ADMINISTRATIVE MATTERS

AGENDA ITEM 13.1
Resolution No. 11-0281

STOCKTON CITY COUNCIL

RESOLUTION AWARDING A CONSTRUCTION CONTRACT TO GRANITE CONSTRUCTION COMPANY, IN THE AMOUNT OF $1,899,985, FOR THE FEDERAL FISCAL YEAR 2010-11 STREET OVERLAY PROJECT, PROJECT NO. PW 10-16; FEDERAL PROJECT NO. STPL 5008(104)

On August 18, 2011, the City Clerk of the City of Stockton did open, examine, and publicly declare the sealed proposals or bids offered for the Federal Fiscal Year 2010-11 Street Overlay Project, Project No. PW 10-16; Federal Project No. STPL 5008(104); now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The specifications and all letters of clarification contained in the bid for the Federal Fiscal Year 2010-11 Street Overlay Project, Project No. PW 10-16; Federal Project No. STPL 5008(104) are incorporated herein by reference and are hereby approved and adopted.

2. Said project is authorized and the contract awarded to the lowest and best regular responsible bidder, to wit: Granite Construction Company for the sum of $1,899,985.

3. The City Manager is authorized and directed to execute a Construction Contract on behalf of the City of Stockton with Granite Construction Company in accordance with the specifications and all letters of clarification, for such work hereinabove adopted by the City Council, a copy of which is attached as Exhibit 1.

4. The City Clerk is authorized to return to each of the unsuccessful bidders, the bidder's bonds, certified checks, and cashier's checks which accompanied their respective bids for the above-mentioned work.

City Atty
Review
Date September 19, 2011

280
5. The City Manager is authorized to take such other actions as are appropriate to carry out the intent of this Resolution.

PASSED, APPROVED, and ADOPTED September 27, 2011.

ANN JOHNSTON, Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE
City Clerk of the City of Stockton
CONSTRUCTION CONTRACT

This contract is made and entered into on ______________, by and between GRANITE CONSTRUCTION COMPANY, INC., a corporation, with a business address at 585 West Beach Street, Watsonville, CA 95076, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, plans and specifications for the construction of FFY 2010-11 STREET OVERLAY PROJECT, PROJECT NO. PW 10-16, FEDERAL PROJECT NO. STPL 5003(104), hereinafter called "PROJECT," were regularly adopted by Council Resolution No. 11-_______, on September 27, 2011, and

WHEREAS, the contract for said work was regularly awarded to CONTRACTOR, by Council Resolution No. 11-_______, on September 27, 2011.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

1. CONTRACTOR agrees:
   (a) To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the plans and specifications therefore regularly adopted on September 27, 2011, by Council Resolution No. 11-_______. The "contract documents," which include the project plans, specifications, and all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.
   (b) To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefore at the prices specified in Exhibit A, attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of Public Works of the City of Stockton.
   (c) Contractor shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this agreement the policies of insurance specified in Exhibit B, which is attached to this agreement and incorporated by this reference.
Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by CONTRACTOR as may be applied to each subcontractor's work.

Contractor shall defend, indemnify, and hold harmless City, its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses, including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of Contractor, any sub-contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the City.

(d) The performance of said work and the furnishing of said materials shall be executed in accordance with Section 8-1.03 of the City of Stockton Standard Specifications and Plans as adopted on November 25, 2003, by Council Resolution No. 03-0707, effective December 1, 2003, and the provisions of the issued project specifications.

The Director will furnish CONTRACTOR a weekly statement showing the number of days charged to the contract for the preceding week, the number of days specified for completion of the contract, and the number of days remaining to complete the contract. CONTRACTOR will be allowed one (1) week in which to file a written protest setting forth in what respects said weekly statement is incorrect; otherwise the statement shall be deemed to have been accepted by CONTRACTOR as correct.

It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements, is not finished or completed within the number of days as set forth, damage will be sustained by the CITY, and that it is and will be impracticable and extremely difficult to ascertain the actual damage which CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to CITY the sum of THREE THOUSAND AND NO/100 DOLLARS ($3,000) per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and CONTRACTOR agrees to pay said liquidated damages as herein provided, and in case the same are not paid, agrees that CITY, may deduct the amount thereof from any monies due or that may become due CONTRACTOR under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of days as specified, the
CITY shall have the right to increase the number of days or not, as may seem best to serve the interest of CITY, and if the CITY decides to increase the said number of days, the CITY shall further have the right to charge to CONTRACTOR, CONTRACTOR's heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as may be deemed proper, the liquidated damages as specified or the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, whichever is greater, except the cost of final surveys and preparation of final estimate shall not be included in such charges.

