

RESOLUTION 2010-18

A RESOLUTION OF THE CITY OF LA FERIA, TEXAS, APPROVING AN INTERLOCAL AGREEMENT BETWEEN LA FERIA INDEPENDENT SCHOOL DISTRICT AND THE CITY OF LA FERIA FOR CONSTRUCTION AND DEVELOPMENT OF IMPROVEMENTS TO SOUTH BEDDOES ROAD AND COMMITTING TO THE FUTURE ISSUANCE OF CERTIFICATES OF OBLIGATION PURSUANT TO SUBCHAPTER C, CHAPTER 271, AS AMENDED, TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the City of La Feria, Texas, is a Home Rule Municipal Corporation formed pursuant to TEX. LOC. GOV'T. CODE § 9.001, et. seq; and

WHEREAS, the City of La Feria's Home Rule Charter authorizes the construction and development of capital improvements to its roads; and

WHEREAS, the capital improvements to South Beddoes Road are an integral part of the City of La Feria's street and road system and will benefit residents of the City; and

WHEREAS, the La Feria Independent School District (hereinafter, School District) and the City of La Feria (hereinafter, City) both desire that the City construct improvements on a portion of South Beddoes Road consisting of the installation, construction, and improvement of the street, drainage, sidewalks, water lines, and fire hydrants to connect with new facilities for a school within the city limits and which capital improvements abut property of the school; and

WHEREAS, the costs of the capital improvements will be borne equally by the School District and the City; and

WHEREAS, the School District is a political subdivision of the State of Texas; and

WHEREAS, the School District and the City are authorized to enter into interlocal agreements pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code, as amended, Section 791.001 et seq. (the "Act"); and

WHEREAS, the Board of Trustees of the School District has adopted a resolution which has (1) approved this interlocal agreement and (2) made a finding that the expenditure of school funds on said improvements and any future maintenance and repair of the improvements constructed as part of the capital improvements is necessary in the conduct of public schools; and

WHEREAS, the capital improvements require the City to issue a series of certificates of obligation pursuant to Subchapter C, Chapter 271, as amended, Texas Local Government Code to provide a source of funds to satisfy the City's obligation; and

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF LA FERIA, TEXAS, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The recitals set forth above are found to be true and correct and are hereby adopted by the City Commission and made part of this resolution for all purposes.

SECTION 2. The City of La Feria approves the Interlocal Agreement by and between it and the La Feria Independent School District for the development and construction of improvements on South Beddoes Road, which Interlocal Agreement is attached hereto as Exhibit "A" and is hereby ratified and accepted by the City Commission.

SECTION 3 The estimated cost of the capital improvements is \$307,000.00 which cost will be borne equally by the School District and the City.

SECTION 4. The entire cost of the capital improvements initially will be borne by the School District. The City will reimburse the School District within 18 months after the date of completion of said improvements.

SECTION 5. The City will issue certificates of obligation to reimburse the School District the City's share of the costs of the improvements and hereby declares its intent to use a portion of the proceeds of the certificates of obligation to pay the City obligation as reimbursement of a prior incurred obligation of the City.

SECTION 6. If any portion of this resolution is declared invalid, such declaration shall not affect any of the remaining sections, paragraphs, sentences, clauses and phases of this resolution.

SECTION 7. The resolution shall be effective immediately upon approval.


PASSED AND APPROVED THIS THE 25TH DAY OF MAY, 2010.

APPROVED:




Steve Brewer, Mayor

ATTEST:



Olga Oberwetter, City Secretary

APPROVED AS TO FORM:



Miguel D. Wise, City Attorney

**INTERLOCAL AGREEMENT BETWEEN
LA FERIA INDEPENDENT SCHOOL DISTRICT AND
THE CITY OF LA FERIA FOR CONSTRUCTION AND DEVELOPMENT
OF IMPROVEMENTS TO SOUTH BEDDOES ROAD**

This Interlocal Agreement (“Agreement”) is made by and between the La Feria Independent School District, a political subdivision of the State of Texas, acting by and through its duly authorized superintendent of schools, or designee (the “School”) and the City of La Feria, Texas, a home-rule municipality and political subdivision of the State of Texas, acting by and through its duly authorized city manager, or designee (the “City”).

