Fill action continues for 1 Worthless Check Director – District Attorney's Worthless Check Unit
Fill action continues for 1 Case Manager I – District Attorney's Child Support Unit
Fill action continues for 1 Case Manager II – District Attorney's Child Support Unit
Fill action continues for 1 Deputy D. A. Level 1 – District Attorney's Child Support Unit
Fill action continues for 17 Correction Officer Trainees – Detention Facility
Fill action continues for 1 Corrections Officer Sergeant – Detention Facility
Fill action continues for 3 Clerk II's – Detention Facility
Fill action continues for 1 Store Clerk – Detention Facility
Fill action continues for 4 County Road Equipment Operator I's – Engineering Department
Fill action continues for 1 Civil Engineering Technician II – Engineering Department
Fill action continues for 1 Civil Engineering Technician III – Engineering Department
Fill action continues for 2 Master Auto Mechanics – Engineering Department
Fill action continues for 3 Service Maintenance Worker I's – Personnel Department
Fill action continues for 1 Clerk III – Probate Judge's Office
Fill action continues for 3 Customer Service Clerks – Probate Judge's Office
Fill action continues for 1 Probate Court Clerk – Probate Judge's Office
Fill action continues for 1 Election Director – Probate Judge's Office (Elections Center)
Fill action continues for 1 Clerk III – Revenue Commissioner's Office
Fill action continues for 1 Revenue Branch Supervisor – Revenue Commissioner's Office
Fill action continues for 1 Payroll Clerk – Sheriff's Office
Fill action continues for 3 Deputy Sheriff/Deputy Sheriff Trainee's – Sheriff's Office
Fill action continues for 1 Clerk Typist II – Sheriff's Office
Fill action continues for 1 Fingerprint Classifier – Sheriff's Office
Fill action continues for 1 Deputy Sheriff Corporal – Sheriff's Office
Fill action continues for 1 Relief Juvenile Detention Officer – Youth Facility
Fill action continues for 2 Juvenile Probation Officer I's – Youth Facility
Fill action continues for 1 Relief Cook – Youth Facility
Fill action continues for 1 Building Maintenance Superintendent – Youth Facility
Fill action continues for 2 Juvenile Detention Officers – Youth Facility
Fill action continues for 1 Juvenile Probation Supervisor – Youth Facility

June 3, 2013

06-03-13 Meeting

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND
ORDERED PAID

CHECKS ARE DATED 05-17-13

Check Number	To	Check Number
235205		235261
Total Checks Paid		\$151,699.46

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS
PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS
PAYABLE CHECK REGISTER

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND
ORDERED PAID

CHECKS ARE DATED 05-17-13

Check Number	To	Check Number
235262		235347
Total Checks Paid		\$804,172.52

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS
PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS
PAYABLE CHECK REGISTER

06-03-13 Meeting

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND
ORDERED PAID

CHECKS ARE DATED 05-24-13

Check Number	To	Check Number
235349		235420
Total Checks Paid		\$235,676.12

CHECK #	PAYEE	AMOUNT	DATE
235348	Haskell Slaughter Young & Gallion, LLC	\$62,128.16	05/17/13

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS
PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS
PAYABLE CHECK REGISTER

06-03-13 Meeting

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND
ORDERED PAID

CHECKS ARE DATED 05-24-13

Check Number	To	Check Number
235421		235509
Total Checks Paid		\$575,114.06

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS
PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS
PAYABLE CHECK REGISTER

06-03-13 Meeting

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND
ORDERED PAID

CHECKS ARE DATED 05-31-13

Check Number	To	Check Number
235510		235561
Total Checks Paid		\$105,523.43

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS
PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS
PAYABLE CHECK REGISTER

MONTGOMERY COUNTY COMMISSION

THE FOLLOWING ACCOUNTS PAYABLE WERE AUDITED AND
ORDERED PAID

CHECKS ARE DATED 05-31-13

Check Number	To	Check Number
235562		235616
Total Checks Paid		\$95,322.34

INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS
PAID ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE ACCOUNTS
PAYABLE CHECK REGISTER

MONTGOMERY COUNTY COMMISSION**THE FOLLOWING TRANSACTIONS WERE AUDITED AND
ORDERED PAID****CHECKS ARE DATED
05/31/13**

Payroll Check Number	116303	To	Payroll Check Number	116409	\$ 92,575.80
Direct Deposits					\$ 817,896.12
Payroll Check Number	116410	To	Payroll Check Number	116424	\$ 197,884.48
Direct Deposits					\$ 59,602.72
Federal Deposits					\$ 318,514.30
Total Payroll Paid					\$ 1,486,473.42

**INFORMATION PERTAINING TO PAYEES OF THE CHECKS AND AMOUNTS PAID
ARE MAINTAINED IN THE FINANCE DEPARTMENT IN THE PAYROLL CHECK REGISTER**

NOTICE OF PUBLIC MEETING

NOTICE IS HEREBY GIVEN that at 9:30 a.m. on June 3, 2013, the Montgomery County Commission ("Commission") for Montgomery County, Alabama ("County") will hold a regular meeting in the Commission's chambers at 101 South Lawrence Street in Montgomery, Alabama. Such regular meeting will constitute a public meeting. One of the purposes of the public meeting will be to consider, discuss, vote upon, and take action on the adoption of a resolution (A) approving and authorizing the County's use and grant of public funds, together with the City of Montgomery ("City"), (i) to reimburse DAS North America, Inc. ("DAS") upon certain conditions being satisfied for a portion of DAS's actual capital expenditures incurred in connection with the design, engineering, construction, furnishing and equipping of an approximately 300,000 square foot manufacturing and assembly facility ("Project") located in Montgomery Industrial Park for the manufacture and assembly of seat assemblies and other automotive related products, and (ii) to commit to use its best efforts to obtain grants with the City and, if the grants are obtained, to pay for a portion of the costs for the extension of a portion of a public road adjacent to the Project and the extension of water and sewer lines to serve the Project ("Infrastructure"), (B) authorizing and approving the conveyance of thirty (30) acres, more or less, to DAS on which the Project will be located if certain conditions are met subject to a mortgage in favor of the County in the event that DAS shall fail to satisfy its requirements under the Project Agreement and (C) ratifying and approving the execution and delivery by the County of the Project Agreement between the City, County and DAS providing therefor ("Project Agreement"). The reimbursements from the County, together with reimbursements from the City, are not to exceed \$100,000 in the aggregate. In addition, the City and County will be required to provide funds for the matching portion of any grants, which matching portion is not expected to exceed \$200,000 in the aggregate between the City and the County. These uses of public funds are in consideration of, among other items, the agreements of DAS to expend approximately \$36,800,000 in Capital Expenditures for the design, engineering, construction furnishing and equipping of the Project and to employ with Qualifying Suppliers 400 Full-Time Employees at established levels of wages and to maintain such employment levels for specified periods of time, and DAS's agreement to repay certain amounts if such target levels of employment at established wage rates are not met or maintained or if other conditions contained therein are not met. The County believes that the construction, equipping and furnishing of the Project and the additional improvements thereto will, inter alia, have at least the following public benefits: promote and continue economic and industrial development within the County, create additional jobs, increase median wage rates, expand the tax base and otherwise promote the health, welfare and prosperity of the citizens of the County. The identity of the business entity for whose benefit the City proposes to use and grant public funds is DAS North America, Inc.. This notice is being given in accordance with Amendment 713 of the Alabama Constitution of 1901, as amended, as the expenditure of funds by the County is for the purpose of promoting local economic and industrial development within the corporate limits of the County.

Given on this 23rd day of May, 2013.

MONTGOMERY COUNTY COMMISSION

Tammy Nix

From: Chris Simmons <CSS@rushtonstakely.com>
Sent: Thursday, May 23, 2013 2:05 PM
To: Donald Mims; Emcnair@montgomerychamber.com; jsmyth@montgomerychamber.com
Cc: Jeff Blitz
Subject: RE: DAS
Attachments: Notice of Public Meeting.Draft1(County).pdf

If we are going to approve the DAS Project Agreement at the next County Commission Meeting, we will need to submit a notice of public meeting today by 4pm(to meet the 7-day prior publication requirement). Please find attached hereto the draft of the notice of public meeting. Obviously, just having met on changes this morning, we are publishing a notice without having approved the final form of the Project Agreement, please let me know whether it is permissible to place this notice in the paper by 4pm today. Thank you.

Chris S. Simmons

Rushton, Stakely, Johnston & Garrett, P.A.
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IRS CIRCULAR 230 DISCLOSURE: Pursuant to U.S. Treasury Regulations, we are now required to advise you that, unless explicitly stated above to the contrary: (1) the contents and conclusions (if any) contained in this communication (including any attachments) are preliminary in nature and do not express a formal opinion contemplated by IRS Circular 230; (2) nothing contained in this communication (including any attachments) is intended to be used, or may be relied upon or used, by any taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code; and (3) any statement contained in this communication (including any attachments) relating to any federal tax issue may not be used by any person to support the promotion, marketing of, or used to recommend any transaction or matter addressed in this communication.

PROJECT AGREEMENT
BY AND AMONG
CITY OF MONTGOMERY,
MONTGOMERY COUNTY, ALABAMA
AND
DAS NORTH AMERICA, INC.

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (herein referred to as this "Agreement") is hereby made and entered into on this the _____ day of June, 2013, by and among the City of Montgomery, a body corporate and politic (the "City"), Montgomery County, Alabama, a body corporate and political subdivision of the State of Alabama (the "County"), and DAS North America, Inc., an Alabama corporation ("DAS"). The City, County, and DAS are each referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the City and the County support and encourage business and industrial development within their territorial boundaries for the benefit of their citizens; and

WHEREAS, DAS has approached the City and the County regarding DAS's intention to build a new manufacturing facility as herein described on an approximately thirty (30) acre site located in the Montgomery Industrial Park in Montgomery, Alabama, as such site is more particularly described in Exhibit "A" attached hereto (the "Project Site"); and

WHEREAS, DAS has represented that it will make Capital Expenditures (as defined herein) of approximately Thirty-Six Million Eight Hundred Thousand Dollars (\$36,800,000) in designing, engineering, furnishing, constructing and equipping the Project (as defined herein) and will employ about 400 full-time employees at the Project; and

WHEREAS, DAS has requested certain incentives in connection with locating at the Project Site, and the City and the County are willing to grant certain incentives, all on the terms and conditions herein contained, and based upon representations, agreements and covenants of DAS herein contained relating to the Project and the employment thereat; and

WHEREAS, the Parties desire to set forth the terms and conditions on which the incentives will be provided and the terms and conditions on which repayment of such incentives will occur in the event that the commitments on behalf of DAS as set forth in this Agreement are not fully satisfied.

NOW, THEREFORE, for and in consideration of the foregoing premises and the other agreements and covenants herein contained, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Terms. In addition to the terms defined elsewhere in this Agreement, the capitalized terms defined in this Section 1.1 shall have the meanings herein specified for all purposes of this Agreement unless otherwise clear from the context in which the term is used and shall be applicable to both the singular and plural forms of any of the terms defined herein.

“Agreement” means this Project Agreement, as amended in accordance with its terms.

“Annual Period” means each twelve (12) consecutive month period occurring during the Initial Jobs Period, Interim Jobs Period or the Final Jobs Period, with the first Annual Period beginning on the first day of the applicable jobs period and the next following Annual Period of that jobs period beginning on the date immediately following the end of the preceding Annual Period.

“Average,” when used to determine the average number of Full-Time Employees for purposes of the Interim Jobs Period or Final Jobs Period as such periods are defined in Article 2 hereof, shall be determined as set forth in Section 4.1(e) hereof.

“Capital Expenditures” means the costs incurred and paid for designing, engineering, constructing, furnishing and equipping the Project by DAS which costs are of a type that are properly chargeable to a capital account according to United States generally accepted accounting principles (but does not include items such as capitalized interest). The determination of whether an expenditure is a Capital Expenditure shall be made at the time the expenditure is paid with respect to the Project.

“City” shall have the meaning set forth in the preamble.

“Commencement of Construction” or **“Commenced Construction”** or similar phrases, when capitalized herein, means the date on which the Company shall commence the pouring of the footings or foundations for the Project.

“Commercial Operation” shall mean that the Project (as defined below) is placed in service for federal income tax purposes under Treasury Regulation 1.150-2(c) in manufacturing seat assemblies and other automotive related products for commercial sale.

“County” shall have the meaning set forth in the preamble.

“DAS” shall have the meaning set forth in preamble.

“Effective Date” means the date upon which the last of the following items have occurred: (i) this Agreement has been signed by authorized representatives of each Party hereto, and (ii) the satisfaction of the conditions precedent set forth in Section 5.1.

“Full-Time Employees” means individuals employed directly by DAS, or by a Qualifying Supplier, who are located at the Project Site and whose terms of employment require working at least thirty-five hours per week (provided that holiday pay shall be treated as pay for hours required to be worked in this context), but does not include contracted personnel who would not be treated as a common law employee of DAS or the Qualifying Supplier under applicable Alabama laws.

“Local Governments” means the City and the County.

“Mortgage Default” means an Event of Default as defined under the Mortgage (as defined in Section 3.2 of this Agreement), as such Mortgage is amended in accordance with its terms.

“Party” or “Parties” shall have the meaning set forth in the preamble of this Agreement.

“Person” means all natural persons, corporations, business trusts, associations, companies, partnerships, limited liability companies, joint ventures and other entities and governments and agencies and political subdivisions.

“Project” means the construction and operation of an approximately 300,000 square foot facility for the manufacture and assembling of seat assemblies and other automotive related products at the Project Site.

“Project Site” has the meaning set forth in the Recitals.

“Pro Rata Share”, when used in reference to the Local Governments, shall mean a sixty (60%) percent share for the City and a forty (40%) percent for the County.

“Qualifying Supplier” means a supplier to DAS that (i) has not reduced employment in the State or relocated employees to the Project Site from any other facility in any other location in the State, (ii) is not in breach or violation of any agreement with the State or any municipality in the State or political subdivision of the State, after taking into account any applicable grace or cure period expressly allowed such supplier in the applicable agreement, (iii) has not shut down or reduced operations at any facility located elsewhere in the State, and (iv) is located with DAS at the Project Site.

“State” means the State of Alabama.

“Wage Rate” means \$15.85 per hour.

1.2 Interpretation. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; references to “writing” include printing, typing, lithography, facsimile reproduction and other

means of reproducing words in a tangible visible form; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits, schedules and appendices attached thereto and all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement; references to days shall mean calendar days unless specified otherwise; and references to Persons include their respective successors and permitted assigns.

ARTICLE 2

DAS’S COMMITMENTS FOR PROJECT

2.1 Location and Implementation of Project. DAS covenants and agrees to expend by no later than May 1, 2016, approximately Thirty-Six Million Eight Hundred Thousand Dollars (\$36,800,000) in Capital Expenditures in designing, engineering, furnishing, constructing and equipping the Temporary Location and the Project at the Project Site. DAS covenants and agrees (i) that Commencement of Construction of the Project shall occur no later than June 30, 2014, and (ii) that Commercial Operation shall occur by no later than May 1, 2016 and that the Project shall continue to operate for the twenty-four (24) consecutive month period beginning on the date of Commercial Operation. From the Effective Date hereof until DAS’s Commercial Operation, DAS will lease the Graham Packaging Building located at 201 County Court in Montgomery, Alabama (“Temporary Location”). DAS shall provide by July 1, 2016 written evidence of the expenditure of \$36,800,000 of Capital Expenditures in the Project and the Temporary Location.

2.2 Employment.

(a) DAS hereby certifies that it has 50 employees whose average wage rate is not less than the Wage Rate and who meet the requirements as a Full-Time Employee except that such employees are located at the Temporary Location (and not the Project Site) (such employees are referred to herein as “Qualifying Employees”). DAS agrees to provide (if requested by the Local Governments) back-up documentation for such certification no later than June 30, 2013. DAS agrees and covenants that it will maintain 50 Qualifying Employees for the twenty-four (24) consecutive month period beginning on July 1, 2012 and ending June 30, 2014 (such two-year period is referred to as the “Initial Jobs Period”). With respect to the Initial Jobs Period, DAS shall provide to each of the Local Governments within thirty (30) days after each Annual Period constituting a portion of the Initial Jobs Period a written certification reflecting the number of Qualifying Employees employed throughout such preceding Annual Period. If DAS shall fail to maintain the required number of Qualifying Employees during an Annual Period of the Initial Jobs Period as required by this section, then such failure may be cured by DAS and shall not constitute a default hereunder if DAS shall employ in the following Annual Period of the Initial Jobs Period under this section a sufficient number of

Qualifying Employees so that the number of Qualifying Employees employed throughout each Annual Period of the Initial Jobs Period, when added together and divided by 2, equals or exceeds 50 Qualifying Employees over the Initial Jobs Period.

(b) DAS further agrees and covenants (i) that, by no later than May 1, 2015, there will be 200 Full-Time Employees whose average wage rate is not less than the Wage Rate and (ii) that an Average of 200 Full-Time Employees whose average wage rate is not less than the Wage Rate will be maintained for the twenty-four (24) consecutive month period beginning on the first (1st) day of the calendar month immediately following the month in which the 200 Full-Time Employee level is first reached as then certified by DAS to the Local Governments (such 24-month period is referred to as the "Interim Jobs Period"). With respect to the Interim Jobs Period, DAS shall provide to each of the Local Governments within thirty (30) days after each Annual Period constituting a portion of the Interim Jobs Period a written certification reflecting the number of Full-Time Employees employed for each month during such preceding Annual Period and reflecting the Average for that preceding Annual Period. If DAS shall fail to maintain the required Average number of Full-Time Employees during an Annual Period of the Interim Jobs Period as required by this section, then such failure may be cured by DAS and shall not constitute a default hereunder if DAS shall employ or have employed in the following Annual Period of the Interim Jobs Period under this section a sufficient number of Full-Time Employees so that the Average of the following Annual Period of the Interim Jobs Period, when used to determine the Average number of Full-Time Employees for the jobs period under this Section 2.2(b), shall cause the Average number of Full-Time Employees for the Interim Jobs Period under this Section 2.2(b) to be maintained at the Average level required under this Section 2.2(b).

(c) DAS further agrees and covenants (i) that, by no later than May 1, 2017, there shall be 400 Full-Time Employees whose average wage rate is not less than the Wage Rate and (ii) that an Average of 400 Full-Time Employees whose average wage rate is not less than the Wage Rate will be maintained for the twenty-four (24) consecutive month period beginning on the first (1st) day of the calendar month immediately following the month in which the 400 Full-Time Employee level is first reached as then certified by DAS to the Local Governments (such 24-month period is referred to as the "Final Jobs Period"). With respect to the Final Jobs Period, DAS shall provide to each of the Local Governments within thirty (30) days after each Annual Period constituting a portion of the Final Jobs Period a written certification reflecting the number of Full-Time Employees employed for each month during such preceding Annual Period and reflecting the Average for that preceding Annual Period. If DAS shall fail to maintain the required Average number of Full-Time Employees during an Annual Period of the Final Jobs Period as required by this section, then such failure may be cured by DAS and shall not constitute a default hereunder if DAS shall employ or have employed in the following Annual Period of the Final Jobs Period under this section a sufficient number of Full-Time Employees so that the Average of the following Annual Period of the Final Jobs Period, when used to determine the Average number of Full-Time Employees for the Final Jobs Period under this Section 2.2(c), shall cause the Average

number of Full-Time Employees for such Final Jobs Period under this Section 2.2(c) to be maintained at the Average level required under this Section 2.2(c).

