CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, MARCH 6, 2023
5:00 P.M.

A. 1. **CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**

A. 2. **PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER JUSTON DOBBS**

A. 3. **INVOCATION BY COUNCIL MEMBER JUSTON DOBBS**

A. 4. **APPROVE MINUTES OF THE CALLED CITY COUNCIL MEETING AND PLANNING AND ZONING COMMISSION MEETING OF MARCH 23, 2022, THE CALLED MEETING OF THE TAX INCREMENT FINANCING BOARD #8 OF FEBRUARY 20, 2023, AND THE REGULAR CITY COUNCIL MEETING OF FEBRUARY 20, 2023.**

Citizen Comments

B. 1. **CITIZEN COMMENTS**
During this meeting, the City Council welcomes public comment **only** on agenda items listed under the Open Meeting portion of the agenda, in accordance with Texas Government Code Section 551.007. For items not listed on the agenda, those matters may be discussed with City staff during regular business hours, or with the Mayor or any Council member by contacting them at times other than at City Council meetings.

Consent Agenda

C. 1. **CONSENT AGENDA**
Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Public Hearing

D. 1. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6570**
Establishing Maximum, Reasonable and Prudent Rates of Speed Along Certain Portions of State Highway 56 in the Corporate Limits of Sherman, Grayson County, Texas; Fixing Penalties for Violation Thereof; Declaring an Emergency; Providing for a Relealer

D. 2. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6571**
Abandoning One (1) Variable Width Utility Easement Located in the Plats of Northgate Business Park, Phase One and Replat of Lots 1 and 2 of Northgate Business Park Phase One, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Utility Easements are Established in Volume 16, Page 166 and Instrument Number 2021-234 of the Plat Records of Grayson County, Texas

Close Public Hearing and Consider Adoption of Ordinances

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

D. 3. **ADOPTION OF ORDINANCES**
Consider Adoption of Ordinance Numbers 6570 & 6571.

Resolutions

E. 1. **RESOLUTION NO. 7038**
Authorizing Execution of an Agreement with David Downtain, d/b/a RP Sherman Properties II, LLC under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program for Improvements to 328-330 W Lamar Street

E. 2. **RESOLUTION NO. 7039**
Authorizing Execution of an Agreement with David Downtain, d/b/a RP Sherman Properties II, LLC under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program for Improvements to 213 N Travis Street

E. 3. **RESOLUTION NO. 7040**
To Adopt the Results of the Annual Rate Review for Water and Wastewater

E. 4. **** RESOLUTION NO. 7041***
Authorizing Submission of a Grant Application and the Acceptance of the Energy Efficiency and Conservation Block Grant (EECBG) Program through the Department of Energy (DOE) for the City of Sherman

E. 5. **** RESOLUTION NO. 7042*** **(NO ACTION TAKEN AT THE JANUARY 3, 2023 REGULAR CITY COUNCIL MEETING)**
Accepting the Contract with Piazza Construction, LLC as Complete for the Construction of the WWTP Operations Building Addition & Remodel

E. 6. **** RESOLUTION NO. 7043***
Authorizing Execution of a Contract with American Ramp Company for Construction of an Asphalt Pump Track at Binkley Park Through the Sourcewell Purchasing Cooperative

E. 7. **** RESOLUTION NO. 7044***
Repealing and Replacing Resolution No. 6926; Establishing Salary Structures and Incentive/Certification Pay Schedules for Firefighters and Police Officers; Establishing Special Longevity Pay Schedules for Newly Hired Firefighters and Police Officers; Providing for an Effective Date

Requests to Advertise

F. 1. **** REQUEST TO ADVERTISE***
Purchase and Installation to Replace Existing Ballfield Fencing at Old Settlers Park

Consider Board/Commission Appointments

G. 1. **APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS**
(a) Main Street Advisory Board (3)

G. 2. **APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS**
(a) Animal Control Advisory Committee (2)

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

H. COUNCIL COMMENTS

Executive Session

I. 1. EXECUTIVE SESSION

In accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the City Council may hold an Executive Session if the discussion of any of the items identified in this agenda, or any of the items identified below, concern one or more of the following:

Tex. Gov't Code § 551.071	Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.
Tex. Gov't Code § 551.072	Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
Tex. Gov't Code § 551.073	Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
Tex. Gov't Code § 551.074	Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing.
Tex. Gov't Code § 551.076	Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit.
Tex. Gov't Code § 551.087	Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. (a) Sherman Hospital Project
Tex. Gov't Code § 551.089	Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices.

The Council reconvenes into General Session

J. 1. OPEN MEETING

Reconvene into Open Meeting and Consider Action, if any, on items discussed in Executive Session

K. ADJOURNMENT

COUNCIL CALENDAR

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on Friday, March 3, 2023 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 3rd day of March 2023.
City of Sherman, Texas

_____
City Clerk

The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time.

All agenda items are subject to final action by the City Council.

An unscheduled closed executive session may be held if the discussion of any of the above agenda items concerns the purchase, exchange, lease or value of real property; the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; the deployment or use of security personnel or equipment; or requires consultations with the City Attorney.

At the discretion of the City Council, non-agenda items under the headings of "Citizens Requests", "Media Questions", and "Council Concerns" may be presented to the Council for informational purposes; however, by law, the Council shall not discuss, deliberate, or vote upon such matters except that a statement of specific factual information, a recitation of existing policy, and deliberations concerning the placing of the subject on a subsequent agenda may take place.

The City Attorney has approved the Executive Session items on this agenda.

PERSONS WITH DISABILITIES, WHO PLAN TO ATTEND THIS MEETING AND WHO MAY NEED ASSISTANCE, ARE REQUESTED TO CONTACT LINDA ASHBY AT (903) 892-7204, TWO (2) WORKING DAYS PRIOR TO THE MEETING SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.

Mayor	Deputy Mayor	Council Members	
David Plyler	Josh Stevenson	Henry Marroquin, Council-At-Large, PL #1	Josh Stevenson, Council – District #2
		Juston Dobbs, Council-At-Large, PL #2	Pamela L. Howeth, Council – District #3
		Shawn C. Teamann, Council – District #1	Daron Holland, Council – District #4

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **A. 4.**

Meeting Date: 03/06/2023

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE CALLED CITY COUNCIL MEETING AND PLANNING AND ZONING COMMISSION MEETING OF MARCH 23, 2022, THE CALLED MEETING OF THE TAX INCREMENT FINANCING BOARD #8 OF FEBRUARY 20, 2023, AND THE REGULAR CITY COUNCIL MEETING OF FEBRUARY 20, 2023.

Attachments

March 23, 2022 - Called Mtg - Joint w/ P&Z

P&Z and City Council Legal Fundamentals - March 23, 2022

February 20, 2023 - Called TIRZ #8 Meeting

February 20, 2023

Leadership Sherman Project - Grand Central Station

STATE OF TEXAS §

March 23, 2022

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Joint Called Meeting of the Sherman City Council and the Planning and Zoning Commission was begun and held in the City Council Chambers on March 23, 2022.

COUNCIL MEMBERS PRESENT: Mayor David Plyler; Deputy Mayor Pam Howeth. Council Members Dobbs, Marroquin, Stevenson, Teamann.

COUNCIL MEMBERS ABSENT: Council Member Holland.

PLANNING AND ZONING COMMISSION PRESENT: Clay Mahone, Glenn Whitaker, Shawn Davis, Leigh Ann Sims, Paul Manley, Bryan Blagg.

PLANNING AND ZONING COMMISSION ABSENT: David Downtain.

CITY STAFF PRESENT: Robby Hefton, City Manager; Terrence Steele, Assistant City Manager; Clint Philpott, Assistant City Manager; Ryan Pittman, Attorney, Abernathy, Roeder, Boyd, Hullett; Wayne Lee, Director of Engineering; Rob Rae, Director of Development Services; Nate Strauch, Community and Support Services Manager; Junior Jaimes, Computer Support Technician; Kerri Turner, Administrative Assistant; Teri Fine, Assistant to the City Manager; Linda Ashby, City Clerk.

PURPOSE:

Call to Order, Quorum Determined, Meeting Declared Open

Pledge of Allegiance Led by Council Member Josh Stevenson

Invocation by Council Member Josh Stevenson

Citizen Comments

Council Member and Planning and Zoning Commissioner Training Workshop Conducted by Abernathy, Roeder, Boyd & Hullett, P.C.

(a) Open Government Requirements, including Open Meetings Act and Public Information Act
(b) Ethics in Government
(c) Critical Issues in Planning and Zoning and Economic Development

Council Comments

Executive Session
In Accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the City Council may hold an Executive Session if the discussion of any of the items identified in this agenda, or any of the items identified below, concern one or more of the following:

TEX. GOV'T CODE § 551.071 --
Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of

Professional conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.

TEX. GOV'T CODE § 551.072 --
Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

TEX. GOV'T CODE § 551.073 –
Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

TEX. GOV'T CODE § 551.074 –
Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing

TEX. GOV'T CODE § 551.076 –
Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit

TEX. GOV'T CODE § 551.087 –
Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect

TEX. GOV'T CODE § 551.089 –
Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices

Open Meeting

Adjournment

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

Mayor Plyler called the meeting to order at 11:06 a.m., declared a quorum present, and opened the Called City Council Meeting.

PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER JOSH STEVENSON
INVOCATION BY COUNCIL MEMBER JOSH STEVENSON

Clay Mahone, Planning and Zoning Commission Chairman, called the Planning and Zoning Commission Meeting to order.

Participants got their lunch from 11:07 to 11:21, prior to the actual start of the meeting.

CITIZEN COMMENTS
There were no citizen's comments.

COUNCIL MEMBER AND PLANNING AND ZONING COMMISSIONER TRAINING WORKSHOP CONDUCTED BY ABERNATHY, ROEDER, BOYD & HULLETT, P.C.
Robby Hefton, City Manager, introduced the agenda for today's meeting and said there would be a joint Executive Session at the end of the meeting.

Open Government Requirements, including Open Meetings Act and Public Information Act
Ryan Pittman, City Attorney, said his law firm has served as Sherman's City Attorney since October 2020, and they appreciate the trust that the Council and staff place in them. Today he will discuss open government, public information act, ethics, and critical issues related to planning and zoning and economic development. As a "bottom line," he wanted them to be able to "keep themselves out of jail."

The Open Meetings Act governs City Council and Planning and Zoning Commission Meetings. But it also governs quorums of members at other events. A violation of the Open Meetings Act is remedied through criminal prosecution. The people who would be susceptible to criminal prosecution would be the members of the governmental body, not the staff. He also addressed the penalty for a violation of the Open Meetings Act.

Any member of the governmental body would violate the act if they:

- Willfully called or aided in calling or organizing a special meeting or session which is closed to the public
- Willfully closes or aids in closing a regular meeting or session to the public
- Willfully participates in a regular or special called meeting or session which is closed to the public where a closed meeting is not permitted by the provisions of the Act

He said the Act does allow them to go into closed sessions, but only in very limited circumstances. He said the goal is to ensure transparency in open government. He said that Texas, is second only to Florida, in how restrictive it is for governmental bodies to do what they need to do. He said these rules don't apply to the State Legislature.

Mr. Pittman explained the two ways for a meeting to occur. These include a formal meeting or a gathering of a quorum or more of the members. It also doesn't require the quorum to be in the same location, and the violation could be triggered by social media. If you discuss City business on social media and a quorum of Council Members engage with you, that could be a deliberation, even though there is no formal action. He added that a quorum is a majority of the governing body

Therefore, a regular meeting could violate the Act, but so can discussions on social media of members of the governing body. A social gathering of members of the governmental body would be okay, as long as any discussion of public business or public policy, over which they have jurisdiction, is incidental to the gathering. However, there is no definition for "incidental."

Mr. Pittman said it is difficult, because when you have members of the governmental body together, they may want to talk about business. He urged them to be aware of their surroundings and be aware of who is in attendance, even in the case of cross-over groups that may have Council Members or Planning and Zoning Commission Members or other committees. He said these are okay, but should be posted as a meeting.

Mr. Blagg asked about being at a public event, but wanting to talk about a past event, where the action has already been taken. Mr. Pittman said that would still be City business even if it was a past action that has already been taken. If there was a quorum or more, he said that would be subject to the Act. It doesn't apply only to action items that are coming to the Council in the future, the language says, any discussion of public business or public policies, over which the governing body has supervision or control, which is almost everything.

Mr. Pittman said the law is very restrictive and hasn't been updated over the years for the new methods of communication, such as online and through text.

He asked what is a "deliberation." The definition under the Act is "a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business." Also, deliberation doesn't only mean spoken communication. It would also include a social media conversation, text messaging, written notes, electronic mail, and the receipt of information.

He said there are some provisions for staff and attorney to provide members of the governmental body with information they need, such as through an email. However, it becomes "a problem" if there is a "reply all."