W I T N E S S E T H:

WHEREAS, the School and the City are authorized to enter into this Agreement pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code, as amended, Section 791.001 et seq. (the “Act”); and

WHEREAS, the School and the City both desire that the City construct improvements on a portion of South Beddoes Road consisting of the installation, construction, and improvement of the street, drainage, sidewalks, water lines and fire hydrants to connect with new facilities for the School (the “Project”) within the City limits and which capital improvements abut property of the School; and

WHEREAS, the Board of Trustees of the School has adopted a resolution which has (1) approved this Agreement and (2) made a finding that the expenditure of school funds on the Project and any future maintenance and repair of the improvements constructed as part of the Project is necessary in the conduct of public schools; and

WHEREAS, the City Commission of the City has adopted a resolution which (1) approved this Agreement and (2) committed the City to issue a series of certificates of obligation (the “Certificates of Obligation”) pursuant to Subchapter C, Chapter 271, as amended, Texas Local Government Code to provide a source of funds for the City Obligation (defined herein); and

WHEREAS, the City Commission of the City has adopted a resolution which has declared the intent to use a portion of the proceeds of the Certificates of Obligation to pay the City Obligation as reimbursement of a prior incurred obligation of the City; and

WHEREAS, the City has advertised for bids and will contract with a contractor (“Contractor”) to construct the Project, and the Project is an integral part of the City’s street and road system and will benefit residents of the City; and

WHEREAS, the estimated cost of the Project is \$307,000.00 which will be borne equally by the School and the City; and

WHEREAS, the entire cost of the Project will be initially borne by the School with the City reimbursing the School within 18 months after the "date of completion" of the Project through the issuance by the City of the Certificates of Obligation; and

WHEREAS, the School desires to complete the Project in accordance with the plans and specifications set out in this Agreement; and

WHEREAS, the adoption of this Agreement is hereby found and determined to be in the best interest of the residents of the City and the School;

NOW, THEREFORE, the School and the City agree as follows:

I. OBLIGATIONS OF THE SCHOOL

- A. The School shall appoint _____ to act as a single point of contact (hereinafter "SPOC") with the City. SPOC must be knowledgeable in the planning, content, subject matter, and construction being accomplished through the South Beddoes Road Project. SPOC must possess decision making ability and authority.
- B. The School agrees to the construction of the Project by the City as described in Exhibit A.
- C. The School is responsible for 100% for all payments to the City's Contractor; provided, however, the City is obligated to reimburse the School 50% of the cost of the Project as provided herein.
- D. During the period prior to City acceptance of the completed Project, the School will refer any inquiries from the public regarding the Project to the City.
- E. Recognition of Tax Exempt Financing. The School hereby acknowledges and recognizes that the Certificates of Obligation are being issued as "state or local bonds" under and pursuant to section 103(a) of the Internal Revenue Code of 1986, as amended, and the School hereby covenants and agrees with respect to the use of the Project as follows:

- (a) Definitions. When used in this Section, the following terms have the following meanings:

"Closing Date" means the date on which the Certificates of Obligation are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148 1(b) of the Regulations.

“*Gross Proceeds*” means any proceeds as defined in Section 1.148 1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148 1(c) of the Regulations, of the Certificates of Obligation.

“*Investment*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“*Nonpurpose Investment*” means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Certificates of Obligation are invested and which is not acquired to carry out the governmental purposes of the Certificates of Obligation.

“*Rebate Amount*” has the meaning set forth in Section 1.148 1(b) of the Regulations.

“*Regulations*” means any proposed, temporary, or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates of Obligation. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“*Yield*” of (i) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (ii) the Certificates of Obligation has the meaning set forth in Section 1.148-4 of the Regulations.

- (b) Not to Cause Interest to Become Taxable. The School shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate of Obligation to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the School receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Certificate of Obligation, the School shall comply with each of the specific covenants in this Section.
- (c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City and the School shall at all times while the Certificates of Obligation are outstanding:
- (i) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be

financed or refinanced directly or indirectly with Gross Proceeds of the Certificates of Obligation, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

- (ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates of Obligation or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.
- (d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the School shall not use Gross Proceeds of the Certificates of Obligation to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (i) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (ii) capacity in or service from such property is committed to such person or entity under a take or pay, output or similar contract or arrangement; or (iii) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.
- (e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the School shall not at any time prior to the final Stated Maturity of the Certificates of Obligation directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates of Obligation.
- (f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the School shall not take or omit to take any action which would cause the Certificates of Obligation to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

- (g) Payment of Rebatale Arbitrage. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:
- (i) The School shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Certificate of Obligation is discharged. However, to the extent permitted by law, the School may commingle Gross Proceeds of the Certificates of Obligation with other money of the School, provided that the School separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.
 - (ii) Not less frequently than each Computation Date, the School shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The School shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates of Obligation until six years after the final Computation Date.
 - (iii) As additional consideration for the purchase of the Certificates of Obligation by the Purchasers and the use of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the School shall remit to the School for payment to the United States the amount described in paragraph (g)(ii) above and the amount described in paragraph (g)(iv) below, at the times, in the manner and accompanied by such forms or other information as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder.
 - (iv) The School shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraph (g)(ii), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including the amount remitted to the School for payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148 3(h) of the Regulations.