(d) All such certifications provided under this Agreement shall be subject to the Local Governments' rights to review and audit, upon reasonable prior notice and during normal working hours, said certification or certifications in accordance with normal procedures that the Local Government's use with respect to loans and grants based upon employment criteria as established from time to time. The Local Governments may require reasonable additional documentation to support the certification.

(e) For purposes of the certification to be provided by DAS, each Qualifying Supplier for which DAS is including the employees of that Qualifying Supplier in its certification of Full-Time Employees, shall provide a certification, in form and content satisfactory to the Local Governments, to each of the Local Governments certifying that (i) the Qualifying Supplier is located with DAS at the Project Site, (ii) that such Full-Time Employees of the Qualifying Supplier so certified are located at the Project Site, (iii) that the Qualifying Supplier shall not have reduced employment in the State or relocated employees to the Project Site from any other facility in any other location in the State, (iv) that such Qualifying Supplier is not in breach or violation of any agreement with the State or any municipality in the State or political subdivision of the State, after taking into account any applicable grace or cure period expressly allowed such supplier in the applicable agreement, provided such supplier produces for review the agreement and references the applicable grace or cure period therein relied upon by DAS, and (v) that such Qualifying Supplier shall not have shut down or reduced operations at any facility located elsewhere in the State. Such certification from the Qualifying Supplier shall permit each of the Local Governments to request additional backup documentation and to discuss such certification and back-up documentation with the appropriate officials at the State or locality in which such Qualifying Supplier is located in the State. In certifying the number of Full-Time Employees, DAS may include the Full-Time Employees of the Qualifying Supplier that provides such certification affirmatively evidencing the satisfaction of the requirements to be a Qualifying Supplier hereunder as set forth above and DAS may rely upon such certification for the period in question. Such certifications shall be provided by such Qualifying Supplier annually at the same time as DAS's certification hereunder.

2.3 Employment of Montgomery Residents; Grant Employment Requirements.

(a) The Local Governments each hereby agree that all employees hired by DAS or a Qualifying Supplier at the Project shall be selected in the sole discretion of DAS or the Qualifying Supplier and that DAS and any Qualifying Supplier shall have no obligation to hire Montgomery residents. DAS agrees, in good faith, to give full consideration to qualified Montgomery residents for employment at the Project, subject in all cases to DAS's then existing hiring policies.

(b) DAS agrees to obtain, to the extent permitted by applicable law, at or prior to the time of hiring an employee for the Project Site, a written certification from that prospective employee in which the prospective employee states and certifies his or her employment history for his or her immediately preceding employment and his or her applicable wage and salary rate and household income therefrom. With respect to the community development block grant applied for by the Local Governments from ADECA for the water and sewer extension addressed in Section 3.5 below, DAS shall also satisfy the requirements established for the CDBG Grant in the Letter of Understanding dated June 3, 2013 and related attachments executed by DAS including the hiring requirements for employees for the Project Site within the 12 month timeframe described therein of at least 102 employees (at least 51% of 200 employees excluding the Qualifying Employees) whose income from their immediately preceding employment qualify as low to moderate income levels based upon such employee's family status as established by the CDBG Grant (as defined in Section 3.5 below).

ARTICLE 3

ECONOMIC DEVELOPMENT INCENTIVES

3.1 Project Incentives. Subject to the terms and on the conditions herein contained:

(a) Within twenty (20) calendar days after the date hereof, the Local Governments agree to pay their respective Pro Rata Shares of the sum of Fifty Thousand Dollars (\$50,000) to DAS as reimbursement for Capital Expenditures paid by DAS.

(b) Additionally, if DAS has Commenced Construction of the Project by June 30, 2014 and is proceeding with due diligence towards completion of the construction of the Project, then, on August 1, 2014, if DAS has complied with the requirements of Section 2.2(a) hereof, the Local Governments agree to pay to DAS their respective Pro Rata Shares of the sum of Fifty Thousand Dollars (\$50,000) as reimbursement for Capital Expenditures paid by DAS.

3.2 Conveyance of Land for Project Site; Security for Clawback Obligations. So long as no breach, default or violation by DAS of this Agreement shall have occurred and be continuing, the County agrees to convey to DAS marketable fee simple title to the Project Site via statutory warranty deed in the form of Exhibit "B" attached hereto (the "Deed"), subject to the Mortgage (as defined below) within ten (10) business days following receipt by the County of a copy of (a) the fully-executed construction contract for the Project in accordance with the terms hereof by DAS with Commencement of Construction to occur no later than October 1, 2013, (b) a permit from the City and all other required governmental and administrative authorities allowing site work to begin at the Project Site and (c) a copy of the recorded Plat (as defined below). Simultaneously with the conveyance of the Project Site from the County to DAS, DAS shall grant to the Local Governments a mortgage in the form attached hereto as Exhibit "C" (the "Mortgage") as security for the payment of clawbacks under Section 4.1 below reflecting a maximum secured amount of One Million Two Hundred Thousand Dollars

(\$1,200,000) plus the other obligations of DAS under Article 2 of this Agreement and under the Mortgage. DAS does hereby covenant and agree that the Mortgage shall constitute and grant to the Local Governments, as mortgagee, a first-in-priority mortgage superior in all events to all other encumbrances and exceptions (other than exceptions to title in the Deed and the lien of ad valorem taxes) on the Project Site. In no event shall the Local Governments be required to subordinate the Mortgage.

3.3 Recording Costs. DAS shall pay all costs of recording the Deed and the Mortgage.

3.4 Title Insurance and Survey. The County has provided DAS a copy of the County's title insurance policy covering land which includes the Project Site. DAS shall pay all costs of (i) having title to the Project Site examined and (ii) obtaining, if desired, title insurance on the Project Site. The Local Governments have provided to DAS a certified boundary survey of the Project Site by Rick Clay of Goodwyn, Mills & Cawood, Inc. (the "Survey"), certified to DAS.

3.5 Platting. The County shall cause the Project Site to be platted according to Exhibit "A" (except, at the County's election, the extension of Industrial Park Boulevard ("Boulevard") need only extend approximately 1,035 feet) (the "Plat") and the Plat recorded prior to delivery of the Deed so that the legal description on the Deed will be by reference to the recorded Plat. The Local Governments agree to use good faith efforts to seek industrial access grant funding from the applicable State authority to complete the remaining portion of such Boulevard up to the northwest corner of the Property; provided, however, that if such grant funding does not occur then the such additional road (beyond 1,035 feet) shall not be built. The Local Governments agree to use good faith efforts to seek a community development block grant from the Alabama Department of Economic and Community Affairs ("CDBG Grant") for payment of costs and expenses associated with the extension of the existing water and sewer lines in the Boulevard, a length of approximately 1250 linear feet for the water line extension and approximately 750 linear feet for the sewer line extension to a property line of the Project Site; provided, however, if the CDBG Grant in the amount so requested is not obtained from ADECA, then the Local Governments shall not be obligated to extend the water and sewer lines. Notwithstanding anything contained herein to the contrary, the County shall not be obligated to cause the Plat to be recorded unless the Local Governments receive the requested CDBG Grant.

3.6 Access. The County agrees to complete the extension of a minimum of 1,035 feet of Industrial Park Boulevard shown on Exhibit "A," such construction to be of no less quality and construction as the existing Industrial Park Boulevard, with substantial completion to occur prior to December 31, 2013.

3.7 Storm Water Discharge. The County shall also convey to DAS by separate instrument at the time of delivery of the Deed a permanent, non-exclusive easement from the County for discharge of storm water from the Project Site onto the County's land east of the Project Site in accordance with the plans and specifications approved by the County and with hold harmless and indemnification provisions acceptable to County.

3.8 Title to Easements. The easements referred to in Paragraph 3.7 above shall (a) run with the Project Site, (b) be binding on the land burdened thereby and (c) be included in review of title by DAS. The land burdened thereby shall be included in the copy of the title insurance policy required of the County in Section 3.4 above.

3.9 License to Begin Site Work and for Temporary Access. If title to the Project Site has not been conveyed to DAS before June 10, 2013 but DAS has provided the County a copy of (a) a fully executed letter of intent with DAS's general contractor for the Project with Commencement of Construction to occur on or before October 1, 2013 (with delivery of a fully executed construction contract, fully conforming to the executed letter of intent, on or before June 30, 2013) and (b) a permit from the City to allow site work to begin at the Project Site, the County hereby grants DAS a license to begin site work on the Project Site and to access the Project Site over that portion of Industrial Park Boulevard shown on Exhibit "A," the term of such license being only for the period set forth in the immediately succeeding sentence, unless the Project Site is not so conveyed because DAS has not met the requirements for the conveyance pursuant to the first sentence of Section 3.2 hereof. Such license shall be irrevocable but shall automatically expire upon the earlier of the conveyance of the Project Site to DAS or October 31, 2013; provided, however, that such license may be terminated by the Local Governments earlier than such dates and is not irrevocable if the DAS does not satisfy the requirements set forth in items (a) and (b) of this section by June 30, 2013. DAS shall (i) cause the site work to be performed, in a good and workmanlike manner by a reputable licensed and experienced contractor, in accordance with plans and specifications approved by the County and shall promptly pay any and all costs associated with such work, (ii) maintain at all times while the license is in effect commercial general liability insurance naming the County as an additional insured written on an occurrence basis, including contractual liability, with combined single limit coverage of not less than \$2,000,000 per occurrence, and \$2,000,000 annual aggregate for bodily injury, death or property damage incurred upon any part of the Project Site, issued by an insurance company licensed to do business in the State of Alabama with a rating at least A-VII or better by Best's Insurance Reports published by A.M. Best Co., with a certificate of such coverage provided to the County prior to DAS' entering the Project Site pursuant to the license and upon request of County, a copy of the policies reflecting County as an additional insured thereunder, and (iii) indemnify and hold the County harmless from and against (a) any mechanics' or materialmen's liens or claims of lien (including reasonable attorney's fees in defending against such liens or claims of lien) that may arise or result from such site work during the term of such license, and (b) all damages, claims, costs, expenses (including reasonable attorney's fees) or liabilities for personal injury, death or property damage that may result from such site work during the term of such license. Such indemnity shall expressly survive the expiration of such license.

ARTICLE 4

REPAYMENT AND CLAWBACKS

4.1 Clawbacks.

(a) In the event that the Project Site has not been conveyed to DAS by the County, in the event of a breach of, default under, or violation of Article 2 of this Agreement by DAS, DAS shall repay to the Local Governments an amount equal to the product determined by multiplying (1) the deficiency, if any, between 50 Qualifying Employees and the number of Qualifying Employees maintained at such date of breach, default or violation, by (2) an amount equal to the quotient determined by dividing the sum of the amounts paid by the Local Governments to the date of such breach, default or violation by 50.

(b) In the event that the Project Site has been conveyed to DAS by the County, if DAS shall either (i) fail to complete construction of the Project by December 1, 2015, (ii) fail to achieve the employment requirements of 400 Full-Time Employees whose average wage rate is not less than the Wage Rate in accordance with the requirements of Section 2.2(c) hereof, or (iii) fail to maintain an Average of 400 Full-Time Employees for the Final Jobs Period (or any Annual Period thereof and fails to cure the same as provided in Section 2.2(c) in the following Annual Period) in accordance with the requirements of Section 2.2(c) hereof, then, in any of such events, DAS shall pay in immediately available U.S. Dollars jointly to the Local Governments an amount equal to the product determined by multiplying (A) Three Thousand and No/100 Dollars (\$3,000.00) by (B) the number by which the Average number of Full-Time Employees whose average wage rate is not less than the Wage Rate employed for the period of time running from the beginning of the Annual Period through the date of the event or failure triggering the clawback under this Section 4.1(b) occurs is less than 400 (for example, if the Average number of Full-Time Employees whose average wage rate is not less than the Wage Rate for month of triggering event is 50 Full-Time Employees, then the clawback is $\$3,000 \times 350$ (i.e., $400 - 50 = 350$)). In the event DAS shall have satisfied its requirements in the Initial Jobs Period as set forth in Section 2.2(a) hereof, then the number of Full-Time Employees by which DAS falls below the Average level of 400 Full-Time Employees shall be deemed never to exceed 350, meaning that, even if the deficiency in number of such Full-Time Employees exceeds 350 for the calculation (e.g., 370), the deficiency in number shall be capped at 350.

(c) In the event that the Project Site has been conveyed to DAS by the County, if DAS shall (i) fail to Commence Construction by June 30, 2014, or (ii) fail to achieve the employment requirements of 200 Full-Time Employees whose average wage rate is not less than the Wage Rate in accordance with the requirements of Section 2.2(b) hereof, or (iii) fail to maintain an Average of 200 Full-Time Employees whose average wage rate is not less than the Wage Rate for the Interim Jobs Period (or any Annual Period thereof and fails to cure the same as provided in Section 2.2(b) in the following Annual Period), or (iv) fail to commence Commercial Operations by May 1, 2016, or (v)

after commencement of Commercial Operation, fails to continue to operate the Project for a period of twenty-four (24) consecutive months from date of Commercial Operation, or (vi) breaches or violates any other covenant or agreement of DAS contained in Section 2 hereof or a Mortgage Default occurs, or (vii) any breach, default or violation of this Agreement by DAS, causes either of the Local Governments to fail to satisfy the conditions of an industrial access grant or community development block grant provided to either of the Local Governments in connection with the Project, then DAS shall pay in immediately available U.S. dollars jointly to the Local Governments an amount equal to the product determined by multiplying (A) Thirty Thousand and No/100s Dollars (\$30,000) per acre by (B) the number of acres contained in the Project Site conveyed by the County (e.g., \$30,000 per acre x 30 acres = \$900,000), rounded to the nearest two decimal points, e.g. 30.02 acres.

(d) The Mortgage shall secure the obligations of repayment of DAS set forth hereunder and the covenants of DAS contained in Article 2 hereof and Mortgage Defaults.

(e) The term "Average" for an Annual Period in either of the Interim Jobs Period or the Final Jobs Period shall mean the quotient determined by adding together the total Average of Full-Time Employees whose average wage rate is not less than the Wage Rate Full-Time Employees for each month in the applicable time period and dividing that sum by twelve (12). The "Average" for jobs in the Interim Jobs Period or Final Jobs Period, as the case may be, shall be the quotient determined by dividing the sum of the Average of each Annual Period within the applicable jobs period by 2. "Average" for a month hereunder shall be quotient determined by adding together the daily total of Full-Time Employees whose average wage rate is not less than the Wage Rate for such month by the number of days in that month for that period of time; provided, however, if an event occurs to trigger a clawback repayment under this Article 4, a month period shall be deemed to end on the date the clawback is triggered. "Average" for a period of time shorter than an Annual Period shall be the quotient determined by adding together the Average number of Full-Time Employees whose average wage rate is not less than the Wage Rate for each month in the period of time and dividing that sum of Averages of such months by the number of months in the period of time; provided, however, that the month in which the clawback is triggered shall be considered a month by including the days in the month until and including the date on which the event occurs triggering a clawback.

(f) DAS shall provide, no later than thirty (30) days following the end of each Annual Period during each of the Initial Jobs Period, the Interim Jobs Period and the Final Jobs Period, a certification to the Local Governments of the number of Full-Time Employees employed for that Annual Period, subject to the Local Government's rights to audit said certification in accordance with normal procedures that the Local Governments use with respect to other grants or loans based on employment criteria. The Local Governments may require additional documentation to support the certifications required under this Agreement. For purposes of Sections 2.2(b) and 2.2(c) hereof, a Qualifying Employee shall be eligible to be counted as a Full-Time Employee if such Qualifying

Employee satisfies the requirements to be a Full-Time Employee within the applicable jobs period.

(g) Payments due hereunder from DAS shall be made within thirty (30) days following the date of the event or failure triggering the repayment obligation. The City and County agree to share the payment hereunder with each of the Local Governments receiving their respective Pro Rata Share. Any payment made under Section 4.1(c) shall be credited against any amount due under Section 4.1(b) hereof.

4.2 Termination of Incentives. At the sole option and discretion of the Local Governments, upon written notice to DAS by either of the Local Governments following the occurrence of a breach, default or violation of this Agreement by DAS or upon any event triggering a repayment by DAS under Section 4.1 hereof (each is a "Default"), the obligations of the Local Governments shall cease and terminate.

In no event shall the termination or cessation of the obligations and agreements of the Local Governments in any way waive, limit, abrogate or eliminate the obligations of DAS hereunder, and such termination or cessation of such obligations by the Local Governments shall not constitute a termination of this Agreement.

ARTICLE 5

MISCELLANEOUS

5.1 Condition Precedent. The effectiveness of this Agreement shall be subject to the approval of each of the governing bodies of the City and County taken at a public meeting following satisfaction of the notice and other applicable requirements of Amendment 713 to the Alabama Constitution of 1901, as amended, including, but not limited to, the publication of the notice required by such Amendment 713 relating to the private benefits granted hereby and the approval of the same at an open public meeting held separately by each of the governing bodies of the City and County. It is expressly agreed and understood that each of the Mayor of the City and the Chairman of the Montgomery County Commission for the County may, at their option, execute and deliver this Agreement prior to such authorization but that the obligations, liabilities, agreements, and statements herein contained on the City and County shall not be binding and enforceable unless and until this Agreement is approved by the respective governing bodies of the City and the County following satisfaction of the provisions of Amendment 713 necessary for the actions and obligations of the City and County to be authorized and approved in connection with Amendment 713.

5.2 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

5.3 Governing Law. The governing law of this Agreement shall be the law of the State of Alabama.

5.4 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

5.5 Notices. All communications and notices expressly provided herein shall be in writing and shall be sent, by registered first class mail, postage prepaid, by a nationally recognized overnight courier for delivery on the following business day or by telex or telecopy (with such telex or telecopy to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), as follows:

City of Montgomery: Mayor Todd Strange
City of Montgomery
Post Office Box 1111
Montgomery, Alabama 36101
Fax: (334)241-2600

With copy to: Kim Fehl, Esq.
City of Montgomery
Post Office Box 1111
Montgomery, Alabama 36101
Fax: (334)241-2600

and

Ms. Ellen McNair
Montgomery Area Chamber of Commerce
41 Commerce Street
Montgomery, Alabama 36104
Fax: (334) 265-4745

Montgomery County: Honorable Elton Dean
Donald Mims, Administrator
Montgomery County Commission
Post Office Box 1667
Montgomery, Alabama 36102
Fax: (334) 832-2533

DAS:

DAS North America, Inc.
201 County Court
Montgomery, AL 36105
Attn: Chief Operating Officer
Fax: (334)284-2582

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section 5.5.