Mr. Hefton asked if that would extend to Rob Rae, Director of Development Services, and his ability to communicate by email with the Planning and Zoning Commission, and if they respond back individually to him and not use "reply all." Mr. Pittman clarified that all the requirements of the Act apply to both the City Council and the Planning and Zoning Commission. He said if someone asks a question only to Mr. Rae, there are some provisions that would allow Mr. Rae to direct the answer back out to everyone.

Mr. Pittman addressed the basic requirement to hold a public meeting.

- Meetings must be open to the public
- Notice of a meeting must be posted in a place readily accessible to the general public, at least 72 hours before the scheduled time of the meeting
- Minutes or a recording must be made and kept. Minutes must state the subject of each deliberation, and indicate each vote, order, decision, or other action taken.
- Closed or Executive Session procedures must be followed.

He said there are some exceptions, if there is a bona fide emergency. An Executive Session can be used to discuss "anything" on the agenda, but the item must be identified. He added that legal issues that are discussed outside of Executive Session, essentially waive the attorney-client privilege. There can be no final action or decision or vote in Executive Session. Not even a "straw vote." There can be statements of direction or objection. He also said to be careful in directing the staff to do something from Executive Session. The waiver of the attorney-client privilege is not a Council Member talking to the City Attorney about the issue, it is them talking to someone that was not in Executive Session, about the issue.

Mr. Pittman asked if a Council Member could be found criminally liable if they didn't know what the law was, or if what they were doing was wrong. He said ignorance of the law is not a defense. The only requirement is that the participant knows they are participating in a closed meeting, not necessarily that it was illegal.

As for public comments, Mr. Pittman said the Legislature requires the City to allow people to speak, either before or during each agenda item. There are some rules to follow. It's a public forum, and you can't tell them to stop talking because you don't like what they're saying. It is protected by the

First Amendment. Speech that merely causes public inconvenience, annoyance, or unrest is still protected. However, there are some things that can be done if they try to disrupt the meeting. If they won't stop trying to disrupt the meeting, they can be escorted out. They can also be removed for slander or defamation, but be careful, because that's hard to prove. Mr. Hefton confirmed that vulgarity is protected speech.

Mr. Mahone said during their public comments, he usually asks for "new information" and not repeating what others have said. Mr. Pittman said it was okay to "encourage" that, but you can't turn their microphone off or tell them to sit down or remove them from the room, just for repeating something that was already said. He added that it is okay for the City to put a time limit on the comments.

Council Member Teamann said there was a change about two years ago that said you could limit comments to only items that were on the agenda. Mr. Pittman said the change said that the City is legally required to allow people to speak on agenda items. The determination was made that it could be limited to agenda items and not allow them to speak on whatever they wanted to talk about. The law was not that you couldn't let them speak on something that was not on the agenda, but that you had to let them speak on something that was on the agenda. The City is not required to allow them to speak on non-agenda items. If the Council allows them to speak on a non-agended item, that makes it harder in the future to not let someone speak on a non-agended item.

Mr. Pittman addressed the Texas Public Information Act. Even on personal email or texts, if the information is related to City or P&Z business, or the phone is used in performing official duties, and no exception applies, it is public information. To be deemed personal, the documents must not have any connection with the City's transaction of official business. Communications that are truly personal, are those that have no connection to City business.

Council Member Teamann asked if you received a question on your personal cell phone and didn't answer it, does that open up your personal cell phone. Mr. Pittman said it depends on the wording of the request, but if it's a request for only communications that you've sent or received, it would apply to your personal information.

Mr. Hefton confirmed that the phone's owner determines if it is on their personal phone, the requestor can't go through your cell phone. You must do it and provide wat is requested. He added, that it doesn't matter what device it's on, if it's about City business, it's discoverable, under the Public Information Act.

Mr. Pittman reminded them there are also time limits by which the Council must respond to a public information request. Council Member Teamann asked about the retention period on cell phone messages. Mr. Pittman said most texts and emails, must be kept while they are "administratively valuable." There are also a lot of exceptions to allow withholding information.

The City has adopted the State's records retention requirements by law, and adheres to the prescribed retention schedules. The requirements depend on the subject matter of the record. Most phone text messages are required for retention "as long as it's administratively valuable to you." He said the indiscriminately deleting of records on their phones is "problematic." He added, that most items from the City will be a duplicate copy and will not need to be kept.

Ethics in Government

Mr. Pittman said the next discussion is on ethics and what requirements apply to public officials. He said these requirements apply to both the City Council and the Planning and Zoning Commission members, however it is most likely for Council Members. Sherman's conflicts of interest mirror the requirements by the State. Two statues deal with this.
He explained that a conflict of interest would be if a local public official "knowingly participates in a

vote on a matter involving a business entity or real property in which the official has a substantial business interest if it is reasonably foreseeable that an action on the matter would confer a special economic benefit on the business entity or real property."

He urged them to "get the staff involved" if there was a possible conflict of interest, because there are criminal penalties. There are also conflicts of interest with family members, those in the first degree of blood or marriage, such as a parent, child, spouse, step-child, parent-in-law, child-in-law.

He said a substantial interest in a business entity is defined as:

- The person owns 10% or more of its voting stock or shares, or owns either 10% or more or $15,000 or more of its fair market value
- The funds received by the person from the business entity exceed 10% of the person's gross income for the previous year

A person would have a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more.

Mr. Pittman said when a public official has a substantial interest in an entity, when that entity comes before the body, the rules only apply when you are actually voting on the matter. Public discussion or public deliberation of a matter involving your employer or spouse's employer is okay. When the vote happens, the public official is required to abstain, which means not participate in the vote, and not participate in any discussion of the matter, that is before the body for a vote.

When there is a true conflict of interest, there is also a requirement to disclose that conflict of interest, whether or not you participate in the discussion and the vote. By law, that disclosure is supposed to happen prior to the body participating and voting on the matter. But if it isn't done prior to, it must be done immediately after.

It's not enough that your employer comes before the entity for a vote, what matters is if there is some special economic effect, on the entity or property, that is distinguishable from the effect on the public. The test is, are you voting on something that would give the conflicting business some special economic effect that's different than what is felt by the rest of the public. He urged them to be aware of the issue, so they can have a discussion, before the vote.

Mr. Hefton asked about when the City does business with a Council Member's business. He said that was hard to determine without reviewing the specifics of a situation. He gave some hypothetical examples. Mr. Hefton said the City has a budget to spend any money on anything. The budget is approved by City Council, and the budget could include payments to a Council Member's business that would cause a conflict of interest. If Council Members had to abstain from passing the budget, the City couldn't pass a budget. Mr. Pittman said there is an exception for that under the law. If everyone has a conflict, or more than a quorum has a conflict, such that a quorum couldn't vote on the item, then they would still need to disclose it, but could vote on it. He said this rule especially applies for the budget.

Council Member Dobbs asked about all the information that Council Members are privity too on real estate development and the purchase of property. Mr. Pittman said there is a reference in the City Charter that says a Council Member is not supposed to use their position for personal gain. He said this is a fine line, but if a Council Member feels like the only way they know about something is through their position, and that's why they are taking an action, that's probably a problem. He added that, if information is publicly available, it's not a problem. It's when confidential information is only known because of the public official's position that it is a problem.

Mr. Pittman addressed gifts, adding that, it is considered bribery to accept, solicit or give a gift or "benefit" in exchange for a vote or similar exercise of discretion, regardless of the amount of the gift or benefit.

He addressed when it is okay to accept a gift:

- The item has a value of less than $50 (excluding cash, gift cards/certificates, checks)
- A gift from a person you have a familial, personal or business relationship that is independent of your position with the City
- Benefits you are entitled to receive by law or independent of your position with the City, such as jury duty
- Political contributions made under Texas law
- Food, lodging, transportation or entertainment, as a guest, so long as any applicable reporting requirements are followed.

Mr. Pittman addressed specific scenarios with Council Members. He said there's nothing wrong with having a conflict of interest. What is wrong, is that if you have a conflict of interest, and you don't disclose it, and you participate in the vote. The best practice is to be cautious and to disclose it.

Critical Issues in Planning and Zoning and Economic Development

EXECUTIVE SESSION – IN ACCORDANCE WITH CHAPTER 551, GOVT. CODE, V.T.C.S., (OPEN MEETINGS LAW)

THE CITY COUNCIL WILL NOW HOLD AN EXECUTIVE SESSION PURSUANT TO THE PROVISIONS OF THE OPEN MEETINGS LAW, CHAPTER 551, GOVERNMENT CODE, VERNONS TEXAS CODES ANNOTATED, IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN THE FOLLOWING SECTIONS.

TEX. GOV'T CODE § 551.071 --
SEEKING THE ADVICE OF ITS ATTORNEY ABOUT PENDING OR CONTEMPLATED LITIGATION, SETTLEMENT OFFERS OR ANY MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT

TEX. GOV'T CODE § 551.072 --
DELIBERATING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.073 --
DELIBERATING A NEGOTIATED CONTRACT FOR A PROSPECTIVE GIFT OR DONATION TO THE CITY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.074 --
DELIBERATING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF A PUBLIC OFFICER OR EMPLOYEE; OR TO HEAR A COMPLAINT OR CHARGE AGAINST AN OFFICER OR EMPLOYEE UNLESS THE OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE DELIBERATION OR HEARING REQUESTS A PUBLIC HEARING

TEX. GOV'T CODE § 551.076 –
DELIBERATING THE DEPLOYMENT, OR SPECIFIC OCCASIONS FOR IMPLEMENTATION, OF SECURITY PERSONNEL OR DEVICES OR A SECURITY AUDIT

TEX. GOV'T CODE § 551.087 –
DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT

TEX. GOV'T CODE § 551.089 --
DELIBERATING SECURITY ASSESSMENTS OR DEPLOYMENTS RELATING TO INFORMATION RESOURCES TECHNOLOGY, NETWORK SECURITY INFORMATION, OR THE DEPLOYMENT OR SPECIFIC OCCASIONS FOR IMPLEMENTATION OF SECURITY PERSONNEL, CRITICAL INFRASTRUCTURE OR SECURITY DEVICES

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 12:51 p.m.

On Motion duly made and carried, the Executive Session recessed at 1:25 p.m. and reconvened in Open Meeting.

OPEN MEETING
Reconvene into Open Meeting and take action, if any, on items discussed in Executive Session.

COUNCIL COMMENTS
There were no Council comments.

ADJOURNMENT
There being no further business to come before the City Council, motion was duly made and approved to adjourn the Called Meeting at 1:25 p.m.

_____
MAYOR

ATTEST

_____
CITY CLERK

P&Z and City Council Legal Fundamentals

Presented by:
Ryan D. Pittman
rpittman@abernathy-law.com

A | R | B | H
ABERNATHY ROEDER BOYD HULLETT
EST. 1876

Sherman
CLASSIC TOWN. BROAD HORIZON.

LET'S GET INTO IT

- Open Government, or how to avoid jail time!
  - Open Meetings Act
  - Public Information Act
- Ethics in Government
- Critical Issues
  - Planning & Zoning
  - Economic Development

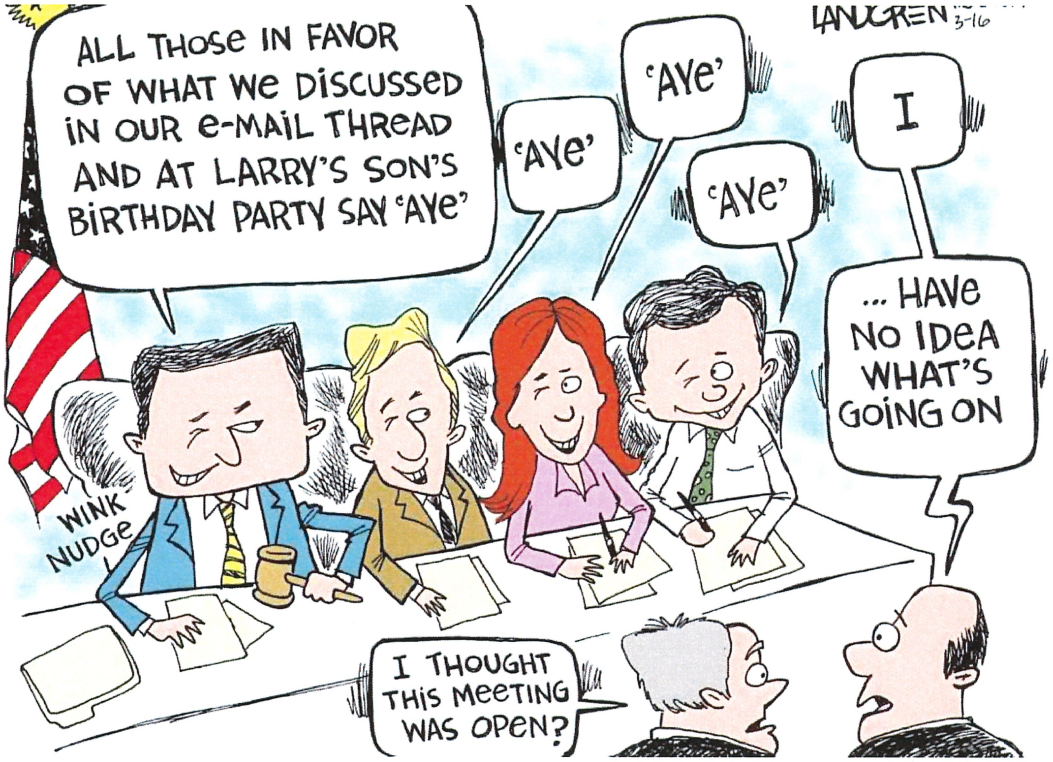
TEXAS OPEN MEETINGS ACT

Criminal penalties for noncompliance with the Open Meetings Act?