II. OBLIGATIONS OF THE CITY

- A. The City shall appoint Sunny K. Philip, City Manager, to act as a single point of contact (hereinafter "Contract Administrator") with the School.
- B. The City is responsible for management of the Project, as described in the attached Exhibit A, including oversight of its Contractor, and assuring that the Contractor complies with contractual and other requirements for the Project. This includes obtaining any necessary permits, other than City permits, for the Project. All City permits are waived for the Project, if the Project is constructed in accordance with the construction plans and specifications set out in Exhibit A. If the Project is completed in accordance with Exhibit A, the Project will be deemed to have complied with applicable City development regulations.
- C. City will inspect construction of the Project, and School staff may accompany City staff on such inspections. City will provide School staff with 24 hours telephone notice of preconstruction conferences, periodic inspections, regular meetings with the Contractor, and the final inspection. (For purposes of this paragraph, telephone notice may be given by calling Daniel Trevino, Assistant Superintendent at 797-2612.)
- D. After completion of construction of the Project, the City will monitor the roadway and require correction of any deficiencies in design or construction of the roadway or related facilities.
- E. City agrees to share 50 percent of the costs of the Project with the School (the "City Obligation"). City will issue the certificates of obligation and reimburse the School its share of the costs within 18 months from the "date of completion." (For purposes of this Agreement, the "date of completion" of the Project is the date that the City verifies, in writing, that the Contractor has completed the Project in accordance with the Contract.)

III. TERM, TERMINATION

- A. This Agreement shall be effective from and after the date of execution by all parties, shall automatically renew for successive one year periods, and shall expire one year from the later of the completion of construction of the Project or payment in full of the City Obligation, unless previously terminated pursuant to Section III. B.
- B. If either party defaults in the performance of any of the terms or conditions of this Agreement, the defaulting party shall have 30 days after receipt of written notice of the default within which to cure the default. If such default is not cured within the 30 days, then the offended party shall have the right without further notice to terminate this Agreement.

IV. MISCELLANEOUS

- A. Severability. If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulations contained in it shall become inoperative or fail by reason of unconstitutionality or invalidity of any other section, subsection, sentence, clause, phrase, provision, or regulation of this Agreement.
- B. Hold Harmless. The City shall, to the extent authorized under the Constitution and laws of the State of Texas, hold the School harmless from liability resulting from the negligent acts or omissions of the City, its officers, agents and employees pertaining to the activities to be carried out pursuant to the obligations of this Agreement; provided, however, the City shall not hold the School harmless from any claims, demands, or causes of action arising in favor of any person or entity, growing out of or incident to, or resulting directly or indirectly from negligence (whether sole, joint, concurring or otherwise) of the School, its officers, agents, representatives, or employees, or any person or entity not subject to the City's supervision or control.

The School shall, to the extent authorized under the Constitution and laws of the State of Texas, hold the City harmless from liability resulting from the negligent acts or omissions of the School, its officers, agents and employees pertaining to the activities to be carried out pursuant to the obligations of this Agreement; provided, however, the School shall not hold the City harmless from any claims, demands, or causes of action arising in favor of any person or entity, growing out of or incident to, or resulting directly or indirectly from negligence (whether sole, joint, concurring or otherwise) of the City, its officers, agents, representatives, or employees, or any person or entity not subject to the School's supervision or control.

- C. Law and Venue. This Agreement shall be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Cameron County, Texas. It is expressly understood that any lawsuit or litigation arising out of or relating to this contract will take place in Cameron County, Texas.
- D. Alteration, Amendment, or Modification. This Agreement shall be binding upon the City and the School and their respective successors and legal representatives and shall inure solely to the benefit of the City and School and their respective successors and legal representatives. Furthermore, no alteration, amendment, or modification of any provision of this Agreement shall be effective unless (1) prior written consent of such alteration, amendment, or modification shall have been obtained from the parties hereto, and (2) such alteration, amendment, or modification is in writing and signed by the parties hereto. The City and the School may amend this Agreement to address the construction or financing of other projects (other than the Project) upon compliance with the provisions of the Act and with other applicable law.

E. Entire Agreement. This Agreement constitutes the entire agreement between the City and the School, and supersedes all their oral and written negotiations, agreements, and understandings of every kind. No other agreement, statement or promise relating to the subject matter of this Agreement which is not contained in this Agreement is valid or binding. The City and School understand, agree, and declare that no agreement, statement, promise, warranty, or representation of any kind whatsoever, which is not expressly stated in this Agreement, has been made by any party hereto or its officer, employees, or other agents to induce execution of this Agreement.