A working day shall not include, nor shall CONTRACTOR be assessed with liquidated damages nor the additional cost of engineering and inspection during any delay beyond the time named for the completion of the work caused by acts of God or of the public enemy, acts of CITY, fire, floods, epidemics, quarantine restrictions, strikes, and freight embargoes and subject to approval by the Director, inability to get materials ordered by CONTRACTOR or subcontractor due to such causes provided that CONTRACTOR shall notify the Director in writing of the causes of delay within five (5) working days from the beginning of any such delay, and the Director shall ascertain the facts and the extent of the delay, and Director's findings of the facts thereon shall be final and conclusive.

If CONTRACTOR is delayed by reason of alterations made in these specifications, or by any act of the Director or of the CITY, not contemplated by the contract, the time of completion shall be extended proportionately and CONTRACTOR shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. CONTRACTOR shall have no claim for any other compensation for any such delay.

(e) To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California.

To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS ($25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California.
(f) That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

(g) CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

(h) Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50% of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with Section 3.68.095.

2. CITY agrees:

(a) To pay CONTRACTOR for the work herein contemplated in the following manner: Progress payments will be made on or about the first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to ninety percent (90%) of the proportional contract price, upon the basis of the progress certificate of the Director of Public Works as to the amount of work done and the proportional amount of the contract price represented therefore; and all of the remaining part of the contract price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the completion of said work of construction and the certification by the Director of Public Works of such completion.

(b) Pursuant to Section 22300 of the Public Contract Code, the contractor will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a state or federally chartered bank as escrow agent. Securities eligible for this
substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

3. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.03 of the City of Stockton Standard Specifications and Plans as adopted by Council on November 25, 2003, by Resolution No. 03-0707, effective December 1, 2003, except that the $23,578 limit shown in Section 4-1.03 shall be increased to $30,737. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.03, CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

4. AUDITS:

(a) CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

(b) CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.
5. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

6. It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

ATTEST:
BONNIE PAIGE
CITY CLERK

By

CITY OF STOCKTON, a municipal corporation

By ____________________________
BOB DEIS
CITY MANAGER
"CITY"

GRANITE CONSTRUCTION COMPANY
a corporation
585 West Beach Street
Watsonville, CA 95076

By ____________________________
Kent Marshali
Vice President
"CONTRACTOR"

Corporation
(Indicate status: corporation, partnership, or solo proprietorship)

94-0519552
Tax Identification No.
# Bidding Schedule

**FFY 2010-11 Street Overlay Project**  
*Project No. PW 10-16, Federal Project No. STPL 5008(104)*

## Base Bid A - Hammer Lane

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Bid Item</th>
<th>Estimated Quantity</th>
<th>Unit of Measure</th>
<th>Unit Price</th>
<th>Total Price</th>
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<tbody>
<tr>
<td>1</td>
<td>6' KEY-CUT GRINDING OF PAVEMENT (2&quot;-3&quot;)</td>
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<td>LF</td>
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**BID OPTION B – CALIFORNIA ST.**

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<th>Bid Item</th>
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<th>Unit Price</th>
<th>Total Price</th>
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<td>41</td>
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<td>930.00</td>
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<td>42</td>
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<td><strong>571,366.10</strong></td>
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**TOTAL BID:** $1,899,985.00

**BIDDER’S NAME:** Granite Construction Co.
BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, ________________________________, a corporation, as Principal and ________________________________, a corporation, organized and existing under the laws of the State of ___________ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, as obligee, in the just and full sum of ONE MILLION EIGHT HUNDRED NINETY-NINE THOUSAND NINE HUNDRED EIGHTY-FIVE AND 00/100 DOLLARS ($1,899,985.00) in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to the said CITY, the said Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that the above bounded Principal has simultaneously entered into a contract with the CITY, to do and perform the following work, to wit:

FFY 2010-11 STREET OVERLAY PROJECT
(PROJECT NO. PW 10-16, FEDERAL PROJECT NO. STPL 5008(104))

NOW, THEREFORE, if the above bounded Principal, CONTRACTOR, Company or Corporation or its subcontractor, shall well and truly perform the work contracted to be done under said contract, then this obligation to be null and void; otherwise to remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract, or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY, and no forbearance on the part of the said CITY shall operate to relieve any Surety or Sureties from liability on this bond, and consent by said Surety is hereby given, and the said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.
SIGNED AND SEALED on ____________________________

GRANITE CONSTRUCTION COMPANY, INC., a corporation

By _______________________________
"PRINCIPAL"

APPROVED AS TO FORM & CONTENT:

JOHN M. LUEMBERKE
OFFICE OF THE CITY ATTORNEY

By _______________________________
CITY ATTORNEY

SURETY

By _______________________________
ATTORNEY-IN-FACT
KNOW ALL MEN BY THESE PRESENTS:

That we, GRANITE CONSTRUCTION COMPANY, INC., a corporation, as Principal and ______________________, corporation, organized and existing under the laws of the State of ____________ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, and unto any and all material suppliers, persons, companies, or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contemplated to be executed or performed under the contract hereinafter mentioned, and all persons, companies, or corporations renting or hiring teams, or implements of machinery, for or contributing to said work and all persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claims have not been paid by the contractor, company or corporation in the just and full sum of ONE MILLION EIGHT HUNDRED NINETY-NINE THOUSAND NINE HUNDRED EIGHTY-FIVE AND 00/100 DOLLARS ($1,899,985.00), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to said City of Stockton and to said persons jointly and severally, the said principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligations is such that the above bounden Principal has simultaneously entered into a contract of even date herewith, with the CITY, to do and perform the following work, to-wit:

**FFY 2010-11 STREET OVERLAY PROJECT**

(PROJECT NO. PW 10-16, FEDERAL PROJECT NO. STPL 5008(104))

NOW, THEREFORE, if the above bounden Principal, CONTRACTOR, Company or Corporation or its subcontractor, fail to pay for all materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same, in an amount not exceeding the sum specified in this bond, provided that any
and all claims hereunder shall be filed and proceedings had in connection therewith as required by the provisions of Division 3, Part 4, Title 15, Chapter 5, Article 1 of the Civil Code of California, provided that in case suit is brought upon this bond, a reasonable attorney's fee shall be awarded by the Court to the prevailing party in said suit; said attorney's fee to be fixed as costs in said suit, and to be included in the judgment therein rendered.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY and no forbearance on the part of the said CITY shall operate to relieve any surety or sureties from liability on this bond, and consent to make such alterations without further notice to or consent by any such surety is hereby given, and the said sureties hereby waive the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on ________________________________.

GRANITE CONSTRUCTION
COMPANY, INC., a corporation

APPROVED AS TO SURETY:

By __________________________
"PRINCIPAL"

APPROVED AS TO FORM & CONTENT:

JOHN M. LUEBBERKE
OFFICE OF THE CITY ATTORNEY

By ________________________
CITY ATTORNEY

ATTORNEY-IN-FACT

By ________________________
EXHIBIT B
INSURANCE REQUIREMENTS
CONTRACTORS

CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, its agents, representatives, volunteers, or employees.

1. INSURANCE Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of Insurance:

A. COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY insurance, endorsed for "any auto" with combined single limits of liability of not less than $1,000,000 each occurrence.

B. WORKERS' COMPENSATION insurance as required under the California Labor Code and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

C. COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;

FOR ADDITIONAL REQUIREMENT(S):

(i) COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY insurance which shall include Contractual Liability, Products and Completed Operations coverage's, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $3,000,000 Aggregate limit. Contractors with excavation and underground risks shall have coverage for and exclusions removed for "x, e, and u."

(ii) EXCESS LIABILITY: $1,000,000 per occurrence, and if written on an Aggregate basis, $1,000,000 Aggregate limit.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

1. The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form with additional insured endorsement naming: City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds. ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form must be used with either ISO form CG 20 10 10 01, or CG 20 33 10 01.

2. All insurance required by this Agreement shall be with a company acceptable to the CITY and licensed and authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

3. For any claims related to products provided under this contract, the Contractor's insurance coverage shall be primary insurance as respects the City of Stockton its officers, agents, and employees. Any coverage maintained by the CITY shall be excess of the Contractor's insurance.
and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.

4. Each insurance policy required by this clause shall have a provision that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, or non-payment of premium, which shall permit ten (10) days advance notice. The insurer and/or the contractor and/or the contractor's insurance agent shall provide the CITY with notification of any cancellation, major change, modification, or reduction in coverage.

5. Regardless of these contract minimum insurance requirements, the Contractor and its insurer shall agree to commit the Contractor's full policy limits and these minimum requirements shall not restrict the Contractor's liability or coverage limit obligations.

6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

7. The Company shall furnish the City of Stockton with the Certificate and Endorsement for all required insurance, prior to the CITY's execution of the Agreement and start of work.

8. Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attention: Risk Services
426 N. El Dorado Street
Stockton, CA 95202

9. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Manager (209) 937-6882. Our fax is (209) 937-5702.

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of subcontractor's insurance shall have the same impact as described above.