5.6 Costs and Expenses. Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of this Agreement or otherwise.

5.7 Amendment and Waivers. This Agreement may not be amended or modified except by a written instrument signed by each Party. The waiver by any Party of such Party's rights under this Agreement in any particular instance or instances, whether intentional or otherwise, shall not be considered as a continuing waiver which would prevent subsequent enforcement of such rights or of any other rights.

5.8 Assignment. This Agreement is not assignable without the consent of the other Parties hereto.

5.9 Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

5.10 Entire Agreement. This Agreement constitutes the entire agreement and understanding among the Parties with respect to the Project and no other offers, agreements, understandings, warranties, or representations exist between DAS and any of the Public Entities.

5.11 Survival of Representations, Warranties and Covenants. DAS represents and warrants to the Local Governments that (i) DAS is duly incorporated, validly existing and in good standing under the laws of the State, (ii) that the execution, delivery and performance of this Agreement has been duly authorized and does not violate DAS's governing organizational documents or any law applicable to it or any judgment or order applicable to it, (iii) that DAS has full power and authority to execute, deliver and perform this Agreement, and (iv) that, when executed, this Agreement constitutes the legal, valid and binding obligation of DAS enforceable against it in accordance with its terms. The representations, warranties and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

5.12 Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of DAS and its successors and permitted assigns and shall be binding upon and shall inure to the benefit of the Public Entities and their respective successors and assigns and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations, and other entities which shall

be successors to the Public Entities or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements, or obligations hereunder of the Local Governments which are Parties hereto.

5.13 Time is of the Essence. Time is of the essence as to all terms and conditions of this Agreement.

5.14 No Consequential Damages. No Party shall, in any event, be liable to any other Party, whether by way of indemnity or otherwise, for any indirect, incidental, punitive, special or consequential damages, including loss of revenue or profit, cost of capital, loss of business reputation or opportunity costs due to delays in payment, whether any such damages arise out of contract, tort (including negligence), strict liability or otherwise.

5.15 No Third Party Beneficiary. This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty, standard of care or liability to, nor confer any right of suit or action on, any Person other than the Parties and no such duties, standards of care, liability, rights of suit or action shall be created or exist in favor of any employees or independent contractors.

5.16 Independent Contractor. For the purposes of this Agreement and all services to be provided hereunder, each Party shall be, and shall be deemed to be, an independent contractor and not an agent or employee or partner of the other Party.

5.17 Acknowledgment of No Liability. The Parties hereto agree that the Local Governments shall have no liability, responsibility or obligation resulting from the construction or operation of the Project (provided, however, that this paragraph shall not relieve any Party of any of its obligations under the Agreement), and that all such liability, responsibility and obligation therefrom shall be DAS's alone.

[EXECUTION AND NOTARY ACKNOWLEDGMENTS
APPEAR ON NEXT FOLLOWING PAGES]

WHEREFORE, the Parties hereto have executed this Agreement as of the date their signature was properly notarized.

CITY OF MONTGOMERY

By: _____
Honorable Todd Strange
As Mayor

STATE OF ALABAMA)

COUNTY OF MONTGOMERY)

Before me, the undersigned, a Notary Public, in and for said county, in said state, personally appeared Todd Strange, in his capacity as Mayor of the City of Montgomery, whose name is signed to the foregoing Agreement, and who is known to me, being first duly sworn, acknowledged before me on this day that, being informed of the contents of said Agreement, that he, as such official and with full authority, has read the foregoing Agreement and knows the contents thereof, executed the same voluntarily for and as the act of said City of Montgomery, Alabama on this date.

SUBSCRIBED AND SWORN to before me on this the ____ of June, 2013.

Notary Public
My Commission Expires: _____

MONTGOMERY COUNTY, ALABAMA

By: Montgomery County Commission

By: _____
Honorable Elton Dean
As Its Chairman

STATE OF ALABAMA)

COUNTY OF MONTGOMERY)

Before me, the undersigned, a Notary Public, in and for said county, in said state, personally appeared Elton Dean, as Chairman of the Montgomery County Commission, whose name is signed to the foregoing Agreement, and who is known to me, being first duly sworn, acknowledged before me on this day that, being informed of the contents of said Agreement, that he, as such official and with full authority, has read the foregoing Agreement and knows the contents thereof, executed the same voluntarily for and as the act of said Montgomery County Commission, acting in its capacity as Chairman thereof on this date.

SUBSCRIBED AND SWORN to before me on this the ____ of June, 2013.

Notary Public
My Commission Expires: _____

DAS NORTH AMERICA, INC.,
an Alabama corporation

By: _____
As its _____

STATE OF ALABAMA)

COUNTY OF MONTGOMERY)

Before me, the undersigned, a Notary Public, in and for said county, in said state, personally appeared _____, as _____ of DAS North America, Inc., an Alabama corporation, whose name is signed to the foregoing Agreement, and who is known to me, being first duly sworn, acknowledged before me on this day that, being informed of the contents of said Agreement, that he, as such officer and with full authority, has read the foregoing Agreement and knows the contents thereof, executed the same voluntarily for and as the act of said corporation on this date.

SUBSCRIBED AND SWORN to before me on this the _____ of June, 2013.

Notary Public
My Commission Expires: _____

EXHIBIT "A"

Legal Description of Project Site

EXHIBIT "B"

Form of Statutory Warranty Deed

See Attached.

EXHIBIT "C"

Form of Mortgage

See Attached.

Donald Mims

From: Chris Simmons [CSS@rushtonstakely.com]
Sent: Thursday, May 30, 2013 3:11 PM
To: ttg@hsy.com; Donald Mims; WKM@CHLAW.COM; jamesuhm@i-das.com; james@dasnorthamerica.com; tstrange2@aol.com; Elton N. Dean, Sr.; Reed Ingram; danharr420@charter.net; Emcnair@montgomerychamber.com
Cc: jsmyth@montgomerychamber.com; Jeff Blitz; Gwynné Branch
Subject: DAS North America
Attachments: Project Agreement (5-30-13) (1).pdf; Project Agreement (5-29-13) (1)-Project Agreement (5-30-13) (1).pdf

The following files have been attached to this mail by Workshare Professional...

Project Agreement (5-30-13) (1).doc (Microsoft Word 97 - 2003 Document)
Project Agreement (5-29-13) (1)-Project Agreement (5-30-13) (1).pdf (PDF)

Please find attached hereto a revised version of the Project Agreement with DAS North America, Inc., in both clean and blacklined format. The blacklined version is a machine generated version comparing the changes in the latest draft to the immediately preceding draft sent yesterday. This draft project agreement is subject to modification after our client's review.

Chris S. Simmons

Rushton, Stakely, Johnston & Garrett, P.A.
184 Commerce Street (36104)
Post Office Box 270 (36101-0270)
Montgomery, Alabama
P (334) 206-3293 F (334) 481-0824
CSS@rushtonstakely.com

RUSHTON ♦ STAKELY
Lawyers Since 1890

About Us



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IRS CIRCULAR 230 DISCLOSURE: Pursuant to U.S. Treasury Regulations, we are now required to advise you that, unless explicitly stated above to the contrary: (1) the contents and conclusions (if any) contained in this communication (including any attachments) are preliminary in nature and do not express a formal opinion contemplated by IRS Circular 230; (2) nothing contained in this communication (including any attachments) is intended to be used, or may be relied upon or used, by any taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code; and (3) any statement contained in this communication (including any attachments) relating to any federal tax issue may not be used by any person to support the promotion, marketing of, or used to recommend any transaction or matter addressed in this communication.

ELTON N. DEAN, Sr.
CHAIRMAN

DANIEL HARRIS, Jr.
VICE CHAIRMAN

REED INGRAM
DIMITRI POLIZOS
JILES WILLIAMS, Jr.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1816

DONALD L. MIMS, CPA, MPA
ADMINISTRATOR
JOHN A. MITCHELL, Sr.
DEPUTY ADMINISTRATOR
(334) 832-1210
FAX (334) 832-2533
TDD (334) 265-3568
www.mc-ala.org

Agenda

JUN - 3 2013

May 29, 2013

MEMORANDUM

TO: Montgomery County Commission

FROM: John A. Mitchell, Sr.
Deputy Administrator 

SUBJECT: Sales Tax Holiday

Alabama Department of Revenue has notified us that the "Back-to-School" Sales Tax Holiday this year is from August 2-4, 2013. ADOR indicated that the deadline for our participation is due back before July 2, 2013. As in the past, the Commission will be required to pass a resolution of the Sales Tax Holiday if they so desire.

This item was discussed during the Working Session on May 20, 2013 and I was advised to place on the agenda for approval at the Montgomery County Commission Meeting on June 3, 2013.

If you have any questions, please contact me.

JAM/tm

**RESOLUTION PROVIDING FOR MONTGOMERY COUNTY'S
PARTICIPATION IN THE "BACK-TO-SCHOOL" SALES TAX HOLIDAY
IN AUGUST 2013, AS AUTHORIZED
BY ACT NO. 2006-574**

WHEREAS, during its 2006 Regular Session, the Alabama Legislature enacted Act No. 2006-574, effective July 1, 2006, which provides an exemption of the state sales and use tax for certain non-commercial purchases related to school clothing and supplies during the first full weekend in August of each year; and

WHEREAS, Act No. 2006-574 authorizes the county commission to provide for an exemption of county sales and use taxes for purchases of items covered by the Act during the same time period in which the state sales and use tax exemption is in place, provided a resolution to that effect is adopted at least thirty days prior to 12:01 a.m. on the first Friday in August; and

WHEREAS, Code of Alabama 1975, § 11-51-210(e) requires that the county commission notify the Alabama Department of Revenue of any new local tax or amendment to an existing local tax levy at least 30 days prior to the effective date of the change; and

WHEREAS, the exemption of certain county sales and use taxes for the first full weekend of August 2013 herein adopted by the county commission is an amendment to the county's sales and use tax levy warranting notice to the Alabama Department of Revenue as provided in Code of Alabama 1975, § 11-51-210(e);

WHEREFORE BE IT RESOLVED BY THE MONTGOMERY COUNTY COMMISSION that it does hereby provide for an exemption of the 2½ percent county sales and use tax on purchases of items covered by Act No. 2006-574 beginning at 12:01 a.m. on Friday, August 2, 2013 and ending at twelve midnight on Sunday, August 4, 2013.

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of the June 3, 2013 meeting of the Montgomery County Commission, and be immediately forwarded to the Alabama Department of Revenue in compliance with Code of Alabama 1975, § 11-51-210(e).

IN WITNESS WHEREOF, the Montgomery County Commission has caused this Resolution to be executed in its name and on its behalf by its Chairman on this the 3rd day of June, 2013.

I hereby certify that the above
Resolution was adopted by the
Montgomery County Commission
on this, the 3rd day of June, 2013.

Elton N. Dean, Sr.
Chairman

ELTON N. DEAN, SR.
CHAIRMAN

REED INGRAM
VICE CHAIRMAN

DIMITRI POLIZOS
JILES WILLIAMS, JR.
HAM WILSON, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION

Tax & Audit Department
P.O. Box 4779
Montgomery, Alabama 36103-4779

ESTABLISHED 1816

Terri A. Henderson, CRE
Revenue Manager

Administrative and Auditing for:
Montgomery County Alabama
Sales & Use Taxes; Lodging Tax;
Gasoline Tax; and Fuel Tax

Telephone (334) 832-1697
FAX (334) 832-1223
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MEMORANDUM

DATE: April 22, 2013

TO: John A. Mitchell, Sr.
Deputy Administrator

FROM: Terri A. Henderson *Terri A. Henderson*
Revenue Manager *5/4/22/13*

RE: 2013 "Back-to-School" Sales Tax Holiday, August 2-4, 2013

Please see notice attached from the State of Alabama Department of Revenue ("ADOR") specific to the 2013 "Back-to-School" Sales Tax Holiday. If we are going to participate again this year, I would respectfully request that this item be included on the agenda for the Montgomery County Commission meeting on May 6, 2013, or as soon as possible thereafter. Written notification of our participation and a certified copy of our resolution will be due back to the ADOR before the July 2, 2013 deadline.

Please note that Ms. Tammy Nix has already contacted me by phone to inquire about getting this scheduled for the upcoming MCC Meeting. It appears Mr. Mims would like to have this item placed on the agenda at the earliest.

Please include discussion on whether the MCC would like to consider adopting a resolution for this annually as they have done or whether they would instead prefer to consider a resolution adopting our MCC participation for all future years until such time MCC decides to repeal or rescind our annual participation. The latter appears to be similar to what the City of Montgomery has in place for this. Please let me know if I can be of assistance in drafting a resolution for this. Thank you in advance for your assistance with this matter.

tah/attachment

Terri Henderson

From: Robbins, Wanda [Wanda.Robbins@revenue.alabama.gov]
Sent: Monday, March 25, 2013 3:07 PM
To: Terri Henderson
Subject: IMPORTANT - 2013 Back-to-School Sales Tax Holiday

March 25, 2013

IMPORTANT

IMPORTANT

**2013 "Back-to-School" Sales Tax Holiday
August 2-4, 2013**

Deadline to notify ADOR: July 2, 2013

The 2013 "Back-to-School" Sales Tax Holiday begins at 12:01 a.m. on Friday, August 2, 2013, and ends at twelve midnight on Sunday, August 4, 2013. As required by Rule 810-6-3-.65, a participating county or municipality shall submit a certified copy of their adopted resolution or ordinance providing for the Sales Tax Holiday, and any subsequent amendments thereof, to the Alabama Department of Revenue before July 2, 2013. The Department will compile this information into a list of all counties and municipalities participating in the "Back-to-School" Sales Tax Holiday and issue a current publication of the list on its website at: www.revenue.alabama.gov/salestax/SalesTaxHol.cfm. Notification of participation in the sales tax holiday may not be included in the published list if received after July 2, 2013.

Your taxpayers need to know whether or not your locality will participate in the 2013 "Back-to-School" Sales Tax Holiday.

Please put it on your calendar to discuss and vote on this matter soon and notify the ADOR of the decision.

Participating? Send a certified copy of any resolution, ordinance, or amendment adopted by your locality.

Not Participating? It is important that you inform us of that fact, as well.

Taxpayers rely on the list provided by the Department of Revenue and the Department cannot post a locality's participation status based on assumption; notification of nonparticipation or copies of resolution/ordinance from the locality is required.

Notification can be faxed, mailed or emailed:

FAX: 334-353-7666

MAIL: ALABAMA DEPARTMENT OF REVENUE
ATTN: Wanda Robbins
Sales & Use Tax Division
Post Office Box 327900
Montgomery, Alabama 36132-7900

EMAIL: wanda.robbins@revenue.alabama.gov

QUESTIONS: 334-353-8044



Alabama Department of Revenue
50 North Ripley Street • Montgomery, AL • 36132 • Infoline 334.242.117
revenue.alabama.gov

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Today is Monday, April 22, 2013

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2013 "Back-to-School" Sales Tax Holiday

Local Governments:

Will your locality be participating in the 2013 "Back-to-School" Sales Tax Holiday?

Information for localities that previously passed ordinances/resolutions to participate annually.

Consumers and Retailers:

Beginning at 12:01 a.m. (CST) on Friday August 2, 2013, and ending at twelve midnight on Sunday August 4, 2013, Alabama will hold its eighth annual sales tax holiday giving shoppers the opportunity to purchase **certain school supplies, computers, and clothing free of state sales or use tax.** Local sales and use tax **may** apply – see list of participating cities and counties.

Retailers are required to participate and may not charge tax on items that are legally tax-exempt during the Sales Tax Holiday.

Sales Tax Holiday Quick Reference Sheet of Exempt Items

Participating Cities & Counties

Sales Tax Holiday Rule 810-6-3-.65

Sales Tax Holiday Act No. 2006-574

For more information, contact us 8:00 a.m. – 5:00 p.m., CST, Monday through Friday, 334-242-1490 or 866-576-6531



www.alabama.gov

open.alabama.gov

"The Alabama Department of Revenue will efficiently and effectively administer the revenue laws in an equitable, courteous and professional manner to fund governmental services for the citizens of Alabama."--

Adopted September 5, 1996

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Street . Montgomery, AL 36104 . Info Line 334.242.1170

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The Alabama Department of Revenue (ADOR) advises that if you receive an e-mail from someone claiming to represent the ADOR and seeking personal or financial information, do not reply. The Alabama Department of Revenue does not initiate taxpayer communications through e-mail. Taxpayers are strongly cautioned not to open any suspicious e-mails or open any links. Links or attachments contained in the suspicious e-mail could contain malicious code that would infect the taxpayers' computers. Do not open any attachments, do not click on any links, and most important of all, do not provide any personal or financial information such as bank account numbers, credit card PIN numbers, or account passwords.

ELTON N. DEAN, SR.
CHAIRMAN

DANIEL HARRIS, JR.
VICE CHAIRMAN

REED INGRAM
DIMITRI POLIZOS
JILES WILLIAMS, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1816

DONALD L. MIMS, CPA, MPA
ADMINISTRATOR
JOHN A. MITCHELL, SR.
DEPUTY ADMINISTRATOR
(334) 832-1210
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Agenda

JUN - 3 2013

May 30, 2013

MEMORANDUM

TO: Montgomery County Commission

FROM: Donald L. Mims *DLM*
County Administrator

SUBJECT: Contract Amendment Number 1 regarding Professional Services Contract with Goodwyn, Mills & Cawood, Inc.

On April 15, 2013, the Commission approved a Professional Services Contract with Goodwyn, Mills & Cawood, Inc. regarding the Industrial Park Boulevard extension to serve the DAS Project site at the Montgomery Industrial Park.

Attached is a Contract Amendment Number 1 to the Professional Services Contract.

I am requesting approval of this item.

DLM/tn

Attachment

Contract Amendment No. 1
Professional Services Contract
By and Between
Montgomery County Commission
Montgomery, Alabama
Goodwyn, Mills and Cawood, Inc.

The contract amount for professional services for the "Industrial Park Boulevard Extension To Serve the DAS Project Site, Montgomery Industrial Park" dated April 15, 2013, is hereby amended as follows:

Project Description

The project description is amended to read as follows:

An extension (approximately 1,335 linear feet) of the existing 38 foot wide 2 lane, curb and gutter roadway (Industrial Park Boulevard) in the Montgomery Industrial Park to serve the DAS 30 acre site.

Provide plans and specifications for the grade, drain, base, and pave for the extension of Industrial Park Boulevard (approximately 1,335 linear feet) in the Montgomery Industrial Park.

Section 3. Payment to the Design Professional

Section 3.A is amended as follows:

- A. The Engineer's compensation in full for satisfactorily providing services as described herein will be an amount NOT TO EXCEED \$71,500.00.

Wherefore, the undersigned, by their signatures, certify they have carefully read this contract Amendment No. 1, understand the terms and condition contained therein, have proper authority to execute this Amendment and do so as their own free act.

OWNER:

THE MONTGOMERY COUNTY COMMISSION
A MUNICIPAL CORPORATION

By: _____

Title: _____

ATTEST: _____
(Name & Title)

ENGINEER:

GOODWYN MILLS & CAWOOD, INC.