- Punishment by fine of $100 to $500; and/or
- Imprisonment in the county jail for 1 to 6 months.

Any member of a governmental body who:

- Willfully calls or aids in calling or organizing a special meeting or session which is closed to the public, or
- Willfully closes or aids in closing a regular meeting or session to the public, or
- Willfully participates in a regular or special called meeting or session which is closed to the public where a closed meeting is not permitted by the provisions of the Act.



TOMA GOALS

The Act's stated purpose is to open governmental decision-making to the public.

The Act is intended to safeguard the public's interest in knowing the workings of its governmental bodies.

"Transparency is furthered by allowing the public to have access to governmental decision making." *Acker v. Texas Water Comm'n*, 790 S.W.2d 299 (Tex. 1990).

WHAT IS A MEETING?

(A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

1. that is conducted by the governmental body or for which the governmental body is responsible;
2. at which a quorum of members of the governmental body is present;
3. that has been called by the governmental body; and
4. at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.

"Incidental" discussion of public business at social functions, conventions/workshops, ceremonial events or press conferences is permitted.

WHAT IS A DELIBERATION?

"Deliberation" means a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.

Does "deliberation" only mean spoken communication?

No. "In addition, were we to conclude that only spoken communications are included in the definition of 'deliberation', then members of a governmental body could easily avoid the Act's requirements by discussing public business via written notes and electronic mail. We decline to give the term 'deliberation' such a limited construction." JC-307 (2000)

P&Z and City Council Legal Fundamentals

Abernathy, Roeder, Boyd & Hullett, P.C.

BASIC REQUIREMENTS

- Meetings must be open to the public (§ 551.005)
- Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting (§ 551.043)
- Minutes or a recording must be made and kept. Minutes must state the subject of each deliberation, and indicate each vote, order, decision, or other action taken (§ 551.021)
- Closed or executive session procedures followed.

CITY ATTORNEY CONSULTATION

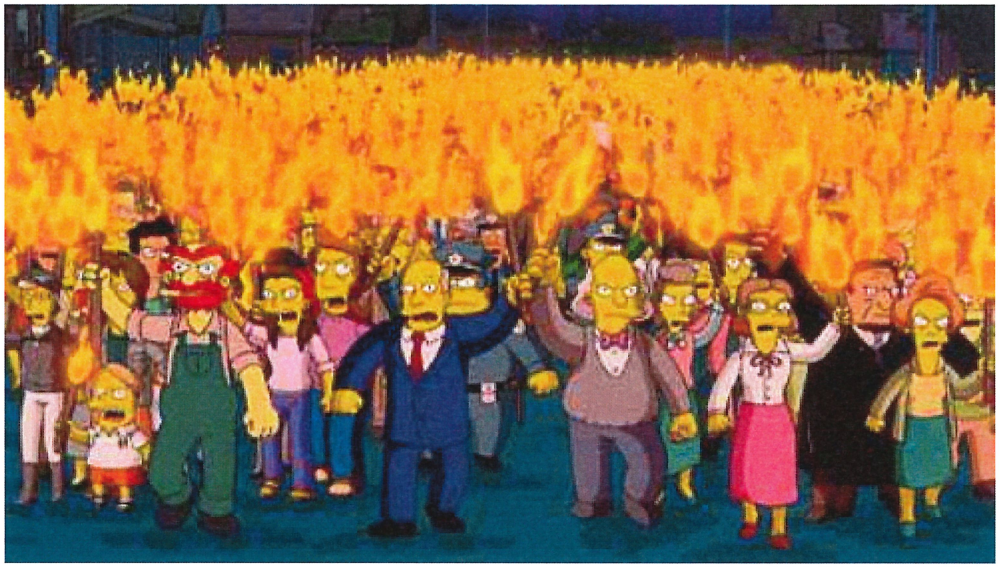
- Pending or contemplated litigation and settlement offers; or
- Matters where the duty of the City Attorney to his/her client, the City, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflict with the Act.
- Waiver of attorney-client privilege if discussion is conducted in public session
- No final action, decision or vote

CRIMINAL INTENT?

Can a Councilmember or Commissioner be criminally prosecuted if he/she did not intentionally or knowingly violate the open meetings laws?

- 1998 case: Individual would not have to know that a closed meeting was illegal in order to be convicted of participating in an illegally closed meeting.
- Individual would only have to know that he/she was participating in a closed meeting.

Actions taken in violation of TOMA are voidable.



PUBLIC COMMENT

- Once public participation is permitted, the speaker is accorded First Amendment rights.
- Governing body may not selectively prohibit speakers based on their viewpoint or status in the community.
- Any restrictions on speech must be content neutral.
- Speech that merely causes public inconvenience, annoyance or unrest is protected.

LIMITING PUBLIC COMMENT

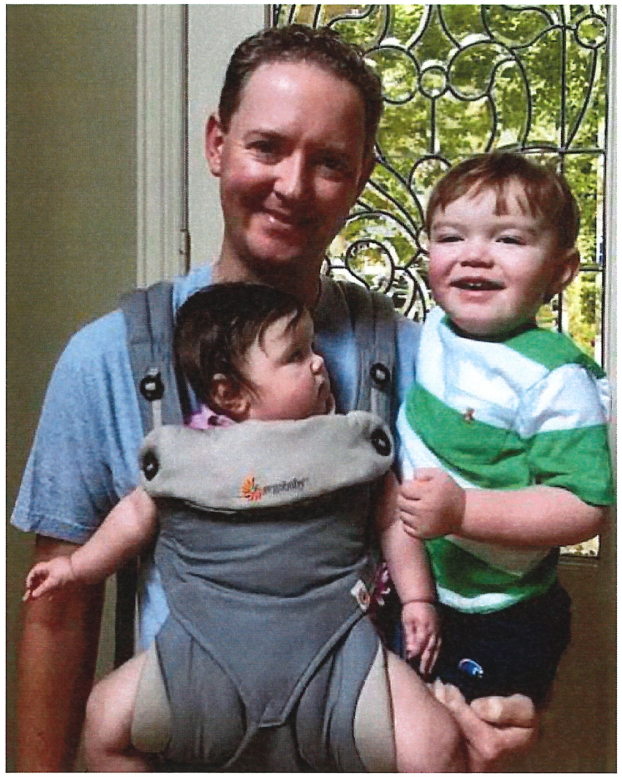
- Disruptive behavior – conduct that seriously violates rules of procedure that have been established to govern the conduct of meetings.
- Fighting words – words that would cause an average person to fight (not an overly sensitive person).
- Indecent or abusive language or an offensive gesture that tends to incite an immediate breach of the peace.
- A filibuster who impairs the rights of other would-be participants.

TEXAS PUBLIC INFORMATION ACT

Are communications on personal email, text, etc. private?

- If the information is related to City or P&Z business or the Councilmember or Commissioner uses the information in performing official duties and no exception applies, it is public information. ORD 2003-811 (2000)

To be deemed personal, the documents must not have any connection with the City's transaction of official business.



"TEMPORARY CUSTODIAN"?

2019 Legislative session

- Temporary Custodian is any current or former public official or employee holding public information
- Applies to public information on private devices and private accounts
- Requires PIO to take effort to acquire information to respond to request
- Places 10 calendar day duty to provide info subject to statutory penalty (discipline, civil and criminal)
- Starts 10 calendar day administrative processing on day info returned to governmental body

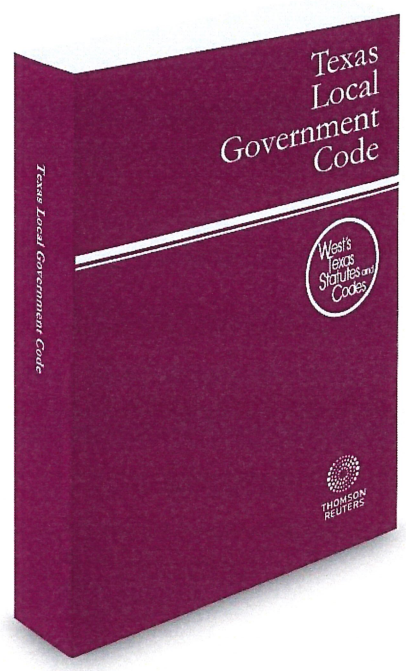
RECORDS RETENTION

- Minimum amount of time that must pass after the creation, recording or receipt of a record before it is eligible for destruction
- Retention period depends on subject matter of record: From "destroy immediately" to "keep permanently"
- An official who uses a private device or account to conduct or discuss City business should consider:
  (1) immediately forwarding any records on a personal device to a City device or account;
  (2) limiting the use of a personal device or account for only transitory information (as described in the retention schedules); or
  (3) using some method of capture to preserve the information for the required period of retention
- Class A misdemeanor

CONFLICTS OF INTEREST

- In general, a local public official commits an offense if the official knowingly participates in a vote on a matter involving a business entity or real property in which the official has a substantial business interest if it is reasonably foreseeable that an action on the matter would confer a special economic benefit on the business entity or real property.

- Family member imputation – first degree of blood or marriage (parent, child, spouse, step-child, parent-in-law, child-in-law)



SUBSTANTIAL INTEREST: BUSINESS ENTITY

A public official has a substantial interest in a business entity if:

(1) The person owns 10% or more of its voting stock or shares, or owns either 10% or more or $15,000 or more of its fair market value; or

(2) The funds received by the person from the business entity exceed 10% of the person's gross income for the previous year.

SUBSTANTIAL INTEREST: REAL PROPERTY

A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more.

ABSTENTION

- If you have a substantial interest in a business entity, you must abstain if the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public.
- If you have a substantial interest in real property, you must abstain if it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property that is distinguishable from the effect on the public.
- Abstention and filing of affidavits required BEFORE voting or participating in the matter

GIFTS

- Bribery – Unlawful to accept, solicit or give a gift or "benefit" in exchange for a vote or similar exercise of discretion.
- Also unlawful to accept, solicit or give a gift unless:

1. The item has a value of less than $50 (excluding cash, gift cards/certificates, checks).
2. A gift from a person you have a familial, personal or business relationship that is independent of your position with the City.
3. Benefits you are entitled to receive by law or independent of your position with the City (e.g, jury duty fee)
4. Political contributions made under Texas law.
5. Food, lodging, transportation or entertainment so long as any applicable reporting requirements are followed.

ETHICS CHECKLIST

- Have I reviewed Chapter 171 of the Texas Local Government Code?
- Have I reviewed Chapter 176 of the Texas Local Government Code?
- Have I reviewed Article X of the City Charter?
- Do I or does a relative of mine engage in a business in any way related to issues which may come before me as a member of the Council or Commission?
- Could that business potentially benefit or be harmed by a decision of the Council or Commission?
- Do I or does a relative of mine have real estate investments that could cause a conflict of interest?

P&Z and City Council Legal Fundamentals

Abernathy, Roeder, Boyd & Hullett, P.C.

P&Z HOT TOPICS

- Rezoning requests accompanied by approved site plans and other pretty pictures
- "Zoning for dollars"
- Zoning runs with the land and cannot be tied to a particular landowner or applicant
- More flexibility on SUPs
- Development phasing requirements

Ryan D. Pittman

ECONOMIC DEVELOPMENT HOT TOPICS

- Chapter 380 Agreements
- Economic Development Sales Tax Incentives
- Tax Abatement under Chapter 312
- Tax Increment Financing
- Public Improvement Districts

THANK YOU!

STATE OF TEXAS §

February 20, 2023

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Called Meeting of the Tax Increment Financing Board #8 was begun and held in the City Council Chambers on February 20, 2023.

COUNCIL MEMBERS PRESENT: Deputy Mayor Josh Stevenson
Council Members Dobbs, Marroquin
Grayson County Judge Bruce Dawsey

COUNCIL MEMBERS ABSENT: None.

CITY STAFF PRESENT: Robby Hefton, City Manager; Terrence Steele, Assistant City Manager; Clint Philpott, Assistant City Manager; Ryan Pittman, Attorney, Abernathy, Roeder, Boyd, Hullett; Mary Lawrence, Director of Finance; Rob Rae, Director of Development Services. Teri Fine, Assistant to the City Manager; Linda Ashby, City Clerk.