F. Notice. Notices to either party shall be in writing, and may be either hand delivered or sent by certified or registered mail, postage paid, return receipt requested. If sent to the parties at the addresses designated herein, notice shall be deemed effective upon receipt in the case of hand delivery and three days after deposit in the U.S. Mail in case of mailing. The address of City for all purposes shall be:

City Manager
City of La Feria
115 East Commercial Avenue
La Feria, Texas 78559

Attn: Sunny K. Philip
(956) 797-2261

The address for the School for all notices hereunder shall be:

Board President
La Feria Independent School District
203 East Oleander
La Feria, Texas 78559

Attn: Alan Moore
(956) 797-2612

with a copy to:

Superintendent
La Feria Independent School District
203 East Oleander
La Feria, Texas 78559

Attn: Nabor Cortez, Ed.D.


G. Independent Relationship. Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of

one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

- H. No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the parties hereto, their past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. Neither party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- I. Compliance with Laws. The parties hereto shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations.
- J. Miscellaneous; Assignment. All the situations, promises, undertaking and agreements herein contained by or on behalf of either the School or the City shall bind the successors and assigns of either party, whether so expressed or not but neither the School nor the City shall have the right to assign this Agreement, or any part thereof except as hereinafter provided without the written consent of the other party. Either party may waive any default on the part of the opposite affecting any other provision of this Agreement; and a waiver of any one default shall not be deemed a waiver of any other or subsequent default or defaults. No delay by either party in enforcing any of its rights under this Agreement shall be deemed a waiver of such rights.
- K. Approval and Consent. Unless otherwise provided herein, any approval or consent required by the provisions of this Agreement by the City or the School shall be evidenced by a written resolution adopted by the governing body of the party giving such approval or consent. Upon receipt of such written resolution duly certified by the appropriate party, the City or the School can conclusively act on the matter requiring such approval.
- L. Covenants. The City and the School covenant that they will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Agreement. The City and the School covenant that they are duly authorized under the laws of the State of Texas to execute and deliver this Agreement, that all actions on their part as provided herein and the execution and delivery of this Agreement have been duly and effectively taken according to the import thereof as provided in this Agreement.
- M. Legal Fees. In the event it is necessary for either party to commence legal action of any kind to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to collect all court costs and reasonable attorney's fees and expenses incurred in connection therewith.

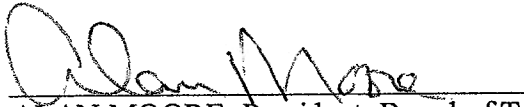
- N. Force Majeure. In the event that either party shall be entirely prevented from completing performance of its obligations hereunder by an act of God or any other occurrence whatsoever which is beyond the control of such party, then such party shall be excused from any further performance of its obligations and undertakings hereunder. In the event that the performance of either party of any obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then he shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.
- O. Compliance with Texas Open Meetings Act. It is officially found, determined, and declared that the meeting of each of the City and the School at which this Agreement is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Agreement, was given, all as required by Chapter 551, as amended, Texas Government Code.
- P. Counterparts. This Agreement may be executed in any number of counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.
- Q. Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Agreement for all purposes and are adopted as a part of the judgment and findings of the City Commission of the City and the Board of Trustees of the School.
- R. Inconsistent Provisions. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Agreement are hereby repealed to the extent of such conflict, and the provisions of this Agreement shall be and remain controlling as to the matters provided herein.
- S. Construction. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be constructed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.
- T. Effective Date. This Agreement is executed to be effective the date of the last party to sign.

CITY OF LA FERIA, TEXAS

By: 
SUNNY K. PHILIP,
City Manager
City of La Feria


Date: 05-25-2010

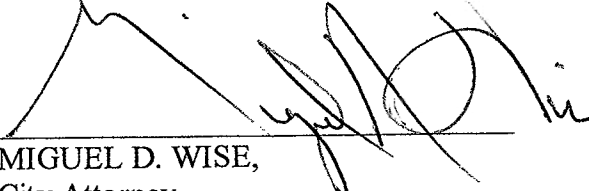
LA FERIA INDEPENDENT SCHOOL DISTRICT

By: 
ALAN MOORE, President, Board of Trustees
La Feria Independent School District

Date: 05-26-2010

APPROVED AS TO FORM:

By: 
JULIE A. CROCKETT,
LFISD School Board Attorney

By: 
MIGUEL D. WISE,
City Attorney

EXHIBITS

EXHIBIT A – Construction drawings titled “Proposed 42’ B.B. STREET (Beddoes Road)”, prepared by Sigler Winston Greenwood and Associates, Inc., Alfonso Gonzalez P.E. (License # 93805), dated May 6, 2010.