By: 
Derril L. Strickland, P.E.

Title: Regional Vice President

ATTEST: _____
(Name & Title)

ELTON N. DEAN, SR.
CHAIRMAN

DANIEL HARRIS, JR.
VICE CHAIRMAN

REED INGRAM
DIMITRI POLIZOS
JILES WILLIAMS, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1818

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Agenda

JUN - 3 2013

May 23, 2013

MEMORANDUM

TO: Montgomery County Commission

FROM: John A. Mitchell, Sr. *JAM*
Deputy Administrator

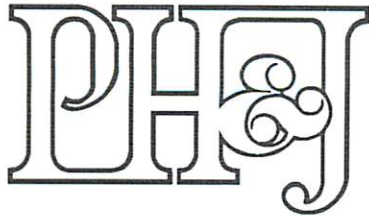
SUBJECT: Architect Agreement

The Montgomery County of Human Resources has requested that the County Building located at 3030 Mobile Highway, Montgomery; Al 36108 needed some renovations that include carpentry, painting, and other repairs. The Agreement between Montgomery County Commission and the Department of Human Resources states: The County will make necessary repairs using the funds earned from rental payments that have been escrowed.

During the Working Session on May 20, 2013 I was advised that this item be placed on the agenda for approval at the Montgomery County Commission Meeting on June 3, 2013.

If I can be of further assistance, please contact me.

JAM/tm



architects inc.

Founded 1957 • Pearson, Humphries & Jones Architects

807 SOUTH MCDONOUGH STREET • MONTGOMERY, AL 36104-5080 POST OFFICE BOX 215-36101
Tel 334/265-8781 / Fax 334/265-9208 • Email: phjarch@bellsouth.net • Website: www.phjarchitects.com

Renis O. Jones, Jr., FAIA
Harrell G. Gandy, AIA

J. Roland Pond, AIA
Renis O. Jones, III, AIA

E. Griffin Harris, AIA
Patrick T. Addison, AIA

May 14, 2013

Mr. John Mitchell, Deputy Administrator
Montgomery County Commission
Post Office Box 1667
Montgomery, AL 36102-1667

RE: Miscellaneous Architectural Improvements for the Montgomery County Commission to the Department of Human Resources Building located at 3030 Mobile Highway, Montgomery, AL 36108; plus such Miscellaneous Projects as the Commission, through the County Administrator, shall direct in writing to be undertaken by the Architect. PH&J #1305GV

Dear Mr. Mims:

Enclosed please find four (4) copies of the Agreement between Owner and Architect on the above referenced project for your review and Chairman Dean's signature.

Once the documents have been signed, please retain two copies for your records and return the other two copies to our office for our records.

Sincerely,

Kristie Hutto
Enclosures
Cc - file

AIA® Document B151™ – 1997

Abbreviated Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 14th day of May in the year 2013
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Montgomery County Commission
PO Box 1667
Montgomery, AL 36102

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

PH&J Architects, Inc.
PO Box 215
Montgomery, AL 36101

For the following Project:
(Include detailed description of Project)

Miscellaneous Architectural Improvements for the
Montgomery County Commission to the Department of
Human Resources Building located at 3030 Mobile
Highway, Montgomery, AL 36108; plus such
Miscellaneous Projects as the Commission, through the
County Administrator, shall direct in writing to be
undertaken by the Architect. PH&J #1305GV

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The Owner and Architect agree as follows.

Int.

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

§ 1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.3 The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

§ 1.4 The services covered by this Agreement are subject to the time limitations contained in Section 11.5.1.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 2.1 DEFINITION

The Architect's Basic Services consist of those described in Sections 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

§ 2.2 SCHEMATIC DESIGN PHASE

§ 2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

§ 2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 5.2.1.

§ 2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

§ 2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

§ 2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

§ 2.3 DESIGN DEVELOPMENT PHASE

§ 2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

§ 2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

§ 2.4 CONSTRUCTION DOCUMENTS PHASE

§ 2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

§ 2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

Init.

§ 2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

§ 2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 2.5 BIDDING OR NEGOTIATION PHASE

The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

§ 2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

§ 2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

§ 2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.3 Duties, responsibilities and limitations of authority of the Architect under this Section 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.5 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.6 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.9 CERTIFICATES FOR PAYMENT

§ 2.6.9.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

§ 2.6.9.2 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Sections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

§ 2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the

Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

§ 2.6.17 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 2.6.18 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Section 2.6.17, shall be subject to mediation and arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 GENERAL

§ 3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Section 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

§ 3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

§ 3.2.1 If more extensive representation at the site than is described in Section 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

§ 3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

§ 3.2.3 Through the presence at the site of such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

§ 3.3 CONTINGENT ADDITIONAL SERVICES

§ 3.3.1 Making revisions in drawings, specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

§ 3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 5.2.5.

§ 3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

§ 3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

§ 3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

§ 3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

§ 3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto.

§ 3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

§ 3.4 OPTIONAL ADDITIONAL SERVICES

§ 3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

§ 3.4.2 Providing financial feasibility or other special studies.

§ 3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

§ 3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

§ 3.4.5 Providing services relative to future facilities, systems and equipment.

§ 3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

§ 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

§ 3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

§ 3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

§ 3.4.10 Providing detailed estimates of Construction Cost.

§ 3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

§ 3.4.12 Providing analyses of owning and operating costs.

§ 3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

Init.

§ 3.4.14 Providing services for planning tenant or rental spaces.

§ 3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

§ 3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

§ 3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

§ 3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

§ 3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

§ 3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

§ 4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 4.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

§ 4.6 The Owner shall furnish the services of consultants other than those designated in Section 4.5 when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 4.7 The Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

Init.

§ 4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

§ 4.9 The services, information, surveys and reports required by Sections 4.4 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

§ 4.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

ARTICLE 5 CONSTRUCTION COST

§ 5.1 DEFINITION

§ 5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

§ 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

§ 5.2.1 Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

§ 5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

§ 5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 8.5; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

§ 5.2.5 If the Owner chooses to proceed under Section 5.2.4.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the

fixed limit, if established as a condition of this Agreement. The modification of such documents without cost to the Owner shall be the limit of the Architect's responsibility under this Section 5.2.5. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

§ 6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 6.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 6.3 Except for the licenses granted in Section 6.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 6.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 6.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

ARTICLE 7 DISPUTE RESOLUTION

§ 7.1 MEDIATION

§ 7.1.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

§ 7.1.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in

advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

§ 7.2 ARBITRATION

§ 7.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 7.1.

§ 7.2.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

§ 7.2.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§ 7.2.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

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

§ 7.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8.

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.7.

§ 8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Article 12.

§ 9.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§ 9.4 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

§ 9.6 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 9.9 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 9.10 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

ARTICLE 10 PAYMENTS TO THE ARCHITECT

§ 10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 10.2 REIMBURSABLE EXPENSES

§ 10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Article 12;
- .8 other similar direct Project-related expenditures.

§ 10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 10.3.1 An initial payment as set forth in Section 11.1 is the minimum payment under this Agreement.

§ 10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 11.2.2.

§ 10.3.3 If and to the extent that the time initially established in Section 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 11.3.2.

§ 10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

§ 10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

§ 10.5 PAYMENTS WITHHELD

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§ 10.6 ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

§ 11.1 An Initial Payment of N/A (\$ N/A) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

§ 11.2 BASIC COMPENSATION

§ 11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

See Attachment A dated May 14, 2013

§ 11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

(Insert additional phases as appropriate.)

Schematic Design Phase:	Fifteen	percent (	15	%)
Design Development Phase:	Twenty	percent (	20	%)
Construction Documents Phase:	Forty	percent (	40	%)
Bidding or Negotiation Phase:	Five	percent (	05	%)
Construction Phase:	Twenty	percent (	20	%)

Total Basic Compensation	one hundred	percent (	100.00	%)
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§ 11.3 COMPENSATION FOR ADDITIONAL SERVICES

§ 11.3.1 For Project Representation Beyond Basic Services, as described in Section 3.2, compensation shall be computed as follows:

N/A

§ 11.3.2 For Additional Services of the Architect, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Section 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

FOR ADDITIONAL SERVICES THE ARCHITECT SHALL BE COMPENSATED AT THE HOURLY RATES SET FORTH IN ATTACHEMENT A.

§ 11.3.3 For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those provided under Section 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one and one half (1.5) times the amounts billed to the Architect for such services.
(Identify specific types of consultants in Article 12, if required.)

§ 11.4 REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one and one fifteenth (1.15) times the expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project.

§ 11.5 ADDITIONAL PROVISIONS

§ 11.5.1 If the Basic Services covered by this Agreement have not been completed within forty-eight (48) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Sections 10.3.3 and 11.3.2.

§ 11.5.2 Payments are due and payable thirty (30) days from the date of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 11.5.3 The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Architect.

ARTICLE 12 OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

See Attachment "A" dated May 14, 2013

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

OWNER

(Signature)

Elton N. Dean, Sr., Chairman

(Printed name and title)

ARCHITECT

(Signature)

Patrick T. Addison, Vice-President

(Printed name and title)

Init.

MODIFICATIONS TO AIA B151 – 1997 EDITION**Dated May 14, 2013**

12.1 Add to (or modify) Article 2, **SCOPE OF ARCHITECT'S SERVICE**: as follows:

2.6.2.1 (Add) General Conditions: The Architect's administration of the Contract for Construction shall be as set forth in AIA Document A201 (or A105 if applicable) of the edition referenced in the Project Manual, and as modified by the Supplemental General Conditions, both subject to pre-bid review and approval of the Owner.

2.6.9.2 (Add) Certificate For Payment: As used herein, the word 'certify' shall mean an expression of the Consultant's professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by the Consultant.

12.2 Add to (or modify) Article 3, **ADDITIONAL SERVICES**: as follows:

3.3.2 (Add) Construction Contract Delivery: The anticipated construction delivery process is a single lump sum construction contract, either negotiated or competitively bid. Should the Owner subsequently select another method or Construction/Program Management, the Architect's fee shall be adjusted and an amendment to this contract will be prepared and signed.

3.3.4 (Add) Substitutions: The Architect agrees that evaluating the Contractor's proposed substitutions during the Bidding and Construction Phase is part of Basic Services unless such substitutions involves revisions to the Drawings and is approved by the Owner.

3.4.16 (Add) Record Drawings: The Architect agrees to assemble a set of record drawings for the Owner's file as part of Basic Services, but any duty of measuring and marking will be transferred to the Contractor via construction contract provisions.

3.4.19 (Add) Special Consultants: The following engineering and planning consultants, as required, may be furnished by the Architect as an additional service; for which the architect shall receive an additional fee equal to 1.5 times the consultant's fee. The Owner must approve each such consultant and the fee to be paid. In the event the consultant generates a significant portion of work on which the Architect's fee is based, then that portion will be deleted from the "Cost of the Work" as defined in Article 5.

Audio/Visual Consultant
Graphics/Signage Consultant
Life Safety Consultant
Food Service Consultant
Environmental Consultant
Acoustical Consultant
LEED Consultant
Landscape Architect
Elevator Consultant
Sound Reinforcing and Recording System Design

Civil engineering in connection with unique or problematic site development
Civil Engineers in connection with Special or Advanced drawings for the City
Planning and Zoning Authorities

12.3 Add the following to Article 4, **OWNER'S RESPONSIBILITIES:**

Any recommendation or other participation by the Architect in the selection or employment by the Owner of a soil engineering consultant, testing laboratory, insurance consultant, hazardous material consultant, or engineer who prepares surveys and topographic maps, shall not act to make the Architect responsible for the performance of these individuals or entities.

4.8 Insurance Counsel: The Owner agrees that he is responsible for the insurance provisions in the final construction documents, and that any draft prepared by the Architect shall constitute only a convenient starting point for the final development of those provisions by the Owner's insurance adviser.

4.11 Test Labs and Surveys: The Owner shall also be responsible for any necessary Environmental assessments and survey of the site and for rezoning and replatting.

4.12 Asbestos Contamination: It is agreed that in the event asbestos contamination is encountered in the course of this work, or if there is a reasonable belief that it will be encountered, the Owner will engage the services of an environmental consultant (or equivalent) to plan and administer its abatement or removal.

12.4 Add to Article 5, **CONSTRUCTION COST:**

5.1.21 Sales Tax: If Sales Tax Savings Program is implemented by the Owner, the Construction cost employed to compute the Architect's fee shall include the amount of any sales or use tax that would have been applicable had the job been bid in the private sector.

5.2.5 (Modify) Cost Overrun: The architect shall be reimbursed for revising the plans and specifications as an additional service where the bid overrun is up to 10% of the project budget. If the bid overrun is greater than 10% of the project budget, the architect will revise the plans and specifications to conform to the project budget at no cost to the awarding authority. However, such redesign at the architect's expense only if: 1) The awarding authority has received bids for the work within 90 days after final approval of the plans and specifications and; 2) The reason that the overrun exceeds 10% of the project budget is not attributable to a unique or unexpected market condition, which the architect would not have reasonably contemplated in its estimates of the cost of construction.

12.5 Add the following to Article 6, **USE of ARCHITECTS DRAWINGS**:

6.6 Reports and Studies: No third party shall be entitled to rely on any report, study, survey, as-built design, etc. generated by the Architect in connection with this contract, unless explicit written permission is granted otherwise by the Architect.

12.6 Add to or modify Article 7, **DISPUTE RESOLUTION**, as follows:

7.1 Mediation, 7.2 Arbitration, 7.3 Claims for Consequential Damages: If a dispute arises out of or relates to this agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions and negotiations. If the dispute cannot be settled through direct discussions or negotiations, the parties shall endeavor to settle the dispute by non-binding mediation. The location of the mediation shall be Montgomery, Alabama. Either party may terminate the mediation at any time after the session, but the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other form of binding dispute resolution. If the parties cannot agree on a mutual resolution then any disputes not resolved by mediation shall be decided in the Circuit Court of Montgomery County, Alabama and governed by the laws of the State of Alabama between the Montgomery County Commission and PH&J Architects, Inc.

12.8 Add the following to Article 8, **TERMINATION or SUSPENSION**

8.1.1 Timely Payment: Owner agrees to pay all invoices from Architect not in dispute within 30 days of receipt. The Owner further agrees to call the Architect's attention to any charge or portion thereof held to be in dispute within two weeks of its receipt.

8.1.2 Other Parties: The Owner agrees to protect the Architect from any claim by others arising out of the Architect's suspension of activity due to failure of timely payment.

12.9 Add to or Modify Article 9, **MISCELLANEOUS PROVISIONS**, as follows:

9.2.1 (Add) The AIA 201 General Conditions of reference shall be the edition Identified in Paragraph 2.6.2.1.

9.4.1 (Add) Subrogation: The Owner agrees that he does and will waive his permanent property insurer's right of subrogation against the Architect on such policies as might exist now or be taken out in the future.

The Owner further agrees that he will require in the Construction Documents provisions which will protect both the Architect and Owner from subrogation by the Contractor's insurers of workmen compensation, builders risk and comprehensive general liability.

9.5 Assignments of this Agreement: Modify paragraph by deleting all words after "consent of the other."

12.10 Add to (or modify) Article 10, **PAYMENTS to ARCHITECT**, as follows:

10.2.1.9 (Add) Reimbursable Expenses: The Owner will reimburse the Architect for the cost of the required publication of advertisement for bids for the project.

10.3.4 (Add) Alternates: Compensation for design of work not constructed shall also include Alternates prepared by the Architect.

10.3.5 (Add) Construction Overrun: Inasmuch as the Building Contractor's failure to perform in a timely manner is beyond the control of the Architect, it is agreed that any Construction Administration by the Architect which exceeds 120% of the initial construction period agreed to by the Owner and contractor, will constitute additional service.

12.11 Insert the following to Paragraph 11.2.1, **BASIC COMPENSATION**:

Fee Schedule: The Architect's fee for Basic Architectural Services shall be based on the following fee schedule:

CONSTRUCTION VALUE			FEE PERCENTAGE
Up	to	\$100,000	10.0
100,001	to	200,000	9.0
200,001	to	300,000	8.0
300,001	to	400,000	7.9
400,001	to	500,000	7.8
500,001	to	600,000	7.7
600,001	to	700,000	7.6
700,001	to	800,000	7.5
800,001	to	900,000	7.4
900,001	to	1,000,000	7.3
1,000,001	to	1,250,000	7.2
1,250,001	to	1,500,000	7.1
1,500,001	to	1,750,000	7.0
1,750,001	to	2,000,000	6.9
2,000,001	to	2,500,000	6.8
2,500,001	to	3,000,000	6.7
3,000,001	to	3,500,000	6.6
3,500,001	to	4,000,000	6.5
4,000,001	to	5,000,000	6.4
5,000,001	to	6,000,000	6.3
6,000,001	to	8,000,000	6.2
8,000,001	to	10,000,000	6.1
10,000,001	to	12,000,000	6.0
12,000,001	to	14,000,000	5.9
14,000,001	to	16,000,000	5.8
16,000,001	to	18,000,000	5.7
18,000,001	to	20,000,000	5.6
20,000,001	to	22,000,000	5.5
22,000,001	to	24,000,000	5.4
24,000,001	to	27,000,000	5.3
27,000,001	to	30,000,000	5.2

This Basic Fee shall increase by 25% as applied to any portion of the work, which involves substantial renovation, or alterations of existing facilities (as is standard in the Alabama Building Commission Schedule).

12.12 Insert the following into Par 11.3.1, **COMPENSATION for ADDITIONAL SERVICES**

Hourly Rates:

Current Hourly Rates: The following is the Architects hourly rate schedule. When fees are not based on a percentage of the work, the hourly rates are employed:

Principal Architect -	\$225.00
Project Architect -	\$130.00
Intern Architect -	\$115.00
Interior Designer	\$110.00
Cost Estimator	\$100.00
Draftsman/CADD -	\$ 95.00
Clerical -	\$ 70.00
Field Representative -	\$110.00
Specification Writer	\$110.00

Civil, Structural, Mechanical, Electrical, Plumbing Engineers	
Primary Consulting Engineers (CSMEP)	\$200.00
Design Engineers	\$135.00
Draftsman/CADD	\$100.00
Clerical	\$ 70.00
Specification Writer	\$190.00
Cost Estimator	\$185.00

The Architect shall submit invoices, which reflect the actual hours worked, with appropriate hourly rates.

The published rates are **2013** rates and are subject to change according to the Architect's pay rate inflation.

The fee will be separately computed for Group III in as many separate bid packages as the owner directs.

12.13 Insert the following into Par 11.5, **ADDITIONAL PROVISIONS**

The Architect will include cost of printing of up to 10 sets of construction documents for the project. The Owner will pay for the cost of printing of construction documents in excess of 10 sets for the project.

11.5.2 (Add) Payment Due: The agreed interest rate will be 6% per annum. The Architect shall be reimbursed for the cost (including reasonable attorney's fees) for collection of accounts.

The Owner shall reimburse the Architect for the cost of the required publication of Advertisement for Bids for the project.