PURPOSE: **Call to Order, Quorum Determined, Meeting Declared Open**

Citizen Comments

Other Business
Authorizing Execution of a TIRZ #8 Reimbursement Agreement with Heritage Ranch Municipal Utility District No. 1 of Grayson County for the Construction of Public Infrastructure within Sherman Tax Increment Reinvestment Zone, Number Eight (#8) in the City of Sherman

Executive Session
In Accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the City Council may hold an Executive Session if the discussion of any of the items identified in this agenda, or any of the items identified below, concern one or more of the following:

TEX. GOV'T CODE § 551.071 --
Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.

TEX. GOV'T CODE § 551.072 --
Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

TEX. GOV'T CODE § 551.073 –
Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

TEX. GOV'T CODE § 551.074 –
Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing

TEX. GOV'T CODE § 551.076 –
Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit

TEX. GOV'T CODE § 551.087 –
Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect

TEX. GOV'T CODE § 551.089 –
Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices

Open Meeting

Adjournment

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN
Deputy Mayor Stevenson called the meeting to order at 5:02 p.m., declared a quorum present, and opened the Tax Increment Financing Board #8 Meeting.

CITIZEN COMMENTS
There were no citizen's comments.

OTHER BUSINESS
AUTHORIZING EXECUTION OF A TIRZ #8 REIMBURSEMENT AGREEMENT WITH HERITAGE RANCH MUNICIPAL UTILITY DISTRICT NO. 1 OF GRAYSON COUNTY FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITHIN SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER EIGHT (#8) IN THE CITY OF SHERMAN
Mary Lawrence, Director of Finance, said in 2021, the City entered into a Master Development Agreement with the developer for Heritage Ranch, Tax Increment Reinvestment Zone #8, which is the residential part of Heritage Ranch.

According to the Agreement, the City entered into a Reimbursement Agreement to reimburse the Municipal Utility District, that's paying for the public improvements to that district. These are the improvements that the City would have done anyway, but they will be constructed as part of the Developer's Agreement.

ACTION TAKEN.

Motion by Council Member Marroquin to approve a TIRZ #8 Reimbursement Agreement with Heritage Ranch Municipal Utility District No. 1 for the construction of public infrastructure, as presented. Second by Council Member Dobbs.

VOTING AYE: Dobbs, Marroquin, Stevenson, Dawsey.
VOTING NAY: None.
MOTION CARRIED.

EXECUTIVE SESSION – IN ACCORDANCE WITH CHAPTER 551, GOVT. CODE, V.T.C.S., (OPEN MEETINGS LAW)

THE CITY COUNCIL WILL NOW HOLD AN EXECUTIVE SESSION PURSUANT TO THE PROVISIONS OF THE OPEN MEETINGS LAW, CHAPTER 551, GOVERNMENT CODE, VERNONS TEXAS CODES ANNOTATED, IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN THE FOLLOWING SECTIONS.

TEX. GOV'T CODE § 551.071 --
SEEKING THE ADVICE OF ITS ATTORNEY ABOUT PENDING OR CONTEMPLATED LITIGATION, SETTLEMENT OFFERS OR ANY MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT

TEX. GOV'T CODE § 551.072 --
DELIBERATING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.073 --
DELIBERATING A NEGOTIATED CONTRACT FOR A PROSPECTIVE GIFT OR DONATION TO THE CITY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.074 --
DELIBERATING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF A PUBLIC OFFICER OR EMPLOYEE; OR TO HEAR A COMPLAINT OR CHARGE AGAINST AN OFFICER OR EMPLOYEE UNLESS THE OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE DELIBERATION OR HEARING REQUESTS A PUBLIC HEARING

TEX. GOV'T CODE § 551.076 –
DELIBERATING THE DEPLOYMENT, OR SPECIFIC OCCASIONS FOR IMPLEMENTATION, OF SECURITY PERSONNEL OR DEVICES OR A SECURITY AUDIT

TEX. GOV'T CODE § 551.087 –
DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE

LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT

TEX. GOV'T CODE § 551.089 --
DELIBERATING SECURITY ASSESSMENTS OR DEPLOYMENTS RELATING TO INFORMATION RESOURCES TECHNOLOGY, NETWORK SECURITY INFORMATION, OR THE DEPLOYMENT OR SPECIFIC OCCASIONS FOR IMPLEMENTATION OF SECURITY PERSONNEL, CRITICAL INFRASTRUCTURE OR SECURITY DEVICES

The Executive Session was not needed.

ADJOURNMENT
There being no further business to come before the Tax Increment Financing Board #8, motion was duly made and approved to adjourn the Called Meeting at 5:03 p.m.

_____
MAYOR

ATTEST

_____
CITY CLERK

STATE OF TEXAS §

February 20, 2023

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Council Chambers of City Hall on February 20, 2023.

MEMBERS PRESENT: **MAYOR DAVID PLYLER; DEPUTY MAYOR JOSH STEVENSON. COUNCIL MEMBERS DOBBS, HOLLAND, HOWETH, MARROQUIN, TEAMANN.**

MEMBERS ABSENT: **NONE.**

CALL TO ORDER — **CALL TO ORDER**

Mayor Plyler called the meeting to order at 5:00 p.m. The Pledge of Allegiance and Invocation were led by Council Member Henry Marroquin.

TAX INCREMENT FINANCING BOARD #8 — **TIRZ #8 MEETING**

Deputy Mayor Josh Stevenson called the Tax Increment Financing Board #8 Meeting to order at 5:02 p.m. and the meeting adjourned at 5:03 p.m. Council Members proceeded with the Regular Council Meeting.

APPROVE MINUTES — **APPROVE MINUTES**

The Council reviewed the Minutes of the Regular City Council Meeting of February 6, 2023, and the Called Tax Increment Financing Board #2 of February 6, 2023. Deputy Mayor Stevenson moved to approve the Minutes, as presented; Second by Council Member Howeth; All present voted AYE.
MOTION CARRIED.

CITIZEN'S COMMENTS — **CITIZEN'S COMMENTS**

There were no citizen's comments.

CONSENT AGENDA — **CONSENT AGENDA**

Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately.

The Council reviewed the Consent Agenda. Council Member Howeth moved to approve the Consent Agenda, as presented. Second by Deputy Mayor Stevenson. All present voted AYE.

Mayor Plyler introduced Ordinance No. 6567 and called for a public hearing: — **ORD 6567 POLICE & FIRE POSITIONS**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES, ENTITLED "PERSONNEL", ARTICLE 9.05, ENTITLED "CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS", AT SECTION 9.05.026, ENTITLED "AUTHORIZED NUMBER OF POSITIONS", TO REVISE THE NUMBER OF

AUTHORIZED POSITIONS IN THE FIRE DEPARTMENT; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

Billy Hartsfield, Fire Chief, said he was requesting a change to the organizational chart, but no additional personnel. He was moving ranks.

He wanted to remove the Assistant Chief position and add two Battalion Chief positions. He asked that, if the Council approves, they make this ordinance effective when Resolution 6929 is approved for the salary structure.

Robby Hefton, City Manager, explained that this item deals with the structure of the positions, and the upcoming resolution will deal with setting pay for each of those positions. Both items need to be effective at the same time.

No citizens appeared before the City Council to discuss Ordinance No. 6567.

Mayor Plyler asked that the caption of Ordinance Nos. 6568 and 6569 be read together.

ORD 6568 ABANDONING WATER EASEMENT ESTATES OF BAKER PARK

Mayor Plyler introduced Ordinance No. 6568 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) TWENTY FOOT (20') WATER EASEMENT LOCATED IN THE PROPOSED PLAT OF ESTATES AT BAKER PARK, AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH UTILITY EASEMENT IS ESTABLISHED IN VOLUME 1648, PAGE 491 OF THE DEED RECORDS OF GRAYSON COUNTY, TEXAS.

Clint Philpott, Assistant City Manager, explained that both of these ordinances involve the abandonment of water line easements. The water lines were installed prior to both developments actually developing the single-family residential.

Through the engineering process, they have relocated the lines and dedicated new easements, and this is the last piece to abandon the old location where the line originally was located.

No citizens appeared before the City Council to discuss Ordinance No. 6568.

Mayor Plyler introduced Ordinance No. 6569 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) TWENTY FOOT (20') UTILITY EASEMENT FOR CITY WATER AND SEWER LOCATED IN THE PROPOSED PLAT OF WASHINGTON MEADOWS, PHASE TWO, AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH UTILITY EASEMENT IS

ORD 6569 ABANDONING UTILITY EASEMENT WASHINGTON MEADOWS, PHASE 2

ESTABLISHED IN VOLUME 5416, PAGE 697 OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS.

No citizens appeared before the City Council to discuss Ordinance No. 6569.

The Public Hearing was closed.

Ordinance 6567 — **ORD 6567 POLICE & FIRE POSITIONS**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES, ENTITLED "PERSONNEL", ARTICLE 9.05, ENTITLED "CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS", AT SECTION 9.05.026, ENTITLED "AUTHORIZED NUMBER OF POSITIONS", TO REVISE THE NUMBER OF AUTHORIZED POSITIONS IN THE FIRE DEPARTMENT; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to adopt Ordinance No. 6567, with an effective date that is the date the corresponding civil service resolution, setting the compensation rates, is adopted by the City Council. Second by Council Member Howeth.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 6568 — **ORD 6568 ABANDONING WATER EASEMENT ESTATES OF BAKER PARK**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) TWENTY FOOT (20') WATER EASEMENT LOCATED IN THE PROPOSED PLAT OF ESTATES AT BAKER PARK, AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH UTILITY EASEMENT IS ESTABLISHED IN VOLUME 1648, PAGE 491 OF THE DEED RECORDS OF GRAYSON COUNTY, TEXAS.

Ordinance 6569 — **ORD 6569 ABANDONING UTILITY EASEMENT WASHINGTON MEADOWS, PHASE 2**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) TWENTY FOOT (20') UTILITY EASEMENT FOR CITY WATER AND SEWER LOCATED IN THE PROPOSED PLAT OF WASHINGTON MEADOWS, PHASE TWO, AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH UTILITY EASEMENT IS ESTABLISHED IN VOLUME 5416, PAGE 697 OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS.

ACTION TAKEN.

Motion by Council Member Dobbs to adopt Ordinance Nos. 6568 and 6569, as presented. Second by Deputy Mayor Stevenson.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

RES 7033 HERITAGE RANCH MUD TIRZ #8 REIMBURSEMENT AGREEMENT

RESOLUTION NO. 7033 – AUTHORIZING EXECUTION OF A TIRZ #8 REIMBURSEMENT AGREEMENT WITH HERITAGE RANCH MUNICIPAL UTILITY DISTRICT NO. 1 OF GRAYSON COUNTY FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITHIN SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER EIGHT (#8) IN THE CITY OF SHERMAN

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A TIRZ #8 REIMBURSEMENT AGREEMENT WITH HERITAGE RANCH MUNICIPAL UTILITY DISTRICT NO. 1 OF GRAYSON COUNTY FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE WITHIN SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER EIGHT (#8) IN THE CITY OF SHERMAN.

Mary Lawrence, Director of Finance, said this is the same agreement that was just approved by the TIRZ #8 Board, that calls for reimbursement for the public part of the infrastructure going in that development.

ACTION TAKEN.
Motion by Deputy Mayor Stevenson to approve Resolution No. 7033, as presented. Second by Council Member Dobbs.
VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson.
VOTING NAY: None.
ABSTAIN: Teamann.
MOTION CARRIED.

RES 7034 GLOBAL WAFERS PROJECT PLAN REVIEW

RESOLUTION NO. 7034 – AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH BUREAU VERITAS FOR THE PLAN REVIEW AND BUILDING INSPECTION SERVICES FOR THE GLOBAL WAFERS PROJECT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH BUREAU VERITAS FOR THE PLAN REVIEW AND BUILDING INSPECTION SERVICES FOR THE GLOBAL WAFERS PROJECT.

Rob Rae, Director of Development Services, said this resolution sets up an agreement between the City of Sherman and Bureau Veritas to handle inspections, plan reviews, and building inspections, including fire inspections, for the Global Wafers project.

This fee will not be paid by the City of Sherman, and Global Wafers has agreed to pay the fee in lieu of their building permit fees.

ACTION TAKEN.
Motion by Council Member Teamann to approve Resolution No. 7034, as presented. Second by Deputy Mayor Stevenson.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

RES 7035 LAKE TEXOMA PUMP STATION EXPANSION DESIGN

RESOLUTION NO. 7035 – AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. FOR THE LAKE TEXOMA PUMP STATION EXPANSION PRELIMINARY DESIGN PROJECT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. FOR THE DESIGN OF THE LAKE TEXOMA PUMP STATION EXPANSION PRELIMINARY DESIGN PROJECT.