MONTGOMERY OFFICE

305 South Lawrence Street • Montgomery, Alabama 36104
Post Office Box 4660 • Montgomery, Alabama 36103-4660
f. 334.264.7945 • t. 334.265.8573
www.hsy.com

TTG

MEMORANDUM

May 23, 2013

TO: Donnie Mims
FROM: Tommy Gallion
RE: PH&J Architects, Inc.
AIA Contract for Miscellaneous Improvements

I have reviewed your May 23, 2013 memorandum and AIA Contract for miscellaneous architectural improvements for the Department of Human Resources building located at 3030 Mobile Highway.

Donnie, you are correct on pages 9 and 10, Article 7.1 and 7.2 are the standard AIA dispute resolution language which makes arbitration mandatory. However, this issue is addressed in Attachment A (page 3 of 6), 12.6 does modify the agreement regarding mediation and arbitration and does contain Montgomery County's standard language.

It is my legal opinion that the services provided for in this agreement are in the best interest of the public health, safety, education, morals, security, prosperity, contentment and the general welfare of the citizens of Montgomery County. I therefore see no reason why this agreement should not be executed if it is the desire of the Commissioners.

50051-317
#4795416_1

ELTON N. DEAN, SR.
CHAIRMAN

DANIEL HARRIS, JR.
VICE CHAIRMAN

REED INGRAM
DIMITRI POLIZOS
JILES WILLIAMS, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1816

DONALD L. MIMS, CPA, MPA
ADMINISTRATOR
JOHN A. MITCHELL, SR.
DEPUTY ADMINISTRATOR
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TDD (334) 265-3568
www.mc-ala.org

Agenda

JUN - 3 2013

May 30, 2013

MEMORANDUM

TO: Montgomery County Commission

FROM: Donald L. Mims *DLM*
County Administrator

SUBJECT: Addendum to Memorandum of Understanding regarding Joint Management Agreement for Information Technology, Telecommunications and Radio Functions approved by the County Commission on March 12, 2012

Attached is the original Memorandum of Understanding (MOU) with the City of Montgomery regarding the Joint Management for Information Technology, Telecommunications and Radio Functions, which was approved by the County Commission on March 12, 2012.

During the May 20, 2013 County Commission meeting, you agreed to place a revised addendum to this Memorandum of Understanding on the June 3, 2013 agenda. Based upon instructions from the County Commission, the revised addendum is to contain the following three provisions:

- (1) The Chief Information and Technology Officer shall give an update to the Commission at every Commission meeting,
- (2) Every six months, there will be a joint meeting with the Mayor, County Commission, Deputy Mayor, County Administrator and Deputy Administrator to review the prioritization of the City and County goals/projects and
- (3) The term of the agreement shall be extended for an additional three years terminating on March 12, 2016.

DLM/tn

Attachment

**Addendum to March 12, 2012 Memorandum of Understanding (MOU) between the City of
Montgomery, Alabama and Montgomery County Commission, Alabama**

Joint Management Agreement for Information Technology, Telecommunications and Radio Functions

The MOU referenced above and attached hereto has an initial term that expires March 12, 2013. The MOU requires an affirmative approval by both parties to extend the initial term to an additional three years.

The following paragraphs are amendments to the original MOU:

- (1) The CITO shall give an update to the Commission at every Commission meeting.
- (2) Every six months, there will be a joint meeting with the Mayor, County Commission, Deputy Mayor, County Administrator and Deputy Administrator to review the prioritization of the City and County goals/projects.
- (3) The term of the agreement shall be extended for an additional three years terminating on March 12, 2016.

The addendum expressed above is hereby approved through witnessed signatures provided below.

Todd Strange, Mayor

City of Montgomery

Elton N. Dean, Sr., Chairman

Montgomery County Commission

Witness

Witness

Date

Date

Memorandum of Understanding (MOU)

Between

City of Montgomery, Alabama

And

Montgomery County Commission, Alabama

Purpose: In an effort to achieve greater operational and capital efficiencies and effectiveness, the City of Montgomery (City) and Montgomery County Commission (County) shall enter into this agreement to establish a joint management structure for the City of Montgomery and Montgomery County's information technology, telecommunications, and radio functions.

Term: The term of this MOU shall be one year beginning at the date of MOU execution by authorized representatives from both entities. Prior to the one year expiration of the MOU, the Commission and the City shall consider extending the contract for three (3) additional years with the provision that the contract can be terminated by either party with a six (6) month cancellation provision. Further authorization of this MOU beyond those terms shall require affirmative action by both entities in the form of an addendum to this agreement. The Commission and the City will start the evaluation process of the joint management structure nine (9) months after execution of the MOU.

Joint Management Services: The Montgomery County Commission shall create a position titled Chief Information and Technology Officer (CITO) in collaboration and with the approval of the City/County Personnel Department. The job description of the position shall be presented for approval by the City/County Personnel Board no later than 15 days after execution of this MOU. The County shall recruit and select in concurrence with the City said position no later than sixty (60) days after the job description has been approved by the City/County Personnel Board. Upon employment of the Chief Information and Technology Officer by the County, the City of Montgomery shall utilize said employee to manage its IT, Telecommunications, and Radio functions throughout the term of this agreement. The City of Montgomery shall pay to the County 70% of the salary and benefits of the Chief Information and Technology Officer (CITO) prorated to a daily rate based on 365 days divided into the annual salary and benefits of the CITO for use of these management services through the term of this agreement. The City shall pay the County once every three (3) months within thirty (30) days after receipt of an invoice from the County. The payment to the County shall increase as the salary and benefits increase for the CITO. The CITO shall be supervised by the Montgomery County Commission. The CITO shall be responsible to manage and supervise both City and County staff that operate within the aforementioned functions. The CITO shall also coordinate his/her activities through the Chief of Staff/Deputy Mayor with the City of Montgomery.

Joint Capital Purchases: The CITO shall endeavor to identify opportunities to share capital resources in the operation of the City and County's information and technology functions. As these

opportunities are defined and implemented, the CITO shall seek mutual agreement of the City and County to share these resources and the cost thereof. The City and County jointly shall determine the best vehicle to implement the mutually agreed capital joint ventures. This may include use of the Montgomery Metro Communication Cooperative District.

The above agreement and terms are hereby approved through the witnessed signatures below.



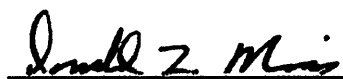
Todd Strange, Mayor
City of Montgomery, Alabama



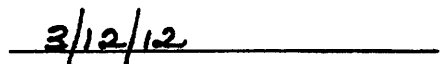
Elton N. Dean, Sr., Chairman
Montgomery County Commission



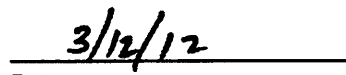
Witness



Witness



Date



Date

ELTON N. DEAN, SR.
CHAIRMAN

DANIEL HARRIS, JR.
VICE CHAIRMAN

REED INGRAM
DIMITRI POLIZOS
JILES WILLIAMS, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
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ESTABLISHED 1816

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Agenda

JUN - 3 2013

May 23, 2013

MEMORANDUM

TO: Montgomery County Commission

FROM: John A. Mitchell, Sr. 
Deputy Administrator

SUBJECT: Probate & Revenue Office East
Change Orders #3, 4, & 5

CannDauSon Construction, Inc. has submitted Change Orders #3, 4 & 5 totaling \$7,756.27. Change Order #3 is for \$920.00 to provide the doors with new hardware to avoid the appearance of a breach in security. Change Order #4 consists of four items:

- | | |
|--|------------------|
| 1. Furnish & Install Forbo Bulletin Board at Probate Waiting Area | \$1,001.00 |
| 2. New Storefront Wide Stile Double Doors with Panic Hardware, Continuous Hinges, Closers and New Threshold in Existing Frame (Door 101a). | \$4,532.00 |
| 3. New Surface Mounted Light Fixture at Rest Room 204 | \$ 209.22 |
| 4. Install Owner Furnished Cash Drawers – 12 Total. | <u>\$ 523.94</u> |
| | \$6,266.16 |

CannDauSon Construction, Inc. has submitted Change Order # 5 consisting of two items:

- | | |
|--|----------|
| 1. Furnish & Install (3) Handicap Unisex Restroom Signs | \$ 97.46 |
| 2. Items Required by Fire Department for <u>Permanent</u> Occupancy. | \$472.65 |

Total \$570.11

The original change order did not include the handicap signs shown as item #1 are a necessity. Item #2 is necessary by the Fire Department in order to occupy.

These items were discussed during the Working Session on May 20, 2013 when I was advised to place on the agenda for approval at the Montgomery County Commission Meeting on June 3, 2013.

If I can be of further assistance, please contact me.

JAM/tm

CONTRACT CHANGE ORDER

Change Order No. Three Date April 29, 2013 B.C.No. _____

TO: (Contractor) CannDauSon Construction, Inc. 216 Echlin Boulevard Prattville, AL 36067	PROJECT: Tenant Improvements to the Montgomery Commission – Probate and Revenue Office East
--	--

TERMS: You are hereby authorized, subject to the provisions of your Contract for this project, to make the following changes thereto in accordance with your proposal(s) dated 4/17/2013

FURNISH the necessary labor, materials, and equipment to *(Description of work to be done or changes to be made.)*

1. Replace Existing Exterior Doors 108B and 112B. \$ 920.00

ORIGINAL CONTRACT SUM	\$ 546,590.00
NET TOTAL OF PREVIOUS CHANGE ORDERS	\$ (23,372.19)
PREVIOUS REVISED CONTRACT SUM	\$ 523,217.81
THIS CHANGE ORDER WILL ☒ INCREASE ☐ DECREASE THE CONTRACT SUM BY	\$ 920.00
REVISED CONTRACT SUM, INCLUDING THIS CHANGE ORDER	\$ 524,137.81

EXTENSION OF TIME resulting from this Change Order None *(Insert "None" or No. of days)*

The Owner does hereby certify that this Change Order was executed in accordance with the provisions of Title 39, Code of Alabama, 1975, as amended.

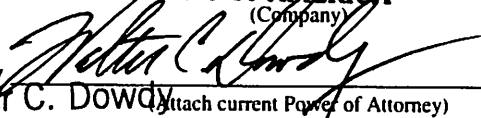
CONSENT OF SURETY

TRAVELERS CASUALTY AND SURETY

COMPANY OF AMERICA

(Company)

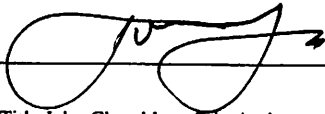
By



Walter C. Dowdy
Attorney in Fact **RECOMMENDED**

Brown Chambless Architects
Architect

By



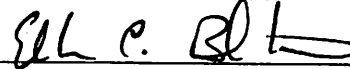
Name & Title John Chambless, Principal

CONTRACTING PARTIES

CannDauSon Construction, Inc.

Contractor

By



Name & Title Ellen C. Baerwette V-President

Montgomery County Commission

(Awarding Authority)

By

Name & Title _____

COR #7 - Replace Existing Exterior Doors 108b and 112b. These doors were to remain and to have new hardware. The prep to make these doors accept new hardware is so extensive that after prep, these doors will look as though they've been badly patched.

Provide Stock 18 ga. Primed Doors	\$800.00
GC Profit & OH	\$120.00
Total Change Order	\$920.00

Stock is being offered because doors per specifications takes 4-6 weeks to deliver.

CONTRACT CHANGE ORDER

Change Order No. Four Date May 1, 2013 B.C.No. _____

TO: (Contractor) CannDauSon Construction, Inc. 216 Echlin Boulevard Prattville, AL 36067	PROJECT: Tenant Improvements to the Montgomery Commission – Probate and Revenue Office East
--	--

TERMS: You are hereby authorized, subject to the provisions of your Contract for this project, to make the following changes thereto in accordance with your proposal(s) dated 4/23/2013, 4/22/2013, 4/19/2013 & 5/1/2013

FURNISH the necessary labor, materials, and equipment to *(Description of work to be done or changes to be made.)*

- | | |
|--|------------------|
| 1. Furnish & Install Forbo Bulletin Board at Probate Waiting Area. | \$ 1,001.00 |
| 2. New Storefront Wide Stile Double Doors with Panic Hardware, Continuous Hinges, Closers and New Threshold in Existing Frame (Door 101a). | \$ 4,532.00 |
| 3. New Surface Mounted Light Fixture at Rest Room 204. | \$ 209.22 |
| 4. Install Owner Furnished Cash Drawers – 12 Total. | <u>\$ 523.94</u> |
| | \$ 6,266.16 |

ORIGINAL CONTRACT SUM	\$ 546,590.00
NET TOTAL OF PREVIOUS CHANGE ORDERS	\$ (22,452.19)
PREVIOUS REVISED CONTRACT SUM	\$ 524,137.81
THIS CHANGE ORDER WILL ☒ INCREASE ☐ DECREASE THE CONTRACT SUM BY	\$ 6,266.16
REVISED CONTRACT SUM, INCLUDING THIS CHANGE ORDER	\$ 530,403.97

EXTENSION OF TIME resulting from this Change Order None *(Insert "None" or No. of days)*

The Owner does hereby certify that this Change Order was executed in accordance with the provisions of Title 39, Code of Alabama, 1975, as amended.

CONSENT OF SURETY

TRAVELERS CASUALTY AND SURETY

COMPANY OF AMERICA

By Walter G. Dewdy
Attorney in Fact *(Attach current Power of Attorney)*

RECOMMENDED

Brown Chambless Architects
Architect

By [Signature]
Name & Title John Chambless, Principal

CONTRACTING PARTIES

CannDauSon Construction, Inc.

Contractor

By [Signature]

Name & Title Ellen C. Bennette V. President

Montgomery County Commission
(Awarding Authority)

By _____

Name & Title _____

Probate Revenue Tenant Improvements - COR LOG

COR #8 - Furnish and Instal Forbo Bulletin	
Board at Probate Waiting Area	\$1,155.00
Credit for Plywood and Wood Veneer	-\$245.00
Subtotal	\$910.00
GC Profit & OH	\$91.00
Total Change Order	\$1,001.00

**COR #9 - New Storefront Wide Stile Double Doors
with Panic Hardware, Continuous Hinges,
Closers and New Threshold in Existing Frame
(Door 101a)**

Independent Glass	\$3,920.00
VCT Flooring	\$200.00
Subtotal	\$4,120.00
GC Profit & OH	\$412.00
Total Change Order	\$4,532.00

It takes 7 to 10 days for material to be received after order. Additional flooring is required because new threshold moves forward from where the existing threshold is located now.

Probate Revenue Tenant Improvements - COR LOG

**COR #10 - Provide New Surface Mounted Light Fixture
at Rest Room 204**

Alpha Acme	\$190.20
GC Profit & OH	\$19.02
Total Change Order	\$209.22

4/26/2013

COR #13 - Install Owner Furnished Cash

Drawers - (12) Total

	Material	Labor	Sub/Rental/Misc.
Misc. Screws, etc.	\$0.00	\$0.00	\$20.00
Labor (12) HRS	\$0.00	\$360.00	\$0.00
subtotals	\$0.00	\$360.00	\$20.00
Tax/Fringe	\$0.00	\$75.60	\$0.00
Totals	\$0.00	\$435.60	\$20.00
Total M/L/SRM			\$455.60
GC OH & Markup (15%)			\$68.34
Total			\$523.94

5/1/2013

CONTRACT CHANGE ORDER

Change Order No. Five Date May 1, 2013 B.C.No. _____

TO: (Contractor)

CannDauSon Construction, Inc.
216 Echlin Boulevard
Prattville, AL 36067

PROJECT:

Tenant Improvements to the Montgomery
Commission – Probate and Revenue Office East

TERMS: You are hereby authorized, subject to the provisions of your Contract for this project, to make the following changes thereto in accordance with your proposal(s) dated 4/26/2013 & 5/1/2013

FURNISH the necessary labor, materials, and equipment to *(Description of work to be done or changes to be made.)*

- | | |
|--|------------------|
| 1. Furnish & Install (3) Handicap Unisex Restroom Signs. | \$ 97.46 |
| 2. Items Required by Fire Department for <u>Permanent</u> Occupancy. | \$ <u>472.65</u> |
| | \$ 570.11 |

ORIGINAL CONTRACT SUM	\$ <u>546,590.00</u>
NET TOTAL OF PREVIOUS CHANGE ORDERS	\$ <u>(16,186.03)</u>
PREVIOUS REVISED CONTRACT SUM	\$ <u>530,403.97</u>
THIS CHANGE ORDER WILL ☒ INCREASE ☐ DECREASE THE CONTRACT SUM BY	\$ <u>570.11</u>
REVISED CONTRACT SUM, INCLUDING THIS CHANGE ORDER	\$ <u>530,974.08</u>

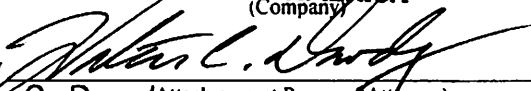
EXTENSION OF TIME resulting from this Change Order None *(Insert "None" or No. of days)*

The Owner does hereby certify that this Change Order was executed in accordance with the provisions of Title 39, Code of Alabama, 1975, as amended.

CONSENT OF SURETY

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA
(Company)

By

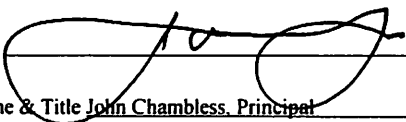


Walter C. Dowdy (Attach current Power of Attorney)
Attorney in Fact

RECOMMENDED

Brown Chambless Architects
Architect

By

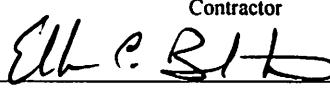


Name & Title John Chambless, Principal

CONTRACTING PARTIES

CannDauSon Construction, Inc.
Contractor

By



Name & Title Ellen C. Baugh V. President

Montgomery County Commission
(Awarding Authority)

By

Name & Title _____

Probate Revenue Tenant Improvements - COR LOG

**COR #11 - Furnish and Install (3) Handicap Unisex
Restroom Signs**

	Material	Labor	Sub/Rental/Misc.
(3) Signs	\$45.00	\$25.00	\$5.00
subtotals	\$45.00	\$25.00	\$5.00
Tax/Fringe	\$4.50	\$5.25	\$0.00
Totals	\$49.50	\$30.25	\$5.00
Total M/L/SRM			\$84.75
GC OH & Markup (15%)			\$12.71
Total			\$97.46

4/26/2013

Probate Revenue Tenant Improvements - COR LOG

**COR #12 - Items Required by Fire Department for
Permanent Occupancy**

	Material	Labor	Sub/Rental/Misc.
(1) 10 # Fire Extinguisher	\$75.56	\$15.00	\$3.00
(1) Knox Box	\$241.00	\$30.00	\$5.00
(2) sets of Bldg. Numbers located at Rear Doors	\$7.79	\$20.00	\$0.00
subtotals	\$324.35	\$65.00	\$8.00
Tax/Fringe (inc)	\$0.00	\$13.65	\$0.00
Totals	\$324.35	\$78.65	\$8.00
Total M/L/SRM			\$411.00
GC OH & Markup (15%)			\$61.65
Total			\$472.65

5/1/2013

ELTON N. DEAN, SR.
CHAIRMAN

DANIEL HARRIS, JR.
VICE CHAIRMAN

REED INGRAM
DIMITRI POLIZOS
JILES WILLIAMS, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION

P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1816

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www.mc-ala.org

Agenda

JUN - 3 2013

May 30, 2013

MEMORANDUM

TO: Montgomery County Commission

FROM: Donald L. Mims *DLM*
County Administrator

SUBJECT: New Carpet for Personnel Department

During the May 20, 2013 County Commission meeting, Personnel Director Barbara Montoya presented a letter requesting for the County Commission to pay a portion of the cost of new carpet in her department. In her letter she stated "I request Montgomery County Commission to pay a portion of the cost which is approximately 20% or \$4,800. The City of Montgomery will provide approximately 80% of the cost." After discussion, the Commission agreed to place this request on the June 3, 2013 agenda.

I am requesting that the Commission approve authorization for the payment in the approximate amount of \$4,800 for the installation of carpet.

Thank you for your consideration of this request.

DLM/tn

**CITY - COUNTY OF MONTGOMERY
PERSONNEL DEPARTMENT**

PERSONNEL BOARD
JOHN L. BAKER, CHAIRMAN
BENITA FROEMMING
RANDALL B. JAMES

27 Madison Avenue
Montgomery, Alabama 36104

BARBARA M. MONTOYA
PERSONNEL DIRECTOR
KAREN B. CASON
ASSISTANT PERSONNEL DIRECTOR
TELEPHONE: 334-625-2675
FAX: 334-625-2219

May 16, 2013

Montgomery County Commission
101 South Lawrence Street
Montgomery, AL 36104

Dear Gentlemen:

I have had several companies and installers to inspect the flooring and give estimates on cleaning and/or replacing carpet. After years of cleaning and normal wear and tear, it has become necessary to replace the carpet in the Personnel Department offices.

Recently, through City General Services, I received an estimate of approximately \$24,000 to purchase and install new carpet. I request Montgomery County Commission to pay a portion of the cost which is approximately 20% or \$4,800. The City of Montgomery will provide approximately 80% of the cost.

Thank you for your careful consideration of this request to be approved at the next County Commission meeting on May 20, 2013.

Sincerely,



Barbara M. Montoya
Personnel Director

BMM:rw

Tammy Nix

From: Sherrill Thomas
Sent: Wednesday, May 22, 2013 3:02 PM
To: Tammy Nix
Subject: RE: Budget Change Request for Carpet

The City is paying for the carpet and will bill us at the end of the year for our share.
Barbara has a category in her budget with enough funds to cover this.
A budget change is not necessary.

From: Tammy Nix
Sent: Wednesday, May 22, 2013 2:33 PM
To: Sherrill Thomas
Subject: Budget Change Request for Carpet

During Monday's meeting, the Commission agreed to pay a portion of the cost to purchase and install carpet for the Personnel Department.

Please do a Budget Change Request in the amount of \$4,800 before next Wednesday.

Thanks

Tammy

ELTON N. DEAN, SR.
CHAIRMAN

DANIEL HARRIS, JR.
VICE CHAIRMAN

REED INGRAM
DIMITRI POLIZOS
JILES WILLIAMS, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1818

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DEPUTY ADMINISTRATOR
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FAX (334) 832-2533
TDD (334) 265-3568
www.mc-ala.org

Agenda

JUN - 3 2013

May 28, 2013

MEMORANDUM

TO: Donald L. Mims
County Administrator

FROM: Scott Kramer *SK*
Risk Manager

SUBJECT: Preventive Testing - Electrical Distribution System Performed by Crosby Electric

On May 20th, I discussed with the County Commission the importance of Crosby Electric performing preventive maintenance on our electrical distribution system. This electrical preventive maintenance reduces the risk of accidents due to an electrical event such as an arc flash.

This testing is recommended by our insurance carrier, Affiliated FM, once every five years. This service was last performed by Crosby five years ago. The cost for this testing on the Courthouse, the older Detention Facility, Annex 1 and Annex 2 is \$12,181.

I have enclosed the professional services agreements to be placed on the agenda of the next Commissioners meeting for their consideration.

cc: John A. Mitchell, Sr.
Deputy County Administrator



This **TEGG Service Electrical Solution Agreement** dated May 28, 2013 by and between:

CUSTOMER

(s) Montgomery County Commission
P O Box 1667
Montgomery, Alabama 36102 United
States
Phone: 334 832 1210

and

TEGG SERVICE CONTRACTOR (TSC)

Crosby Electric Co., Inc.
6012 E. Shirley Lane
Montgomery, AL 36117

Phone: 334 272 2085

constitutes the entire Agreement between the aforementioned parties and includes scope of service, equipment covered, guarantees, terms and conditions, pricing and payment responsibilities for electrical services provided at:

(s) Montgomery County Courthouse
215 S Lawrence St
Montgomery, Alabama 36104

Solution No.: BAS58699411DB
Agreement No.: BAS58699411DB

The Scope of Service provided under this Agreement shall include the selected Service Option below. (See Service Options for details.)

- ☐ **TEGGPrime: A Full Service Guaranteed Maintenance Solution**
- ☐ **TEGGPremium: A Predictive and Proactive Testing & Service Guaranteed Solution**
- ☒ **TEGGBasic: A Thermographic and Ultrasonic Guaranteed Solution**
- ☐ **TEGGBuilders: A New Construction Extended Guarantee Solution**
- ☐ **TEGGStandard: Energized and/or De-Energized Testing and Service Solution**

This Agreement takes effect on 2/13/2013 and will continue for an original term of 12 Months months. Unless either party gives written notice to the other of intention not to renew thirty (30) days prior to any anniversary date, it shall thereafter renew on a year-to-year basis and the service intervals shall repeat. All renewals are subject to the Terms and Conditions of this Agreement.

Agreement Price and Payment Terms:

Your annual Agreement Price based upon the work detailed in the Service Option is:

First Year	\$2,956.00
Second Year	\$0.00
Third Year	\$0.00

Payment for these services shall be made Annually in accordance with the Terms and Conditions of this Agreement. This annual Agreement Price is subject to adjustment on each commencement anniversary to reflect increases/decreases in labor, material and other costs.

Your and Our Acceptance:

This Agreement will become effective only after acceptance as evidenced by the respective signatures of the parties' authorized representatives. This Agreement includes all of your and our obligations. No person has authority to make any claim, representation, promise or condition on our behalf that is not documented within this Agreement or an approved Addendum.

Authorized For:
(s) Montgomery County Courthouse

Authorized For:
Crosby Electric Co., Inc.

Date

Date

Signature

Signature

Scott Kramer
Risk Manager
Phone 334 832 1280

Al Crosby
General Manager
TEGG Service Division

TO ORDER SERVICES UNDER THIS AGREEMENT WITH A PURCHASE ORDER, PLEASE PROVIDE THE FOLLOWING:

PO Number _____ Date of Issue _____ Customer Signature _____

NOTE: When issuing a purchase order for this Agreement, the services, responsibilities, terms and conditions for both parties remain as detailed in this Agreement.

DEFINITIONS

You should note the following words have special meaning throughout the Agreement:

1. **"You"** and **"Your"** mean (s) Montgomery County Courthouse and all of its internal and external representatives.
2. **"We"**, **"Our"**, **"Ours"** and **"Us"** mean Crosby Electric Co., Inc. and all of its internal and external representatives.
3. **"EDS"** means your Electrical Distribution System as defined in the Terms and Conditions.
4. **"Covered Components"** means those components of the EDS that are listed in the System Components and Planned Service Interval Schedule of this agreement.
5. **"Guarantee"** means a repair or replacement provision for Covered Components of your EDS as stipulated in the Service Option and defined in the TEGG Service Guarantees section.
6. **"Sudden and Accidental Breakdown"** means an unexpected event during normal operation that causes direct physical damage to a Covered Component by artificially generated current, including arcing, that damages electrical devices, appliances, or wires, and necessitating repair before being returned to service.

SERVICE OPTIONS

☐ **TEGGPrime** includes predictive and proactive testing, including infrared thermography, ultrasonic inspection, voltage-ampere diagnostics, power quality measurement, visual inspection, with energized and de-energized maintenance service on a regularly scheduled basis on Covered Components of your EDS, and a full repair or replacement service Guarantee against any Sudden and Accidental Breakdown of Covered Components of your EDS that are satisfactorily tested and accepted by us into the program. This Guarantee includes downstream resultant damage protection for your EDS, overtime, and temporary power while repairs are undertaken. See Terms and Conditions for more details

☐ **TEGGPremium** includes predictive and proactive testing and analysis, including infrared thermography, ultrasonic inspection, voltage-ampere diagnostics, power quality measurement, visual inspection, and minor energized service maintenance of Covered Components of your EDS. Minor service maintenance includes such tasks as replacing knockouts, external cleaning of enclosures, etc. that can be performed safely while in an energized mode. TEGG Premium includes a full repair or replacement Guarantee against any Sudden and Accidental Breakdown of any Covered Components of your EDS that are satisfactorily tested and accepted by us into the program. See Terms and Conditions for more details.

☒ **TEGGBasic** includes complete infrared thermography, ultrasonic testing, and visual inspection of the Covered Components of your EDS. TEGG Infrared includes a full 90-day repair or replacement Guarantee against any Sudden and Accidental Breakdown of Covered Components of your EDS that are satisfactorily tested and accepted by us into the program. See Terms and Conditions for more details

☐ **TEGGBuilders** includes predictive and proactive testing, including infrared thermography, ultrasonic inspection, voltage-ampere diagnostics, power quality measurement, visual inspection, with energized service on a regularly scheduled basis on Covered Components of your EDS. Further, it includes a full 36-month repair or replacement service Guarantee against any Sudden and Accidental Breakdown of Covered Components of your EDS that are satisfactorily tested and accepted by us into the program. This Guarantee includes downstream resultant damage protection for your EDS, overtime, and temporary power while repairs are undertaken. See Terms and Conditions for more details. At the conclusion of this Agreement, you may roll this Agreement into a TEGGPrime Agreement.

☐ **TEGG Standard** may include, but not limited to, predictive and proactive testing, including infrared thermography, ultrasonic inspection, voltage-ampere diagnostics, power quality measurement, visual inspection, minor energized service maintenance and de-energized service of the scheduled components of your EDS. **TEGG Standard does not include a repair or replacement Guarantee.**

SERVICE DELIVERABLES

Preventive Maintenance

- ☐ Energized Maintenance Service
- ☐ De-energized Maintenance Service

Testing and Analysis

- ☐ Predictive Proactive Testing
- ☐ Energized Analysis
- ☐ De-energized Analysis
- ☐ True RMS Voltage and Current
- ☐ Harmonics Voltage and Current

Infrared Thermography and Ultrasonic Testing

- ☒ Infrared Thermography
- ☒ Ultrasonic Testing
- ☒ Visual Inspection

OUR RESPONSIBILITIES INCLUDE:

1. Provide a continuing managed process of professional Predictive and Proactive Services as specified on the System Planned Service Interval Schedule.
2. If included, provide consultative input for developing the Capital Asset Management Plan for your EDS.
3. Utilize TEGGTask®, a customized, task-oriented, computer-based asset management program developed exclusively for TEGG Service Customers.
4. Tag and assign a unique identification (ID) number to each component to be serviced.
5. Make appropriate notations and corrections on your existing one-line electrical drawings (if available).
6. Assure that only Certified TEGG Technicians and/or Certified TEGG Electricians (as appropriate) perform the services provided in

this Agreement.

7. Assure that our staff always check-in and checkout with you and provide you with a copy of the detailed TEGG Service Report at the conclusion of each visit.
8. Assign a Lead Technician/Electrician to have Primary Responsibility for work to be performed within your facility.
9. Coordinate all work with your staff to assure safety and minimal disruption of your operations.
10. Redeem all commitments made to you in a professional and timely manner, in compliance with both the applicable electrical code and TEGG Corporation's Standards of Performance.
11. Provide you with our Preferred Service Customer Discount for any electrical labor requirements above and beyond the scope of this Agreement.
12. Assist you in coordinating the de-energizing of your EDS, as required, with the appropriate utility company.
13. Repair or replace any EDS Covered Component per the applicable Service Option and Guarantee selected.

YOUR RESPONSIBILITIES INCLUDE:

1. Assign a Primary Contact with whom we should work to assure the proper coordination of our work.
2. Provide us with a copy, if available, of all electrical one-line drawings or prints.
3. Assign, if required, an escort to provide our Certified TEGG Service personnel with appropriate access to electrical components and/or areas.
4. Provide us with your protocols and regulations regarding working within your facility, such as: parking, sign-in/sign-out and security procedures, emergency contacts, and other appropriate information.
5. Permit only our representatives to perform work on the covered electrical components, as we will only Guarantee our work and not the work of other parties.
6. Assure that the applicable electrical components are under load when our energized service and/or predictive and proactive testing services take place.
7. If de-energized work is scheduled within your facility, assure that the necessary occupants are provided with advance notification of the impending electrical outage and its anticipated duration.
8. Coordinate the de-energizing of your electrical system, as required, with the appropriate utility.
9. Bear the cost to repair or replace of any Covered Component deemed by us to be in a worn or doubtful condition. Should you choose to not make the required repair or replacement, the component shall continue to receive regular service, but is automatically removed from the repair or replacement Guarantee provisions of this Agreement.
10. If included, work with us to help you develop a Capital Asset Management Plan for your electrical distribution system.
11. Provide us with your critique of our services and suggestions for on-going improvements as part of our Customer Assurance Review and Evaluation program.

TEGG SERVICE GUARANTEES

☐ **TEGGPrime Guarantee** shall become effective upon the satisfactory initial tests and inspection of the Covered Components and acceptance by us. Our Guarantee is conditional on the initial and annual energized and de-energized maintenance service inspections, regardless of lapse time and expires upon cancellation or termination of this agreement.

If worn or doubtful components are discovered during any regularly scheduled energized and de-energized service inspection, and these Covered Components have not incurred a Sudden and Accidental Breakdown, these components must be repaired or replaced by you for the Guarantee to remain in effect. If you decide not to repair or replace these components, they will continue to receive regular scheduled service, but shall be automatically removed from the Guarantee provisions.

If as a direct result of a Sudden and Accidental Breakdown of a Covered Component there is any additional damage to your EDS, which was caused directly by the Covered Component breakdown, we will repair or replace, whichever is less, the additional damaged electrical equipment of the EDS at no charge to you.

Further, we will provide 24X7 emergency response and reasonable expediting services, such as overtime, express shipment, temporary repairs, etc., and provide emergency temporary power if required.

☐ **TEGGPremium Guarantee** shall become effective upon the satisfactory initial tests and inspection of the Covered Components and acceptance by us. Our Guarantee is conditional on the initial and annual energized maintenance service inspections, regardless of lapse time and expires upon cancellation or termination of this agreement.

If worn or doubtful components are discovered during any regularly scheduled energized and de-energized service inspection, and these Covered Components have not incurred a Sudden and Accidental Breakdown, these components must be repaired or replaced by you for the Guarantee to remain in effect. If you decide not to repair or replace these components, they will continue to receive regular scheduled service, but shall be automatically removed from the Guarantee provisions.

Further, we will provide 24X7 emergency response and overtime services as necessary to expedite the repair.

☒ **TEGGBasic Guarantee** shall become effective upon the satisfactory results of our testing and inspection of the Covered Components and shall continue for 90-days or until this agreement is terminated. All repairs shall be completed during our normal business hours. If worn or doubtful components are discovered during any subsequent regularly scheduled reinspection and these Covered Components have not incurred a Sudden and Accidental Breakdown, these components must be repaired or replaced by you for the Guarantee to renew for another 90 days.

☐ **TEGGBuilders Guarantee** is a 36-month Guarantee and shall become effective at the end of the regular warranty period of new construction projects. It is dependent upon the satisfactory initial tests and inspection of the Covered Components and acceptance by us.

If worn or doubtful components are discovered during initial scheduled energized service inspection, these Covered Components must be repaired or replaced under warranty by the installing contractor before the Guarantee becomes effective. If you decide not to repair or replace these components, they will continue to receive regular scheduled service, but shall be automatically removed from the Guarantee provisions.

If as a direct result of a Sudden and Accidental Breakdown of a Covered Component there is any additional damage to your EDS, which was caused directly by the Covered Component breakdown, we will repair or replace, whichever is less, the additional damaged electrical equipment of the EDS at no charge to you.

Further, we will provide 24X7 emergency response and reasonable expediting services, such as overtime, express shipment, temporary repairs, etc., and provide emergency temporary power if required.

ELECTRICAL SYSTEM ANALYSIS REPORT:

Your authorized representative will be immediately informed, while we are on site, of any serious condition or safety hazard that we identify.

At the completion of our predictive and proactive service visits, we will compile the results of all inspections, measurements, surveys, and predictive and proactive service activities. We will then analyze these results to ascertain the condition of the Covered Components. The analysis will be documented in a TEGG Service Electrical Systems Analysis (ESA) report, which will be shared only with your authorized representative(s).

The Electrical Systems Analysis report will be reviewed with you, and include any recommended repairs, solutions, opportunities for improved electrical system efficiency, reduced electrical utility costs, improved safety conditions and/or minimize the risk of downtime. If any Covered Component under this Agreement is found to be in a worn or doubtful condition, we will provide you with the options and associated costs to either: (1) repair or replace the doubtful component; or (2) automatically remove the doubtful component from the Guarantee repair or replacement provision of this Agreement.

AGE AND OBSOLESCENCE OF EQUIPMENT:

At our initial and annual re-inspection service visits we will identify any Covered Components that have reached or exceeded their useful life expectancy or are in a worn and doubtful condition necessitating a recommended repair, refurbishment, upgrade or replacement. Upon such discovery, we will provide you with a separate proposal for repairs with associated cost. Should you choose to not make the required repair or replacement, the component shall continue to receive regular service, but is automatically removed from the repair or replacement Guarantee provisions of this Agreement.

If the Customer elects to have any repairs or replacements of Covered Components performed by someone other than the Authorized TEGG Service Provider, the Covered Components must be re-certified by the Authorized TEGG Service Provider at the customer's expense, prior to extending the Guarantee provisions.

TERMS AND CONDITIONS:

Accessibility: In order for us to perform the required services for you in a cost-effective manner and for the price guaranteed in this Agreement, you agree to permit us free and timely access to areas, electrical system(s), circuit(s) and/or equipment, and allow us to energize and de-energize the electrical system and/or circuits and to start and stop the equipment as necessary. No equipment will be turned off without your prior approval. All planned work under this Agreement will be performed during our normal working hours unless otherwise stipulated elsewhere in this Agreement.