Tom Pruitt, Utility Engineer, said in May 2022, the City Council authorized a contract with Freese & Nichols Engineers for a preliminary design for the Lake Texoma Pump Station Expansion project.

Through the process, they determined options for the different pump sizes, and submitted a proposal for what was the most optimal solution. The project is moving to the final design stage, and they are preparing contract documents, suitable for bidding.

ACTION TAKEN.
Motion by Deputy Mayor Stevenson to approve Resolution No. 7035, as presented. Second by Council Member Dobbs.
VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

RES 7036 BUILDING MAINT VEHICLE

RESOLUTION NO. 7036 – AUTHORIZING THE PURCHASE OF A 2023 FORD E-450 UTILITY VAN FROM SAM PACK'S FIVE STAR FORD FOR THE BUILDING MAINTENANCE DEPARTMENT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2023 FORD E-450 UTILITY VAN FROM SAM PACK'S FIVE STAR FORD FOR THE BUILDING MAINTENANCE DEPARTMENT THROUGH BUYBOARD.
CONSENT AGENDA.

RES 7037 WESTSIDE DR REPLACEMENT WASTEWATER LINE

RESOLUTION NO. 7037 – AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREEMAN-MILLICAN, INC. FOR ENGINEERING SERVICES FOR THE WESTSIDE DRIVE REPLACEMENT WASTEWATER LINE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREEMAN-

MILLICAN, INC. FOR ENGINEERING SERVICES FOR THE WESTSIDE DRIVE REPLACEMENT WASTWATER LINE.
CONSENT AGENDA.

REQ TO ADVERTISE SALE OF LAND (1400 W. TAYLOR ST)

REQUEST TO ADVERTISE
SALE OF APPROXIMATELY 0.9 ACRES OF LAND LOCATED AT 1400 WEST TAYLOR STREET

Mr. Rae said the City owns 0.9 acres of land, located at 1400 West Taylor Street, that is not currently being used. It is located in front of the old Anderson Farm. The staff is asking permission to post this property for sale. Mayor Plyler explained that it is a triangle of property on Taylor Street.

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to approve the sale of approximately 0.9 acres of land located at 1400 West Taylor Street, as presented. Second by Council Member Holland.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

CHANGE ORDER NORTHWEST SEWER & FORCE MAIN ($33,613.93 INCREASE)

CHANGE ORDER NO. 3
NORTHWEST SEWER AND FORCE MAIN PROJECT; LYNN VESSELS CONSTRUCTION, LLC; $33,613.93 INCREASE

Mr. Pruitt said this was the third change order on this project. The first one was to adjust for material issues, the second was for the demolition work and relocation of the storm sewer that was revealed.

This change order is on the south end of Roberts Run, and the existing sewer, which was installed prior to the City's annexation of the development, was deeper than where the line is being located. There will be an additional six customers that will now be on the sewer line.

Mr. Pruitt said the contractor determining that these customers were not being served was an effective way to add them to service.

ACTION TAKEN.

Motion by Council Member Teamann to approve Change Order No. 3, in the amount of a $33,613.93 increase, for the Northwest Sewer and Force Main Project, as presented. Second by Deputy Mayor Stevenson.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

LEADERSHIP SHERMAN CLASS PROJECT

OTHER BUSINESS
RECEIVE AN UPDATE ON LEADERSHIP SHERMAN'S CLASS PROJECT

Wendy Vellotti, Kelly Corbet, Wil Bain, and Johns Williams, appeared representing the Leadership Sherman Class to provide an update on their class project, which will be done at Grand Central Station.

Grand Central Station provides a hot breakfast and lunch for those in need. Ms. Vellotti said they serve between 160 and 180 people daily for lunch and between 75 and 82 for breakfast. The facility is on the corner of Houston and Throckmorton Streets.

The Leadership Sherman project will include a 15'x35', three-sided covered pavilion, to be located across from their main location. The area currently features picnic tables that are uncovered, and this will provide a place where people can sit and relax, out of the elements.

The total cost for the project is estimated to be $23,000, and their goal is to raise $25,000 through sponsorships, to cover any overage that could happen during the construction.

Mayor Plyler commended the Leadership Sherman Program, saying they have done great projects throughout Sherman.

PARAMEDIC SCHOOL

PRESENTATION FROM FIRE DEPARTMENT CAPTAIN MASON BEAVER ON THE PARAMEDIC SCHOOL

Mason Beaver, Fire Department Captain, updated the City Council on the Department's Paramedic School, to rapidly increase the number of paramedics.

Currently they are sending two people to Grayson County College's Paramedic School. This is a year long program, which typically results in overtime coverage for every shift the students are off. The Department spends approximately $100,000 in overtime to cover one student for one year. The student also misses a complete year of working with his crew.

They have found an online school, Percom, which would allow all classroom time online. They have signed up six employees in the program. The student stays on shift during the paramedic training, and continues to work with their crews. This reduces the need for overtime.

There is still 720 outside hours for skills, hospital rotations, and ambulance ride outs. The skills sessions are a total of 84 hours, and their combined hospital clinical rotations and ambulance ride outs are 636 hours. This might still require some overtime coverage. However, they can do ambulance ride outs on their shifts.

Captain Beaver said the benefits of the new program include reducing the number of overtime hours required to maintain staffing levels, and increasing the number of paramedics faster.

Also, the Department's Medical Director is one of the Medical Directors for this school. It's normally a 20 month program, but through the online class, they can complete the program in 12 months.

Currently there are 17 EMT-Basic employees, that would be sent to school. He said it would take over seven years to "get caught up" to the Paramedic staff level. They would like to be an ALS

Department, where there are Paramedics on every ambulance, and all Firefighters are Paramedics. All other levels in the Department would also be Paramedics.

They plan to send six employees to Percom, which means they will have six new Paramedics in 12 months. The Medical Director recommends starting another six employees in six months. Captain Beaver said adding Paramedics in such quick succession will also contribute to retention.

In summation, Captain Beaver said it is costing over $100,000 annually in overtime for each Paramedic student the Department sends to school. This causes employees to work 48-hour shifts, increasing overtime. With Percom, the students will remain on shift during their training. This will also save the City at least $100,000 overtime, per student, per year.

Mr. Hefton said this was not a "top-down" suggestion to look at this program. Captain Beaver and the staff came to the City Management and said they were looking at the program and felt it would work well for the Department. Captain Beaver said the "guys came to him." They saw the need and needed a sponsor for the program. He added that the City of Sherman qualifies as an "under served" area, and the State will actually pay for the school.

Mr. Hefton said they've done a good job and the "line-level" guys have come up with great ideas about how to do their business more effectively, more efficiently, and get "boots on the ground" quicker. He felt it was a great program. He said the staff would provide future updates to the Council, on the program.

Council Member Howeth asked what other cities have used this program. Captain Beaver said the Cities of Frisco and Dallas have used the program.

Dr. James Frame, the Medical Director said he expects that the students can complete the course in eight to ten months. Captain Beaver said there is also an 85% pass rate on the first test attempt and 95% on the second test attempt. The national average is 72%.

UPDATE ON CITY PROJECTS

RECEIVE AN UPDATE ON THE CITY OF SHERMAN'S ONGOING PROJECTS

Nate Strauch, Community and Support Services Manager, presented a video update on the City's ongoing projects. Because of previous City Council interest, he advised them that the new Police Department will have two parking spaces designated for online pick-ups and transactions.

The update included the following projects:
New Police Department
Global Wafers
Moore Street
Pebblebrook, Phase 4
The Grove
Travis Heights
Belaire Project

Luella Crossing
Hwy 75 and 82
FM 1417
GAP Project

Mr. Strauch explained that there will be video on the Texas Instruments project in Executive Session.

BUDGET CALENDAR

DISCUSS AND CONSIDER APPROVAL OF THE BUDGET CALENDAR FOR FISCAL YEAR (FY) 2023-2024

Mr. Hefton presented the proposed Budget Calendar and the associated meetings. He proposed a Budget Planning Meeting for April 20, 2023; the CIP Work Session for May 25, 2023; and the Budget Workshop for June 15-16, 2023.

ACTION TAKEN.

Motion by Council Member Holland to approve the Budget Calendar for Fiscal Year 2023-2024, as presented. Second by Council Member Teamann.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

RACIAL PROFILING REPORT

RECEIVE 2022 RACIAL PROFILING REPORT

The City Council received the 2022 Racial Profiling Report from the Sherman Police Department. The Department contracts annually with Dr. Alex del Carmen to analyze their Motor Vehicle-Related Contact information and prepare an annual report. As in past, reports, the Police Department "is engaging in search practices consistent with national trends in law enforcement." No "Racial Profiling" complaints were filed during 2022 from a traffic stop.
CONSENT AGENDA.

COUNCIL COMMENTS

FIRE DEPT. PRESENTATION & RESTRUCTURING

FIRE DEPARTMENT PRESENTATION AND RESTRUCTURING

Council Member Teamann said he appreciated the City's Department Heads looking at the various opportunities to save the City money and to make it more efficient. The students being able to take the Paramedic School while at work will be a tremendous savings for taxpayers.

EXECUTIVE SESSION

EXECUTIVE SESSION – IN ACCORDANCE WITH CHAPTER 551, GOVT. CODE, V.T.C.S., (OPEN MEETINGS LAW)

THE CITY COUNCIL WILL NOW HOLD AN EXECUTIVE SESSION PURSUANT TO THE PROVISIONS OF THE OPEN MEETINGS LAW, CHAPTER 551, GOVERNMENT CODE, VERNONS TEXAS CODES ANNOTATED, IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN THE FOLLOWING SECTIONS.

TEX. GOV'T CODE § 551.071 --
SEEKING THE ADVICE OF ITS ATTORNEY ABOUT PENDING OR CONTEMPLATED LITIGATION, SETTLEMENT OFFERS OR ANY MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF

PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT

TEX. GOV'T CODE § 551.072 --
DELIBERATING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.073 --
DELIBERATING A NEGOTIATED CONTRACT FOR A PROSPECTIVE GIFT OR DONATION TO THE CITY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.074 --
DELIBERATING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF A PUBLIC OFFICER OR EMPLOYEE; OR TO HEAR A COMPLAINT OR CHARGE AGAINST AN OFFICER OR EMPLOYEE UNLESS THE OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE DELIBERATION OR HEARING REQUESTS A PUBLIC HEARING

TEX. GOV'T CODE § 551.076 –
DELIBERATING THE DEPLOYMENT, OR SPECIFIC OCCASIONS FOR IMPLEMENTATION, OF SECURITY PERSONNEL OR DEVICES OR A SECURITY AUDIT

TEX. GOV'T CODE § 551.087 –
DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT

A) Sherman Hospital Project

TEX. GOV'T CODE § 551.089 --
DELIBERATING SECURITY ASSESSMENTS OR DEPLOYMENTS RELATING TO INFORMATION RESOURCES TECHNOLOGY, NETWORK SECURITY INFORMATION, OR THE DEPLOYMENT OR SPECIFIC OCCASIONS FOR IMPLEMENTATION OF SECURITY PERSONNEL, CRITICAL INFRASTRUCTURE OR SECURITY DEVICES

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:46 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:13 p.m. and reconvened in Open Meeting.