Acceptance of Equipment: The annual Agreement Price is conditioned upon the Covered Components being in a satisfactory condition with no worn or doubtful components. If the initial and annual predictive and proactive inspection visit and the resulting Electrical Systems Analysis indicates that a repair or replacement of worn or doubtful components is required, a firm quotation for this repair or replacement will be provided to you for approval. Should you not authorize the repair or replacement, those worn and doubtful component(s) are automatically removed from the Guarantee repair or replacement provisions of this Agreement. We will continue to provide all maintenance services on these components per the Service Option exclusive of the repair and replacement Guarantee.

Electrical Distribution System: For the purpose of this Agreement, the electrical distribution system (EDS) is defined as all wiring, cables, bus structure, conductors and components within the Customer's premises used for the distribution of electricity from the point of attachment to the utility to the connection at the line side of any final installed load and includes all of the Customer's switchgear, breakers, disconnects, auto transfer devices, batteries, power conditioners, capacitors, power distribution centers, relays, motor control centers, and motor controllers that are used to distribute power within the Customer's facility, but does not include any rotating electrical equipment. If rotating electrical equipment is included in the Agreement, the scope of this Agreement then applies only to the electrical components of such rotating equipment and does not include any prime mover or driven equipment, such as an engine, turbine, compressor, pump or machine.

Exclusions: This Agreement does not include responsibility for the design of the system; obsolescence of equipment or parts; non-maintainable parts (such as conduit, fuses, etc.) repair or replacement necessitated by action of the elements or forces of nature (such as lightning and electrical storms), vandalism, fire, misuse or abuse of the system(s); work performed on the system(s) by anyone other than our representatives; negligence of others (including you); your failure to properly operate the system (such as overloading of circuits); requirements of governmental, regulatory or insurance agencies; electrical utility power deficiencies (such as surges, phase loss or power loss); the operation of a safety device, the depletion of a battery charge or the inability of batteries to hold a charge; or other causes beyond our control. The Guarantee repair or replacement provisions shall not apply to feeder cables, wires outside the Covered Component, conduit, fuses or any components rated at greater than 38kV.

Payment Terms: The Customer shall be invoiced upon signing this Agreement and prior to service delivery. You agree to promptly pay invoices within 10 (Ten) days of receipt. Should a payment become 30 (Thirty) days or more delinquent, we may stop all work under this Agreement without notice and/or terminate this Agreement. If this happens, the entire Agreement Price (less prior payments) will become due and payable immediately upon demand.

In the event we must commence third party collection or arbitration in order to recover any amount payable under this Agreement, you agree to reimburse us for all costs and attorneys' fees when incurred by us.

Taxes: You agree to be responsible for all applicable taxes on the services and/or materials provided.

Extra Work: If you require any alteration to or deviation from this Agreement involving extra work, you agree that the cost of material and/or labor will be an extra charge over this Agreement price.

Structures & Buildings: Unless otherwise stated elsewhere in this Agreement, we will not be required to move, replace or alter any part of the building or structures in the performance of this Agreement.

Work Performed by Others: Unless otherwise stated elsewhere in this Agreement, we will not be responsible for work that is performed by anyone other than our representatives. Therefore, you agree to permit only our personnel or agent(s) to perform the work included in the scope of this Agreement. Should anyone other than our representatives perform such work, we may, at our option, terminate this Agreement or eliminate the involved component(s) from the Guarantee repair or replacement provision of this Agreement.

Urgent Call Out: If an Urgent Service call is made at your request and inspection indicates a condition, which is not covered under this Agreement, we may charge you for our services at the rate then in effect.

Temporary Power: Except as provided under the Guarantee provisions in a TEGGPrime and TEGGBuilders program, this agreement price does not include any provision for temporary power. If temporary power or emergency generators are requested, these services will be provided and charged to you at the rate then in effect.

Responsibility for Tools & Equipment: If you request a multi-day power quality monitoring service, we may have to leave materials, tools, instruments, and/or equipment at your premises, and you agree to be responsible for any loss or damage to our materials, tools, instruments, and/or equipment while stored on your premises. You also agree to bear the risk of any loss or damage to the work that has been completed by us.

Hold Harmless: In the unlikely event that there is a claim, damage, loss or expense that is caused in whole or in part by any active or passive act or omission by you, anyone directly or indirectly employed by you or for anyone for whose act you may be liable, then, to the fullest extent permitted by law, you will defend, indemnify and hold harmless our representatives and us from and against these claims, damages, losses and expenses including but not limited to attorneys' fees arising out of or resulting from the performance of our work under this Agreement.

Hazardous Communications: In order to comply with OSHA Hazard Communication Standard Regulations, you agree to make available to our personnel all pertinent Material Safety Data Sheets (MSDS) if required.

Hazardous Substances: Our obligations under this proposal and any Agreements do not include the identification, abatement or removal of any asbestos products or other hazardous substances. In the event such products or substances are encountered, our sole obligation will be to notify you of the existence of such products and materials. We will have the right thereafter to suspend our work until such products or materials and resultant hazards are removed. The time for completion of the work under this Agreement shall be extended to the extent caused by the suspension of work, and the Agreement Price will be equitably adjusted.

Delays Outside Our Control: In the unlikely event that there is a delay, loss, damage or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes (including those by our representatives), lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond our control, you agree that we will not be liable for this delay, loss, damage or detention.

Loss of Profits: Under no circumstances, whether arising in contract, tort (including negligence), equity or otherwise, will we be responsible for loss of use, loss of profit, increased operating or maintenance expenses, claims of your tenants or clients, or any special, indirect or consequential damages.

Limits of Liability: We guarantee that our performance of services under this Agreement will be in accordance with generally accepted trade practices for similar services. In no event will our liability exceed the total amount of compensation we receive for the services rendered, except for the cost of repair or replacement of equipment covered under the Guarantee Repair or Replacement provision of this Agreement. Said Repair or Replacement Guarantee shall be limited to a maximum \$5,000,000 Limit of Loss with a \$100,000 Sub Limit for Overtime, Express Shipments and Temporary Power.

See Attached Dispute Resolution

Dispute Resolution: ~~Should a dispute arise between you and us that remains unresolved, then either party may seek exclusive relief through the procedures of the American Arbitration Association (AAA), Commercial Arbitration and Mediation Center for the Americas (CAMCA), or any equivalent recognized independent arbitrating organization. A single arbitrator shall decide all disputes. The arbitrator shall render a decision no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter. The prevailing party shall recover all costs, including attorney's fees, incurred as a result of the dispute. A prevailing party is a party that recovers at least 75% of its total claims or that is required to pay no more than 25% of the claims made against it.~~

We both agree that any action through arbitration against either of us relating to any breach of this Agreement must be commenced within one (1) year from the date of the work.

Warranty: We warrant that our workmanship on all installations and repairs shall be performed in a good and workmanlike manner and that parts repaired or replaced by us will be free from defects in workmanship and material for one year. **WE DISCLAIM ALL OTHER WARRANTIES ON THE EQUIPMENT FURNISHED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Purchase Orders: You acknowledge and agree that any purchase order issued by you, in accordance with this Agreement, is intended only to establish payment authority for your internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included in your purchase order will have any force or effect.

Changes: This Agreement shall not be subject to change or modification other than by a writing to which both parties are signatories.

Early Termination: In the event you terminate this Agreement for any reason other than our breach before its intended expiration date, you agree to pay the entire stated price for the year of cancellation or reimburse all costs for the work performed to date, whichever is greater.

Severability: Any provision of this Agreement that in any way contravenes the law of any state or country in which this Agreement is effective, will, to the extent the law is contravened, be considered separable and inapplicable and will not affect any other provision or provisions of this Agreement.

This dispute resolution language will replace the language in the TEGG service agreements to be performed by Crosby Electric Company for the following buildings.
Montgomery County Courthouse. Annex 1, Annex 2 and the old Jail Building.

DISPUTE RESOLUTION

If a dispute arises out of or relates to this agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions and negotiations. If the dispute cannot be settled through direct discussions or negotiations, the parties shall endeavor to settle the dispute by non-binding mediation. The location of the mediation shall be Montgomery, Alabama. Either party may terminate the mediation at any time after the session, but the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other form of binding dispute resolution. If the parties cannot agree on a mutual resolution then any disputes not resolved by mediation shall be decided in the Circuit Court of Montgomery County, Alabama and governed by the laws of the State of Alabama between the Montgomery County Commission and Crosby Electric Company Inc

System Components and Planned Service Interval Schedule

QTY.	ELECTRICAL DISTRIBUTION SYSTEM COMPONENT	Service Option PRIME PREMIUM BASIC BUILDERS STANDARD	First Year				Second Year				Third Year			
			Energized	De-Energized	IR	Ultra	Energized	De-Energized	IR	Ultra	Energized	De-Energized	IR	Ultra
	600 Volt and Below													
4	Distribution Panel Single Front (>= 400 amp)	TEGGBasic			4	4								
30	Branch Circuit Panel <= 400 amp	TEGGBasic			30									
4	Motor Control Center (Per vertical section)	TEGGBasic			4	4								
9	Individual Disconnect Switch	TEGGBasic			9									
10	Transformer Dry - <=600V <250 kva	TEGGBasic			10									
2	Wire Trough/Large Junction Boxes	TEGGBasic			2									



This **TEGG Service Electrical Solution Agreement** dated May 28, 2013 by and between:

CUSTOMER

(s) Montgomery County Commission
P O Box 1667

Montgomery, Alabama 36102 United
States
Phone: 334 832 1210

and

TEGG SERVICE CONTRACTOR (TSC)

Crosby Electric Co., Inc.
6012 E. Shirley Lane

Montgomery, AL 36117

Phone: 334 272 2085

constitutes the entire Agreement between the aforementioned parties and includes scope of service, equipment covered, guarantees, terms and conditions, pricing and payment responsibilities for electrical services provided at:

Montgomery County Detention Facility
250 S McDonough St
Montgomery, Alabama 36104

Solution No.: BAS86785471DB
Agreement No.: BAS86785471DB

The Scope of Service provided under this Agreement shall include the selected Service Option below. (See Service Options for details.)

- ☐ TEGGPrime: A Full Service Guaranteed Maintenance Solution
- ☐ TEGGPremium: A Predictive and Proactive Testing & Service Guaranteed Solution
- ☒ TEGGBasic: A Thermographic and Ultrasonic Guaranteed Solution
- ☐ TEGGBuilders: A New Construction Extended Guarantee Solution
- ☐ TEGGStandard: Energized and/or De-Energized Testing and Service Solution

This Agreement takes effect on 2/13/2013 and will continue for an original term of 12 Months months. Unless either party gives written notice to the other of intention not to renew thirty (30) days prior to any anniversary date, it shall thereafter renew on a year-to-year basis and the service intervals shall repeat. All renewals are subject to the Terms and Conditions of this Agreement.

Agreement Price and Payment Terms:

Your annual Agreement Price based upon the work detailed in the Service Option is:

First Year	\$3,120.00
Second Year	\$0.00
Third Year	\$0.00

Payment for these services shall be made Annually in accordance with the Terms and Conditions of this Agreement. This annual Agreement Price is subject to adjustment on each commencement anniversary to reflect increases/decreases in labor, material and other costs.

Your and Our Acceptance:

This Agreement will become effective only after acceptance as evidenced by the respective signatures of the parties' authorized representatives. This Agreement includes all of your and our obligations. No person has authority to make any claim, representation, promise or condition on our behalf that is not documented within this Agreement or an approved Addendum.

Authorized For:
Montgomery County Jail

Authorized For:
Crosby Electric Co., Inc.

Date

Date

Signature

Signature

Phone 334 832 1280

Al Crosby
General Manager
TEGG Service Division

TO ORDER SERVICES UNDER THIS AGREEMENT WITH A PURCHASE ORDER, PLEASE PROVIDE THE FOLLOWING:

PO Number _____ Date of Issue _____ Customer Signature _____

NOTE: When issuing a purchase order for this Agreement, the services, responsibilities, terms and conditions for both parties remain as detailed in this Agreement.

System Components and Planned Service Interval Schedule

			First Year				Second Year				Third Year			
<u>QTY.</u>	<u>ELECTRICAL DISTRIBUTION SYSTEM COMPONENT</u>	<u>Service Option</u> PRIME PREMIUM BASIC BUILDERS STANDARD	<u>Energized</u>	<u>De-Energized</u>	<u>IR</u>	<u>Ultra</u>	<u>Energized</u>	<u>De-Energized</u>	<u>IR</u>	<u>Ultra</u>	<u>Energized</u>	<u>De-Energized</u>	<u>IR</u>	<u>Ultra</u>
	600 Volt and Below													
6	DISTRIBUTION SWITCHBOARD Multi Cover (Per Section)	TEGGBasic			6	6								
2	Switchboard Safety Disconnects > 400A	TEGGBasic			2	2								
2	Distribution Panel Single Front (>= 400 amp)	TEGGBasic			2	2								
32	Branch Circuit Panel <= 400 amp	TEGGBasic			32									
12	Motor Control Center (Per vertical section)	TEGGBasic			12	12								
3	MCC: Combination Motor Starters	TEGGBasic			3	3								
20	Individual Disconnect Switch	TEGGBasic			20									
3	Transformer Dry - <=600V <250 kva	TEGGBasic			3									



This **TEGG Service Electrical Solution Agreement** dated May 28, 2013 by and between:

CUSTOMER

(s) Montgomery County Commission
P O Box 1667
Montgomery, Alabama 36102 United
States
Phone: 334 832 1210

and

TEGG SERVICE CONTRACTOR (TSC)

Crosby Electric Co., Inc.
6012 E. Shirley Lane
Montgomery, AL 36117

Phone: 334 272 2085

constitutes the entire Agreement between the aforementioned parties and includes scope of service, equipment covered, guarantees, terms and conditions, pricing and payment responsibilities for electrical services provided at:

(s) Montgomery County Courthouse Annex 1
100 S Lawrence St
Montgomery, Alabama 36104

Solution No.: BAS67787512DB
Agreement No.: BAS67787512DB

The Scope of Service provided under this Agreement shall include the selected Service Option below. (See Service Options for details.)

- ☐ TEGGPrime: A Full Service Guaranteed Maintenance Solution
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- ☐ TEGGStandard: Energized and/or De-Energized Testing and Service Solution

This Agreement takes effect on 2/13/2013 and will continue for an original term of 12 Months months. Unless either party gives written notice to the other of intention not to renew thirty (30) days prior to any anniversary date, it shall thereafter renew on a year-to-year basis and the service intervals shall repeat. All renewals are subject to the Terms and Conditions of this Agreement.

Agreement Price and Payment Terms:

Your annual Agreement Price based upon the work detailed in the Service Option is:

First Year	\$4,472.00
Second Year	\$0.00
Third Year	\$0.00

Payment for these services shall be made Annually in accordance with the Terms and Conditions of this Agreement. This annual Agreement Price is subject to adjustment on each commencement anniversary to reflect increases/decreases in labor, material and other costs.

Your and Our Acceptance:

This Agreement will become effective only after acceptance as evidenced by the respective signatures of the parties' authorized representatives. This Agreement includes all of your and our obligations. No person has authority to make any claim, representation, promise or condition on our behalf that is not documented within this Agreement or an approved Addendum.

Authorized For:
(s) Montgomery County Courthouse Annex 1

Authorized For:
Crosby Electric Co., Inc.

Date

Date

Signature

Signature

Scott Kramer
Risk Manager
Phone 334 832 1280

Al Crosby
General Manager
TEGG Service Division

TO ORDER SERVICES UNDER THIS AGREEMENT WITH A PURCHASE ORDER, PLEASE PROVIDE THE FOLLOWING:

PO Number _____ Date of Issue _____ Customer Signature _____

NOTE: When issuing a purchase order for this Agreement, the services, responsibilities, terms and conditions for both parties remain as detailed in this Agreement.

System Components and Planned Service Interval Schedule

QTY.	ELECTRICAL DISTRIBUTION SYSTEM COMPONENT	Service Option PRIME PREMIUM BASIC BUILDERS STANDARD	First Year				Second Year				Third Year			
			Energized	De-Energized	IR	Ultra	Energized	De-Energized	IR	Ultra	Energized	De-Energized	IR	Ultra
	600 Volt and Below													
4	Switchgear - Incoming Main Service (Per Section)	TEGGBasic			4	4								
1	Switchgear Safety Disconnects > 400A	TEGGBasic			1	1								
4	Switchgear Molded Case Breakers > 400A	TEGGBasic			4	4								
3	DISTRIBUTION SWITCHBOARD Multi Cover (Per Section)	TEGGBasic			3	3								
2	Switchboard Safety Disconnects > 400A	TEGGBasic			2	2								
1	Switchboard Molded Case Breakers >400A	TEGGBasic			1	1								
5	Distribution Panel Single Front (>= 400 amp)	TEGGBasic			5	5								
58	Branch Circuit Panel <= 400 amp	TEGGBasic			58									
21	Individual Disconnect Switch	TEGGBasic			21									
20	Individual Combination Motor Starter	TEGGBasic			20									
1	Transformer Dry - <=600V <250 kva	TEGGBasic			1									
	Non-EDS Specialty													
1	Auto Transfer Switch > 400A	TEGGBasic			1	1								
5	Variable Frequency Drives 51-200hp	TEGGBasic			5									
1	Uninterruptible Power Supply UPS >= 50 kVA	TEGGBasic			1	1								



This **TEGG Service Electrical Solution Agreement** dated May 29, 2013 by and between:

CUSTOMER

(s) Montgomery County Commission
P O Box 1667
Montgomery, Alabama 36102 United
States
Phone: 334 832 1210

and

TEGG SERVICE CONTRACTOR (TSC)

Crosby Electric Co., Inc.
6012 E. Shirley Lane
Montgomery, AL 36117

Phone: 334 272 2085

constitutes the entire Agreement between the aforementioned parties and includes scope of service, equipment covered, guarantees, terms and conditions, pricing and payment responsibilities for electrical services provided at:

Montgomery County Courthouse Annex #2
125 Washington Avenue
Montgomery, Alabama 36104

Solution No.: BAS85857391DB
Agreement No.: BAS85857391DB

The Scope of Service provided under this Agreement shall include the selected Service Option below. (See Service Options for details.)

- ☐ TEGGPrime: A Full Service Guaranteed Maintenance Solution
- ☐ TEGGPremium: A Predictive and Proactive Testing & Service Guaranteed Solution
- ☒ TEGGBasic: A Thermographic and Ultrasonic Guaranteed Solution
- ☐ TEGGBuilders: A New Construction Extended Guarantee Solution
- ☐ TEGGStandard: Energized and/or De-Energized Testing and Service Solution

This Agreement takes effect on 2/13/2013 and will continue for an original term of 12 Months months. Unless either party gives written notice to the other of intention not to renew thirty (30) days prior to any anniversary date, it shall thereafter renew on a year-to-year basis and the service intervals shall repeat. All renewals are subject to the Terms and Conditions of this Agreement.

Agreement Price and Payment Terms:

Your annual Agreement Price based upon the work detailed in the Service Option is:

First Year	\$1,633.00
Second Year	\$0.00
Third Year	\$0.00

Payment for these services shall be made Annually in accordance with the Terms and Conditions of this Agreement. This annual Agreement Price is subject to adjustment on each commencement anniversary to reflect increases/decreases in labor, material and other costs.