OPEN MEETING **OPEN MEETING**

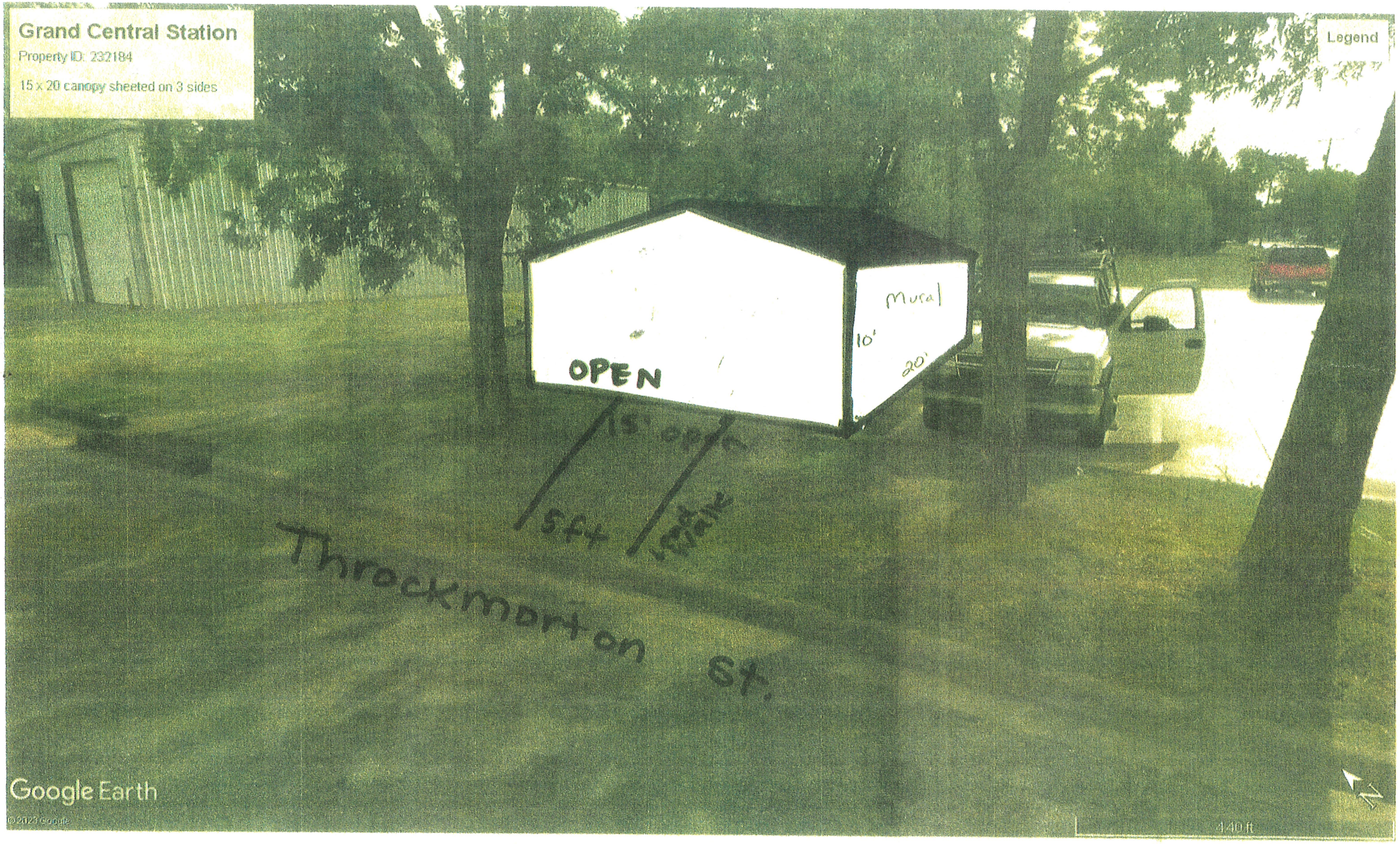
Reconvene into Open Meeting and take action, if any, on items discussed in Executive Session.

ADJOURNMENT **ADJOURNMENT**

On Motion duly made and carried, the meeting adjourned at 6:14 p.m.

MAYOR

CITY CLERK


Grand Central Station
Property ID: 232184
15 x 20 canopy sheeted on 3 sides
Legend
OPEN
Mural
10'
20'
15' open
5ft
Throckmorton St.
Google Earth
©2023 Google
440 ft

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **C. 1.**

Meeting Date: 03/06/2023

Approved By: Robby Hefton, City Manager

Caption:

CONSENT AGENDA

Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Issue:

E. 4. **** RESOLUTION NO. 7041***
Authorizing Submission of a Grant Application and the Acceptance of the Energy Efficiency and Conservation Block Grant (EECBG) Program through the Department of Energy (DOE) for the City of Sherman

E. 5. **** RESOLUTION NO. 7042*** **(NO ACTION TAKEN AT THE JANUARY 3, 3023 REGULAR CITY COUNCIL MEETING)** Accepting the Contract with Piazza Construction, LLC as Complete for the Construction of the WWTP Operations Building Addition & Remodel

E. 6. **** RESOLUTION NO. 7043***
Authorizing Execution of a Contract with American Ramp Company for Construction of an Asphalt Pump Track at Binkley Park Through the Sourcewell Purchasing Cooperative

E. 7. **** RESOLUTION NO. 7044***
Repealing and Replacing Resolution No. 6926; Establishing Salary Structures and Incentive/Certification Pay Schedules for Firefighters and Police Officers; Establishing Special Longevity Pay Schedules for Newly Hired Firefighters and Police Officers; Providing for an Effective Date

F. 1. **** REQUEST TO ADVERTISE***
Purchase and Installation to Replace Existing Ballfield Fencing at Old Settlers Park

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SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 1.**

Meeting Date: 03/06/2023

Prepared By: Clint Philpott, Assistant City Manager

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6570

Establishing Maximum, Reasonable and Prudent Rates of Speed Along Certain Portions of State Highway 56 in the Corporate Limits of Sherman, Grayson County, Texas; Fixing Penalties for Violation Thereof; Declaring an Emergency; Providing for a Relealer

Issue:

Establishing Maximum, Reasonable and Prudent Rates of Speed Along Certain Portions of State Highway 56 in the Corporate Limits of Sherman, Grayson County, Texas; Fixing Penalties for Violation Thereof; Declaring an Emergency; Providing for a Relealer

Background:

The Texas Department of Transportation submitted information to Austin after the District Office received a request to review existing speed limits along west SH 56. After the speed study was finished, Austin approved a change in speed zone limits. Attached is a speed zone map showing the results of the study and the proposed speed zone limits.

Origination:

Texas Department of Transportation

Financial Consideration:

None

Staff Recommendation:

It is recommended that TxDOT's recommended speed limits be approved.

Alternatives:

As may be directed by the City Council

Attachments

Ordinance No. 6570
Speed Zone Map
TxDot Letter
Aerial Location Map

ORDINANCE NO. 6570

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ESTABLISHING MAXIMUM, REASONABLE AND PRUDENT RATES OF SPEED ALONG THE CERTAIN PORTIONS OF STATE HIGHWAY 56 IN THE CORPORATE LIMITS OF SHERMAN, GRAYSON COUNTY, TEXAS; FIXING PENALTIES FOR VIOLATION THEREOF; DECLARING AN EMERGENCY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, by authority and direction of the City Council of the City of Sherman, Texas, the Traffic and Operations Office of the Texas Department of Transportation determines the maximum, reasonable and prudent rates of speed for vehicles traveling upon the following named streets and highways and parts thereof, to facilitate the most effective use of said streets and highways and the safe and effective movement of vehicular traffic thereon;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That no person shall drive a vehicle upon a public road, street and highway in the City of Sherman, Texas, at a speed greater than is reasonable and prudent under the conditions and circumstances then existing. Except when a special hazard exists that requires lower speeds for compliance with the above requirement, the limits hereinafter set out shall be lawful; but any speed in excess of the limits hereinafter set out for the streets and highways and portions thereof to which they apply shall be prima facie evidence that the speed is not reasonable or prudent:

On State Highway 56, easterly from the west city limits of Sherman for approximately 0.339 miles, a speed limit of sixty (60) miles per hours at all times, thence easterly for approximately 0.660 miles, a speed limit of fifty-five (55) miles per hour at all times, thence easterly for approximately 0.492 miles, a speed limit of fifty (50) miles per hour at all times; except that a school speed limit of thirty-five (35) miles per hour will be effective on school days only at the school crossing zone, from approximate highway mile point 17.229 to mile point 17.566 only during the following hours:

From forty-five (45) minutes before school opens until classes begin; from the beginning to the end of lunch period, if needed; and for a thirty (30) minute period beginning at the close of school as evidenced by the attached which is hereby approved and made a part there or.

Thence easterly for approximately 1.332 miles, a speed limit of forty-five (45) miles per hour at all times; except that a school speed limit of thirty (30) miles per hour will be effective on school days only at the school crossing zone, from

approximate highway mile point 18.371 to mile point 18.671 only during the following hours:

From forty-five (45) minutes before school opens until classes begin; from the beginning to the end of lunch period, if needed; and for a thirty (3) minute period beginning at the close of school as evidenced by the attached which is hereby approved and made a part thereof.

SECTION 2. That any person violating the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a work zone fine not exceeding TWO THOUSAND AND NO/100 DOLLARS ($2,000.00).

SECTION 3. That the fact that present traffic regulations are inadequate to control traffic in the area covered by this ordinance creates an emergency which is here and now declared, and all rules and regulations providing for the reading of ordinance is passed as an emergency measure and shall be in full force and effect from and after its passage and publication and after the installation of speed limit signs.

SECTION 4. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 5. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 6. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the 6th day of March 2023.

ADOPTED on this the 6th day of March 2023.

EFFECTIVE DATE on this the 6th day of March 2023.

CITY OF SHERMAN, TEXAS

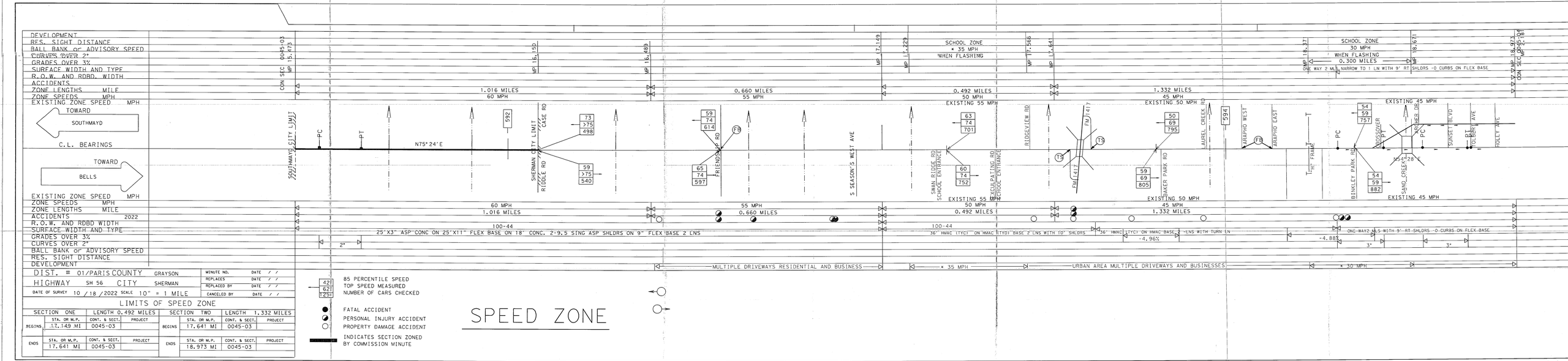
BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER BOYD & HULLETT, P.C.

BY: _____
RYAN PITTMAN,
CITY ATTORNEY



DIST. # 01/PARIS COUNTY GRAYSON

HIGHWAY SH 56 CITY SHERMAN

DATE OF SURVEY 10 / 18 / 2022 SCALE 10" = 1 MILE

MINUTE NO.	DATE / /
REPLACES	DATE / /
REPLACED BY	DATE / /
CANCELED BY	DATE / /

LIMITS OF SPEED ZONE

	SECTION ONE	LENGTH 0.492 MILES		SECTION TWO	LENGTH 1.332 MILES	
	STA. OR M.P.	CONT. & SECT.	PROJECT	STA. OR M.P.	CONT. & SECT.	PROJECT
BEGINS	17.149 MI	0045-03		17.641 MI	0045-03	
ENDS	17.641 MI	0045-03		18.973 MI	0045-03	

42
62
125
85 PERCENTILE SPEED
TOP SPEED MEASURED
NUMBER OF CARS CHECKED

FATAL ACCIDENT
PERSONAL INJURY ACCIDENT
PROPERTY DAMAGE ACCIDENT

INDICATES SECTION ZONED BY COMMISSION MINUTE

SPEED ZONE

Texas Department of Transportation
1365 North Main Street•Paris, Texas 75460•(903) 737-9498
February 16, 2023

Mr. Robby Hefton
City Manager, City of Sherman
220 W Mulberry St
PO Box 1106
Sherman, TX 75090

Dear Mr. Hefton,

Our District Traffic Office received notice from the City of Sherman about the city limit extension. We resubmitted the information to Austin and received approval from Austin on the change in speed zone limits and city limit changes. The attached speed zone map shows these results will show the results from the study and the proposed speed zone limits and the change in city limits.

Also attached is a sample speed zoning ordinance covering the proposed speed zones. The sample ordinance may be used in its present form, or may be rewritten, using the distances and speed limits given.

Please present the proposed speed zoning plan to the city council for their review and passage of the required ordinance. When approved, **two (2) signed and sealed copies of the completed original ordinance should be sent to this office at the above address.**

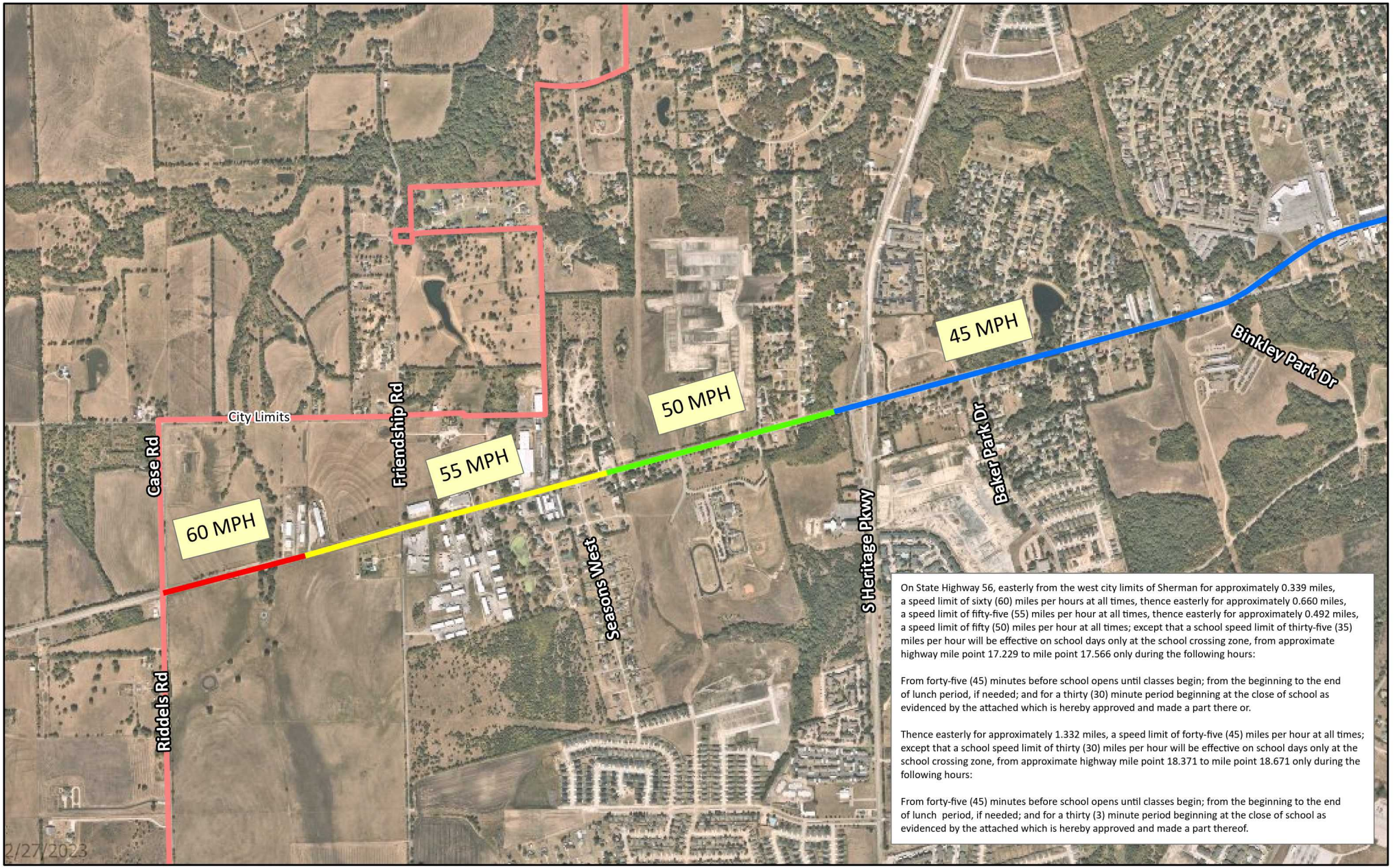
Upon receiving ordinance, arrangements will be made with Area /Maintenance office to have signs installed per ordinance.

If you have any questions, contact Ashley Smith in the District Traffic Office at 903-737-9234.

Sincerely,

Darius Samuels, P.E.
Traffic Engineer

DLS:akw
Attachments
DTO file



On State Highway 56, easterly from the west city limits of Sherman for approximately 0.339 miles, a speed limit of sixty (60) miles per hours at all times, thence easterly for approximately 0.660 miles, a speed limit of fifty-five (55) miles per hour at all times, thence easterly for approximately 0.492 miles, a speed limit of fifty (50) miles per hour at all times; except that a school speed limit of thirty-five (35) miles per hour will be effective on school days only at the school crossing zone, from approximate highway mile point 17.229 to mile point 17.566 only during the following hours:

From forty-five (45) minutes before school opens until classes begin; from the beginning to the end of lunch period, if needed; and for a thirty (30) minute period beginning at the close of school as evidenced by the attached which is hereby approved and made a part there or.

Thence easterly for approximately 1.332 miles, a speed limit of forty-five (45) miles per hour at all times; except that a school speed limit of thirty (30) miles per hour will be effective on school days only at the school crossing zone, from approximate highway mile point 18.371 to mile point 18.671 only during the following hours:

From forty-five (45) minutes before school opens until classes begin; from the beginning to the end of lunch period, if needed; and for a thirty (3) minute period beginning at the close of school as evidenced by the attached which is hereby approved and made a part thereof.

dlagrone H:\ENGINEER\GIS\ArcGIS Pro Projects\Planning\Public Notification.aprx

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Development Services Department

CITY OF SHERMAN

SH 56 West Speed Zones

N
W E
S

Date: 2/3/2023 10:30 AM

Scale: 1:17,745

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 2.**

Meeting Date: 03/06/2023

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6571

Abandoning One (1) Variable Width Utility Easement Located in the Plats of Northgate Business Park, Phase One and Replat of Lots 1 and 2 of Northgate Business Park Phase One, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Utility Easements are Established in Volume 16, Page 166 and Instrument Number 2021-234 of the Plat Records of Grayson County, Texas

Issue:

To consider the abandonment of one (1) Variable Width Easement located within the plats of Northgate Business Park, Phase One and Replat of Lots 1 and 2 of the Northgate Business Park Phase One to the City of Sherman, Texas

Background:

Said easements, which are filed of record in Volume 16, Page 166 and Instrument Number 2021-234 of the Plat Records of Grayson County, Texas, are not being utilized and are no longer deemed necessary.

Origination:

Engineering Department

Financial Consideration:

None

Staff Recommendation:

Staff recommends approval of the one (1) variable width utility easement abandonment

Alternatives:

As may be directed by City Council

Attachments

Ordinance No. 6571
Exhibit A
Filed Plats Establishing Easements
Location Map

ORDINANCE NO. 6571

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) VARIABLE WIDTH UTILITY EASEMENT LOCATED IN THE PLATS OF NORTHGATE BUSINESS PARK, PHASE ONE AND REPLAT OF LOTS 1 AND 2 OF NORTHGATE BUSINESS PARK PHASE ONE, AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH UTILITY EASEMENTS ARE ESTABLISHED IN VOLUME 16, PAGE 166 AND INSTRUMENT NUMBER 2021-234 OF THE PLAT RECORDS OF GRAYSON COUNTY, TEXAS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman, Texas has received a request to abandon one (1) variable width Utility Easement, as described herein; and

WHEREAS, the City Council has held a public hearing on the proposed abandonment and the abutting property owner(s) of the proposed abandonment have been notified; and

WHEREAS, the City Council has investigated and determined that all persons who own property adjacent to the easement concur and agree with the proposed abandonment; and

WHEREAS, the City Council has investigated and determined that the easements are no longer needed; and

WHEREAS, the City Council finds that it is in the best interest of the City and its citizens to abandon the City's right and interest in the easements, and that such action will benefit the public generally.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the Variable Width Utility Easements located in the plats of Northgate Business Park, Phase One and Replat of Lots 1 and 2 of Northgate Business Park Phase One, and being more particularly described on the Exhibit "A" attached hereto and made a part hereof for all purposes, which Utility Easements are established in Volume 16, Page 166 and Instrument Number 2021-234 of the Plat Records of Grayson County, Texas, shall be abandoned.

SECTION 2. That it is the intent of the City Council that the City's rights and interests in such easement is hereby vacated.

SECTION 3. The abandonment approved by this Ordinance does not relinquish any right arising other than from the plat or other instrument creating the public easement or right-of-way, nor does this Ordinance create new rights.

SECTION 4. That the City Clerk is hereby directed to file and record this Ordinance after its adoption in the Official Public Records of Grayson County, Texas.

SECTION 5. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place, and purpose of said meetings were given all as required by law.

SECTION 6. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 8. This Ordinance shall become effective immediately upon its passage and adoption.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the 6th day of March 2023.

ADOPTED on this the 6th day of March 2023.

EFFECTIVE DATE on this the 6th day of March 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

BEING a tract of land situated in the Elizabeth Jones Survey, Abstract No. 625, City of Sherman, Grayson County, Texas, and being part of Lot 3, Block 2 of Northgate Business Park Phase One, an addition to the City of Sherman, Texas according to to the plat thereof recorded in Volume 16, Page 166, Plat Records of Grayson County Texas, and part of a utility easement dedication in the plat of Northgate Business Park, Phase One, an addition to the City of Sherman, Texas according to the plat thereof recorded in Volume 16, Page 166, Plat Records of Grayson County, Texas, and being part of Lot 4, Block 2 of Northgate Business Park Phase One, an addition to the City of Sherman, Texas, according to the plat thereof recorded in Volume 16, Page 166, Official Public Records of Grayson County, Texas, and part of a utility easement per the plat of Replat of Lots 1 and 2 of Northgate Business Park Phase One, an addition to the City of Sherman, Texas according to the plat thereof recorded in Document No. 2021-234, Official Public Records of Grayson County, Texas and being more particularly described as follows:

COMMENCING at the southernmost end of a right-of-way corner clip at the intersection of the west right-of-way line of Northgate Drive (a variable width right-of-way) and the north right-of-way line of F.M. 1417 (a variable width right-of-way), and being the southerly, southeast corner of Lot 1, Block 2, of said Replat of Lots 1 and 2 of Northgate Business Park Phase One;

THENCE South 70°45'26" West, along the southerly line of said Lot 1, Block 2 and said north right-of-way line, a distance of 164.40 feet to a point for corner;

THENCE continuing along the southerly line of said Lot 1, Block 2 and said north right-of-way line, South 73°57'09" West, a distance of 360.01 feet to a 1/2" iron rod found at the southwest corner of said Lot 1, Block 2;

THENCE North 16°02'51" West, with the west line of said Lot 1 and Lot 2, Block 2, a distance of 30.00 feet to the **POINT OF BEGINNING**;

THENCE North 16°02'51" West, with said west line, a distance of 765.00 feet to a 1/2" iron rod found at the northwest corner of said Lot 2, Block 2, and the southwest corner of Lot 3, Block 2, of said Northgate Business Park, Phase One;

THENCE North 12°57'35" West, with the west line of said Lot 3, Block 2 and Lot 4, Block 2, of said Northgate Business Park, Phase One, a distance of 823.50 feet to a 1/2" iron rod found at the northwest corner of said Lot 4, Block 2;

THENCE North 73°49'27" East, with the north line of said Lot 4, Block 2, a distance of 572.98 feet to a point for corner;

THENCE over and across said Lot 3 and Lot 4, Block 2, and Lot 1 and Lot 2, Block 2, the following courses and distances:

South 09°51'22" East, a distance of 30.18 feet to a point for corner;

2/27/23

MICHAEL MARX
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5181
6160 WARREN PKWY., SUITE 210
FRISCO, TEXAS 75034
PH. 972-335-3580
michael.marx@kimley-horn.com

STATE OF TEXAS
REGISTERED
MICHAEL B. MARX
5181
PROFESSIONAL
LAND SURVEYOR

UTILITY EASEMENT ABANDONMENT
2.9652 ACRES
NORTHGATE BUSINESS PARK, PHASE ONE
ELIZABETH JONES SURVEY, ABST. NO. 625
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

Kimley»Horn
13455 Noel Road, Two Galleria Office Tower, Suite 700, Dallas, Texas 75240 FIRM # 10115500
Tel. No. (972) 770-1300
Fax No. (972) 239-3820

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SRD	MBM	Jan. 2023	064046018	1 OF 6

South 73°49'27" West, a distance of 541.29 feet to a point for corner;

South 12°57'35" East, a distance of 365.47 feet to a point for corner;

North 73°49'27" East, a distance of 521.39 feet to a point for corner;

South 09°51'22" East, a distance of 30.18 feet to a point for corner;

South 73°49'27" West, a distance of 519.75 feet to a point for corner;

South 12°57'35" East, a distance of 382.91 feet to a point for corner;

North 73°49'27" East, a distance of 499.90 feet to the beginning of a non-tangent curve to the left with a radius of 1,060.00 feet, a central angle of 01°37'26", and a chord bearing and distance of South 13°09'28" East, 30.04 feet;

In a southerly direction, with said non-tangent curve to the left, an arc distance of 30.04 feet to a point for corner;

South 73°49'27" West, a distance of 499.24 feet to a point for corner;

South 16°02'51" East, a distance of 340.32 feet to a point for corner;

North 73°55'49" East, a distance of 498.40 feet to a point of a non-tangent curve to the right with a radius of 958.50 feet, a central angle of 04°10'25", and a chord bearing and distance of South 12°54'43" East, 69.81 feet;

In a southerly direction, with said non-tangent curve to the right, an arc distance of 69.82 feet to a point for corner;

South 73°55'49" West, a distance of 494.58 feet to a point for corner;

South 16°02'51" East, a distance of 340.05 feet to a point for corner;

South 73°57'09" East, a distance of 30.00 feet to the **POINT OF BEGINNING** and containing 129,162 square feet or 2.9652 acres of land.