Your and Our Acceptance:

This Agreement will become effective only after acceptance as evidenced by the respective signatures of the parties' authorized representatives. This Agreement includes all of your and our obligations. No person has authority to make any claim, representation, promise or condition on our behalf that is not documented within this Agreement or an approved Addendum.

Authorized For:
Montgomery County Courthouse Annex #2

Authorized For:
Crosby Electric Co., Inc.

Date

Date

Signature

Signature

Phone 334 832 1210

Al Crosby
General Manager
TEGG Service Division

TO ORDER SERVICES UNDER THIS AGREEMENT WITH A PURCHASE ORDER, PLEASE PROVIDE THE FOLLOWING:

PO Number _____ Date of Issue _____ Customer Signature _____

NOTE: When issuing a purchase order for this Agreement, the services, responsibilities, terms and conditions for both parties remain as detailed in this Agreement.

System Components and Planned Service Interval Schedule

QTY.	ELECTRICAL DISTRIBUTION SYSTEM COMPONENT	Service Option PRIME PREMIUM BASIC BUILDERS STANDARD	First Year				Second Year				Third Year			
			Energized	De-Energized	IR	Ultra	Energized	De-Energized	IR	Ultra	Energized	De-Energized	IR	Ultra
	600 Volt and Below													
2	DISTRIBUTION SWITCHBOARD Multi Cover (Per Section)	TEGGBasi c			2	2								
1	Switchboard Safety Disconnects > 400A	TEGGBasi c			1	1								
9	Branch Circuit Panel <= 400 amp	TEGGBasi c			9									
7	Individual Disconnect Switch	TEGGBasi c			7									



TOP 10 REASONS FOR ELECTICAL PREVENTIVE MAINTENANCE

- 1) Electrical Preventive Maintenance reduces the risk of accidents and deaths due to electrical events such as arc flash and electrocution.
- 2) Electrical Preventive Maintenance reduces the risk of costly business interruptions due to electrical failure. The Institute of Electrical and Electronics Engineers states that "Without electrical preventive maintenance the failure rate of the electrical system components is THREE TIMES HIGHER than with an electrical preventive maintenance program in place."
- 3) Electrical Preventive Maintenance helps facility managers SCHEDULE SHUT-DOWNS instead of having UNPLANNED SHUT-DOWNS wreck their schedule.
- 4) Electrical Preventive Maintenance extends the life of costly equipment such as microprocessor-driven equipment, computers, motors, and PLC controlled machinery by ensuring clean and dependable power.
- 5) Electrical Preventive Maintenance reduces the risk of fire. BOMA (Building Owners and Managers Association) has determined that 26% of their member's building fires where a result of electrical distribution failure.
- 6) Electrical Preventive Maintenance can reduce the cost of insurance premiums and is even being required by many insurance companies. ~~Insurance Company~~
- 7) Electrical Preventive Maintenance lowers power consumption therefore lowering electric utility bills, sometimes saving as much as \$4,000 a month.
- 8) Electrical Preventive Maintenance helps facility managers better manage a valuable asset, the electrical distribution system, and therefore increase Net Operating Income.
- 9) Electrical Preventive Maintenance has been utilized for decades to protect valuable assets such as vehicles, HVAC systems, and large machines, and it is becoming the norm for electrical distribution systems as well.
- 10) Electrical Preventive Maintenance is PROACTIVE (keep electrical system healthy) rather than REACTIVE (Oh No! Our electrical system is broke again!). This enables facility managers to manage their electrical system, instead of their electrical system managing them.

Crosby Electric Co., Inc.
TEGG Service®
Professional Solutions

FOR THE CONSIDERATION OF:

Scott Kramer , Risk Manager

Montgomery County

Montgomery, Alabama 36104

Prepared By:

D J Bos
Electrical Services Specialist
Crosby Electric Co., Inc.
6012 E. Shirley Lane
Montgomery, AL 36117

TEGG Service Professional Solutions Table of Contents

Topic	Section
Crosby Electric Co., Inc. Capabilities	1
Why Perform Electrical Preventative Maintenance	2
Our Recommendations	3
Our Promise to You	4
Energized Service and Inspections	5
Predictive and Proactive Care	6
Your Professional TEGG Service Solutions for the following sites Montgomery County Jail, Annex 1, Annex 2, and Courthouse.	7



Our Mission: To provide superior electrical services to our clients in a safe and timely manner, and do it RIGHT the first time.

Founded in 1967 Crosby Electric Inc. is a privately held, full service, electrical contracting firm that specializes in commercial and industrial work. The majority of our work is within a 60 mile radius of Montgomery. We however will work in neighboring states on projects of the proper scope and size.

At Crosby we believe that the customer comes first and that true success never comes at the client's expense. Every project we undertake is approached with our total commitment to professional service and support.

Our service department is second to none and is committed to quality service and support for your electrical distribution system. Staffed with highly trained electricians and technicians we are committed to making your experience with our company a pleasant one. It is our goal to respond quickly, act in a professional manner; provide the service or repair required with as little interruption to your business as is possible.

We are in the business of building long term relationships, and in our opinion the first step in that long term relationship is to earn the trust of our clients.

We look forward to serving you and providing your company with the finest electrical service available.



April 23, 2013

Scott Kramer
Montgomery County
100 S Lawrence St
Montgomery, Alabama 36104

RE: OUR PROFESSIONAL RECOMMENDATIONS AND PROMISE TO YOU

Dear Mr: Kramer

Thank you for taking the time to review our recommendation for your Electrical Distribution System.

We have customized this program to address your following objectives:

- 1.Perform infrared testing on all listed electrical distribution equipment
- 2.Perform Ultrasonic testing on all required electrical distribution equipment
- 3.Provide complete reporting of all projects both written and electronic
- 4.Furnish proof of testing documentation for insurance purposes

We look forward to working with you and your staff to insure the safety and reliability of your Electrical Distribution System.

Very truly yours,

A handwritten signature in black ink, appearing to read "D J Bos", written over a horizontal line.

D J Bos
Electrical Services Specialist
Crosby Electric Company Inc

ELTON N. DEAN, SR.
CHAIRMAN

DANIEL HARRIS, JR.
VICE CHAIRMAN

REED INGRAM
DIMITRI POLIZOS
JILES WILLIAMS, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1810

DONALD L. MIMS, CPA, MPA
ADMINISTRATOR
JOHN A. MITCHELL, SR.
DEPUTY ADMINISTRATOR
(334) 832-1210
FAX (334) 832-2533
TDD (334) 265-3568
www.mc-ala.org

March 26, 2013

MEMORANDUM

TO: Thomas T. Gallion, III
County Attorney

FROM: Donald L. Mims *DLM*
County Administrator

SUBJECT: TEGG Service Electrical Solution Agreement

Attached is an email from Risk Manager Scott Kramer and TEGG Service Electrical Solution Agreements for four buildings in the County Courthouse Annex.

The following is information that will be added/changed to the agreements:

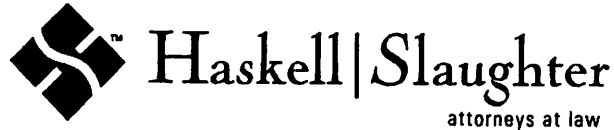
- The "Customer" information on each contract will be changed to
Montgomery County Commission
P.O. Box 1667
Montgomery, Alabama 36102-1667
Phone: 334-832-1210
- The County's Dispute Resolution will be added to the Agreements
- The street address of the County Jail will be listed on the Agreement pertaining to that building

Please review the Agreements and the proposed changes and issue your opinion by 5:00 p.m., Friday, May 24, 2013, as to whether they are acceptable.

As always, thank you for your assistance.

DLM/tn

Attachments



MONTGOMERY OFFICE
305 South Lawrence Street • Montgomery, Alabama 36104
Post Office Box 4660 • Montgomery, Alabama 36103-4660
f. 334.264.7945 • t. 334.265.8573
www.hsy.com

MEMORANDUM
May 23, 2013

T-16

TO: Donnie Mims
FROM: Tommy Gallion
RE: TEGG Service Electrical Solution Agreements for Four Locations
TEGG Service Contractor Crosby Electric Co., Inc.

I have reviewed your March 26, 2013 memorandum and the e-mail correspondence between Scott Kramer and Crosby Electric Co., Inc.

It is my understanding from your memorandum that the correct customer name and address, dispute resolution paragraph and the street address issues have already been addressed and Crosby Electric is willing to make those changes.

Other than the first and last page, all four agreements are identical. I have no changes to the rest of the agreement. All four agreements are legal and binding upon the parties.

I am of the opinion that the services provided for in these four agreements are in the best interest of the public health, safety, education, morals, security, prosperity, contentment and the general welfare of the citizens of Montgomery County. I therefore see no reason why these agreements should not be executed if it is the desire of the Commissioners.

ELTON N. DEAN, SR.
CHAIRMAN

DANIEL HARRIS, JR.
VICE CHAIRMAN

REED INGRAM
DIMITRI POLIZOS
JILES WILLIAMS, JR.

A COUNTY OLDER THAN THE STATE

MONTGOMERY COUNTY COMMISSION
P.O. BOX 1667
MONTGOMERY, ALABAMA 36102-1667

ESTABLISHED 1816

DONALD L. MIMS, CPA, MPA
ADMINISTRATOR
JOHN A. MITCHELL, SR.
DEPUTY ADMINISTRATOR
(334) 832-1210
FAX (334) 832-2533
TDD (334) 265-3568
www.mc-ala.org

Agenda

JUN - 3 2013

June 3, 2013

MEMORANDUM

TO: Montgomery County Commission

FROM: Donald L. Mims, County Administrator *DLM*

SUBJECT: Miscellaneous Appropriations Reprogramming Requests

I am requesting authority to reprogram the following from fund code 001-59320-498 (Agency, Miscellaneous Appropriations) to:

- C-2013-102: Faith Crusades Ministries, Inc., for at Risk Youth Program - \$1,500;
(Dean-\$500, Harris-\$500, and Polizos-\$500)
- C-2013-103: Montgomery Sunrise Foundation, Inc., for Grants Program - \$500; (Dean)
- C-2013-104: Montgomery County Recreation Department, Tukabatchee Area Council,
Boy Scouts of America, for Learning for Life Program - \$1,000;
(Harris)
- C-2013-105: Alpha Rho Zeta Stork's Nest, Inc. of Zeta Phi Beta Sorority, Inc., for
Prenatal Help Program - \$500; (Harris)
- NC-2013-104: Alabama Cooperative Extension System, for the 2013 Successful Aging
Initiative Conference - \$500; (Harris)
- NC-2013-105: BOE, Highland Avenue Elementary School, for Principal's Discretionary
Fund - \$500; (Harris)
- NC-2013-106: City of Montgomery, to be used by BONDS for the Cost of a Walking
Trail to Join the Two Neighborhoods for the Taylor Lakes/Sagestone
Homeowners Association - \$5,000; (Polizos)

DLM/tll

JUN - 3 2013

BUDGET FORM 5

MONTGOMERY COUNTY COMMISSION BUDGET CHANGE REQUEST REQUEST NUMBER 21

DEPARTMENT: County Comm Appropriat REVIEWED: S. Thomas 5/2/2013
DATE: 5/2/2013 Finance Director Date
REQUESTED BY: Donald L. Mims APPROVED: _____
Elected Official/Dept. Head Administrator Date

ACCOUNT NAME	ACCOUNT NUMBER	CURRENT BUDGET	INCREASE (DECREASE)	REVISED BUDGET
Montgomery Area Chamber of Commerce	001-59320-483	373,500	35,000	408,500
Fund Balance	001.35900		-35,000	0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
TOTAL		373,500	0	408,500

JUSTIFICATION:

To provide funding for tourism development regarding the 2013 Buckmaster Expo.

JUN - 3 2013

BUDGET FORM 5

MONTGOMERY COUNTY COMMISSION BUDGET CHANGE REQUEST

REQUEST NUMBER 22

DEPARTMENT:	County Comm Appropriati	REVIEWED:	S. Thomas	5/13/2013
DATE:	5/13/2013	Finance Director		Date
REQUESTED BY:	Donald L. Mims	APPROVED:		
Elected Official/Dept. Head		Administrator		Date

ACCOUNT NAME	ACCOUNT NUMBER	CURRENT BUDGET	INCREASE (DECREASE)	REVISED BUDGET
Montgomery Area Chamber of Commerce	001-59320-483	408,500	12,000	420,500
Fund Balance	001.35900		-12,000	0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
				0
TOTAL		408,500	0	420,500

JUSTIFICATION:

To provide funding for tourism development regarding the 2013 AME Zion National Conference.

Montgomery County Commission
Travel / Training Request Approval

Appendix C

Request # 23

Agenda

JUN - 3 2013

Date: May 29, 2013
To: Donald L. Mims, Administrator
From: Sheriff D. T. Marshall
Re: Travel / Training Request

Request approval to be granted for the following:

Destination: Gatlinburg, TN
Departure Date: July 8, 2013 Return Date: July 12, 2013
Conference Leave (Days / Hours): 5 days
Purpose of Travel: DARE Officers Conference

Traveler (s) Name: 1. Corporal Kofee Anderson 4. _____
2. _____ 5. _____
3. _____ 6. _____

Check Mode of Transportation: County Vehicle ☒ Commercial Air ☐
Private Vehicle ☐ Other (Specify) ☐

Total (est.) Cost: \$1,200.00 Advance Registration Required: \$175.00
Department Name: Sheriff's Office Fund Name: 001-52110-265

Additional Comments: _____

To: Sheriff D. T. Marshall
From: Donald L. Mims, Administrator

The above request is app. 06/03/13 reimbursement of actual and necessary expenses in the
approximate amount of \$1,200.00 and advance registration of \$175.00 is authorized.

To be completed by the Finance Department

Fund Code:	<u>001-52110.265</u>	(ex: 000-00000-000)
Description:	<u>Registration & Training</u>	
Current Budget:	<u>\$25,000.00</u>	
Approved Requests:	<u>\$12,705.00</u>	
Budget Available:	<u>\$12,295.00</u>	
Current Requests:	<u>\$1,200.00</u>	
Budget Balance:	<u>\$11,095.00</u>	

Donald L. Mims, Administrator

Reviewed by: S. Thomas

Date: 5/29/2013

cc: Finance Director / Buyer

Montgomery County Commission
Travel / Training Request Approval

Appendix C

Request # 43

Agenda

JUN - 3 2013

Date: May 20, 2013

To: Donald L. Mims, Administrator

From: Ellen Brooks

Re: Travel / Training Request

Request approval to be granted for the following:

Destination: Orange Beach, AL

Departure Date: June 25, 2013

Return Date: June 28, 2013

Conference Leave (Days / Hours): 4 Days

Purpose of Travel: To Attend: ADAA 2013 Summer Conference

Traveler (s) Name: 1. Lakeita Rox 4. _____
2. Crystal Taylor 5. _____
3. Azzie Taylor 6. _____

Check Mode of Transportation: County Vehicle ☐ Commercial Air ☐
Private Vehicle ☒ Other (Specify) ☐

Total (est.) Cost: \$4,467.00 Advance Registration Required: \$1,125.00

Department Name: District Attorney Fund Name: 760-51260-265

Additional Comments: _____

To: Ellen Brooks

From: Donald L. Mims, Administrator

The above request is app. 06/03/13 reimbursement of actual and necessary expenses in the
approximate amount of \$4,467.00 and advance registration of \$1,125.00 is authorized.

To be completed by the Finance Department

Fund Code: 760-51260.265 (ex: 000-00000-000)

Description: Registration & Training

Current Budget: \$45,000.00

Approved Requests: \$36,168.46

Budget Available: \$8,831.54

Current Requests: \$4,467.00

Budget Balance: \$4,364.54

Donald L. Mims, Administrator

Reviewed by: S. Thomas

Date: 5/21/2013

cc: Finance Director / Buyer

122

Montgomery County Commission
Travel / Training Request Approval

Appendix C

Request # 44

Agenda

JUN - 3 2013

Date: May 21, 2013

To: Donald L. Mims, Administrator

From: Ellen Brooks

Re: Travel / Training Request

Request approval to be granted for the following:

Destination: Orange Beach, AL

Departure Date: June 25, 2013

Return Date: June 28, 2013

Conference Leave (Days / Hours): 4 Days

Purpose of Travel: To Attend: ADAA 2013 Summer Conference

Traveler (s) Name: 1. Carrie Gray 4. _____
2. _____ 5. _____
3. _____ 6. _____

Check Mode of Transportation: County Vehicle ☐ Commercial Air ☐
Private Vehicle ☒ Other (Specify) ☐

Total (est.) Cost: \$1,489.00 Advance Registration Required: \$375.00

Department Name: District Attorney Fund Name: 760-51260-292

Additional Comments: _____

To: Ellen Brooks

From: Donald L. Mims, Administrator

The above request is app. 06/03/13 reimbursement of actual and necessary expenses in the
approximate amount of \$1,489.00 and advance registration of \$375.00 is authorized.

To be completed by the Finance Department

Fund Code:	<u>760-51260.292</u>	(ex: 000-00000-000)
Description:	<u>Grant Expense</u>	
Current Budget:	<u>\$250,000.00</u>	
Approved Requests:	<u>\$56,669.25</u>	
Budget Available:	<u>\$193,330.75</u>	
Current Requests:	<u>\$1,489.00</u>	
Budget Balance:	<u>\$191,841.75</u>	

Donald L. Mims, Administrator

Reviewed by: S. Thomas

Date: 5/29/2013

cc: Finance Director / Buyer

Montgomery County Commission
Travel / Training Request Approval

Appendix C

Request # 45

Agenda

JUN - 3 2013

Date: May 23, 2013

To: Donald L. Mims, Administrator

From: Ellen Brooks

Re: Travel / Training Request

Request approval to be granted for the following:

Destination: Orange Beach, AL

Departure Date: August 13, 2013

Return Date: August 16, 2013

Conference Leave (Days / Hours): 4 Days

Purpose of Travel: To Attend: Gov't Finance Officers Assoc of Alabama Conference

Traveler (s) Name: 1. Rhonda Cape 4. _____
2. _____ 5. _____
3. _____ 6. _____

Check Mode of Transportation:

County Vehicle

☐

Commercial Air

☐

Private Vehicle

☒

Other (Specify)

☐

Total (est.) Cost: \$1,150.00

Advance Registration Required: \$250.00

Department Name: District Attorney

Fund Name: 760-51260-265

Additional Comments: _____

To: Ellen Brooks

From: Donald L. Mims, Administrator

The above request is app. 06/03/13 reimbursement of actual and necessary expenses in the
approximate amount of \$1,150.00 and advance registration of \$250.00 is authorized.

To be completed by the Finance Department

Fund Code: 760-51260.265 (ex: 000-00000-000)

Description: Registration & Training

Current Budget: \$45,000.00

Approved Requests: \$36,168.46

Budget Available: \$8,831.54

Current Requests: \$5,617.00

Budget Balance: \$3,214.54

Donald L. Mims, Administrator

Reviewed by: S. Thomas

Date: 5/28/2013

cc: Finance Director / Buyer