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

UTILITY EASEMENT ABANDONMENT
2.9652 ACRES
NORTHGATE BUSINESS PARK, PHASE ONE
ELIZABETH JONES SURVEY, ABST. NO. 625
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

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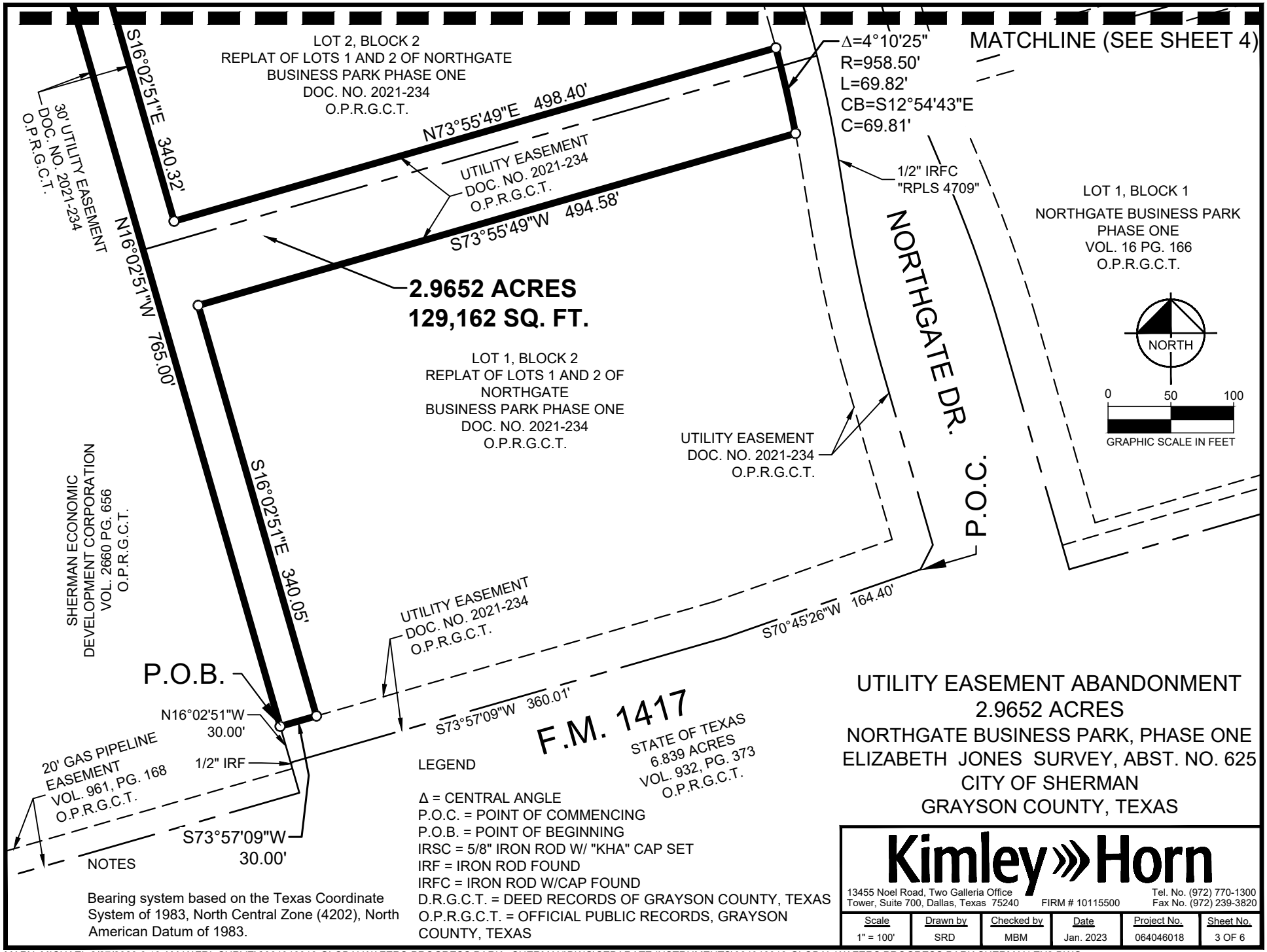
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SRD	MBM	Jan. 2023	064046018	2 OF 6



NOTES

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

LEGEND

Δ = CENTRAL ANGLE
P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
IRSC = 5/8" IRON ROD W/ "KHA" CAP SET
IRF = IRON ROD FOUND
IRFC = IRON ROD W/CAP FOUND
D.R.G.C.T. = DEED RECORDS OF GRAYSON COUNTY, TEXAS
O.P.R.G.C.T. = OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS

UTILITY EASEMENT ABANDONMENT
2.9652 ACRES
NORTHGATE BUSINESS PARK, PHASE ONE
ELIZABETH JONES SURVEY, ABST. NO. 625
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

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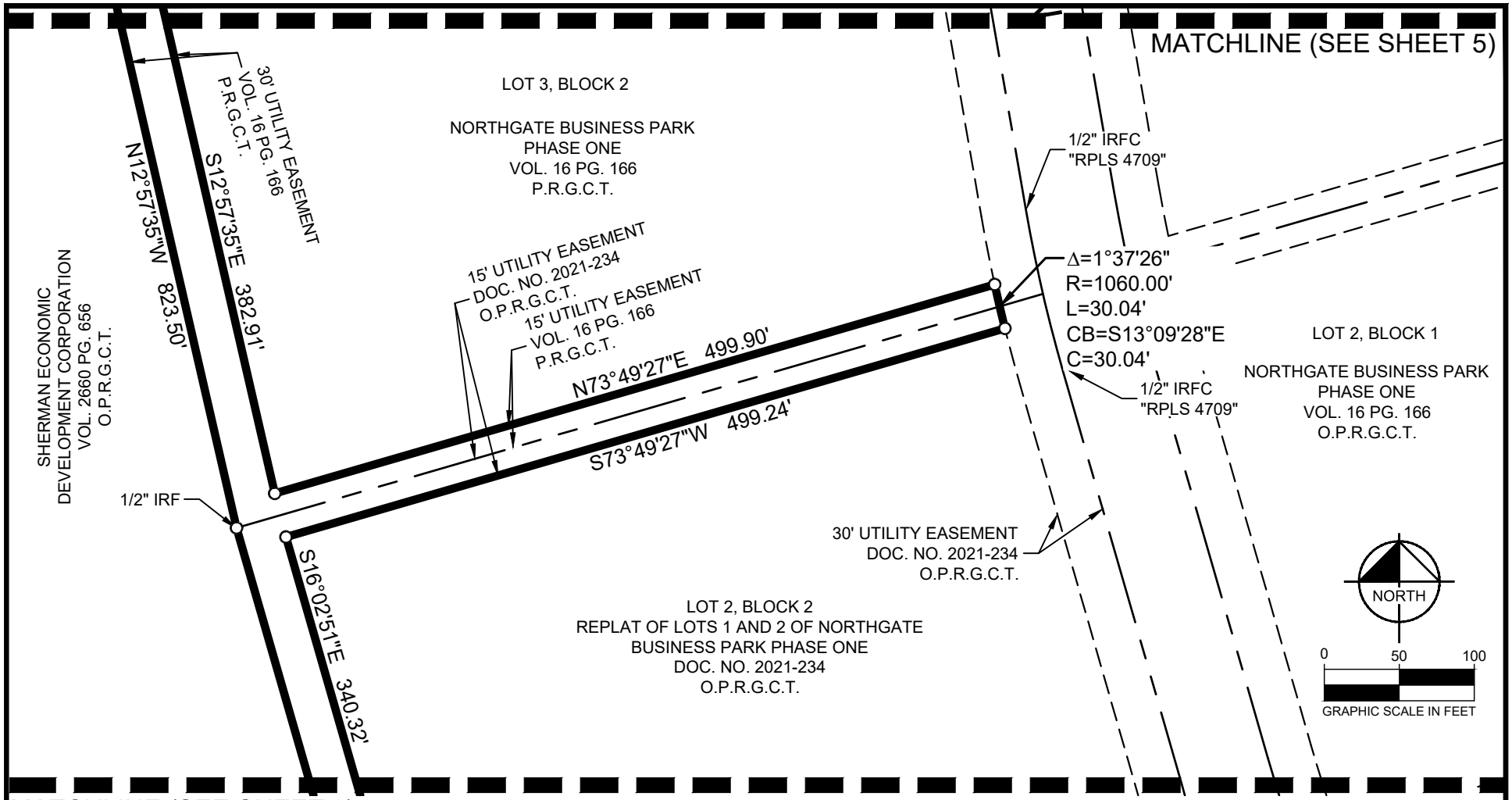
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	SRD	MBM	Jan. 2023	064046018	3 OF 6



MATCHLINE (SEE SHEET 3)

UTILITY EASEMENT ABANDONMENT
2.9652 ACRES
NORTHGATE BUSINESS PARK, PHASE ONE
ELIZABETH JONES SURVEY, ABST. NO. 625
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

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Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

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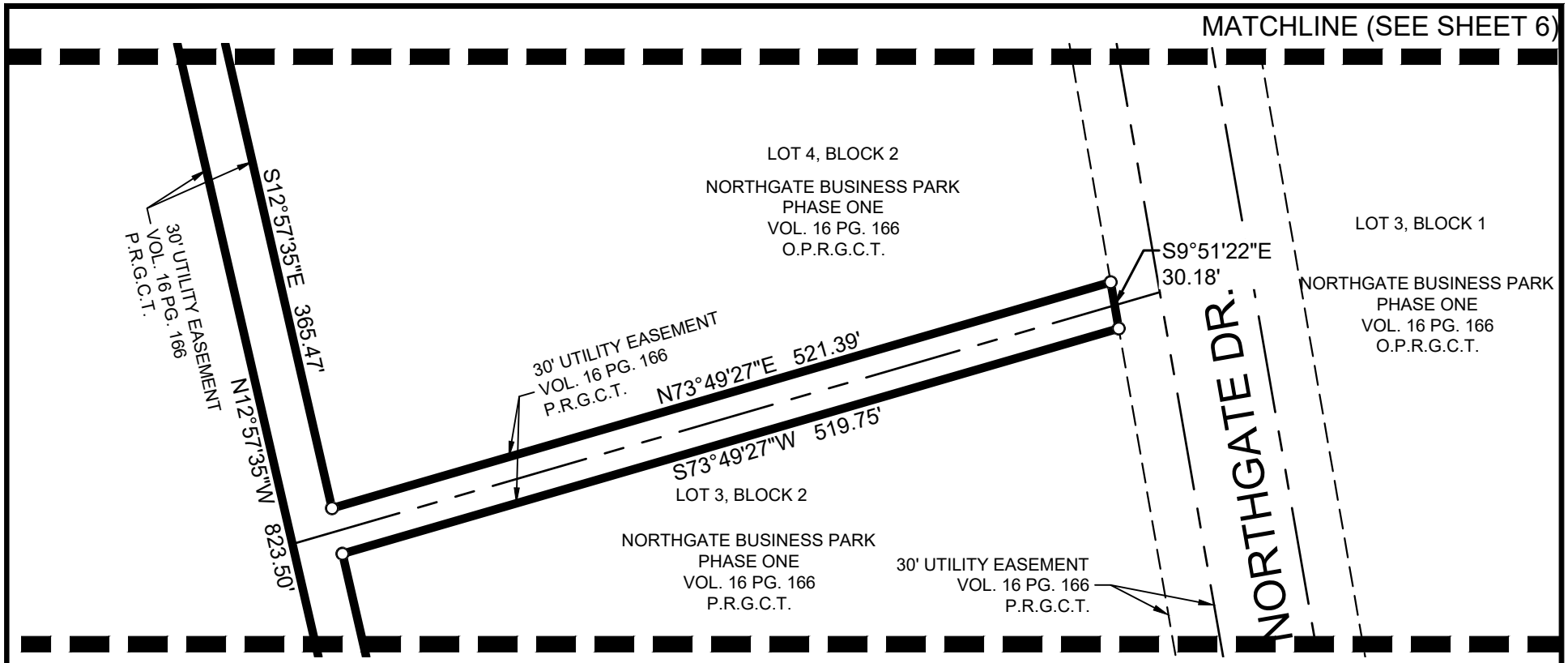
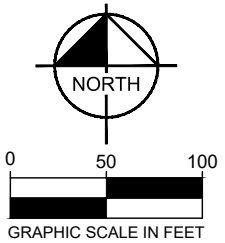
1" = 100'	SRD	MBM	Jan. 2023	064046018	4 OF 6





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UTILITY EASEMENT ABANDONMENT
2.9652 ACRES
NORTHGATE BUSINESS PARK, PHASE ONE
ELIZABETH JONES SURVEY, ABST. NO. 625
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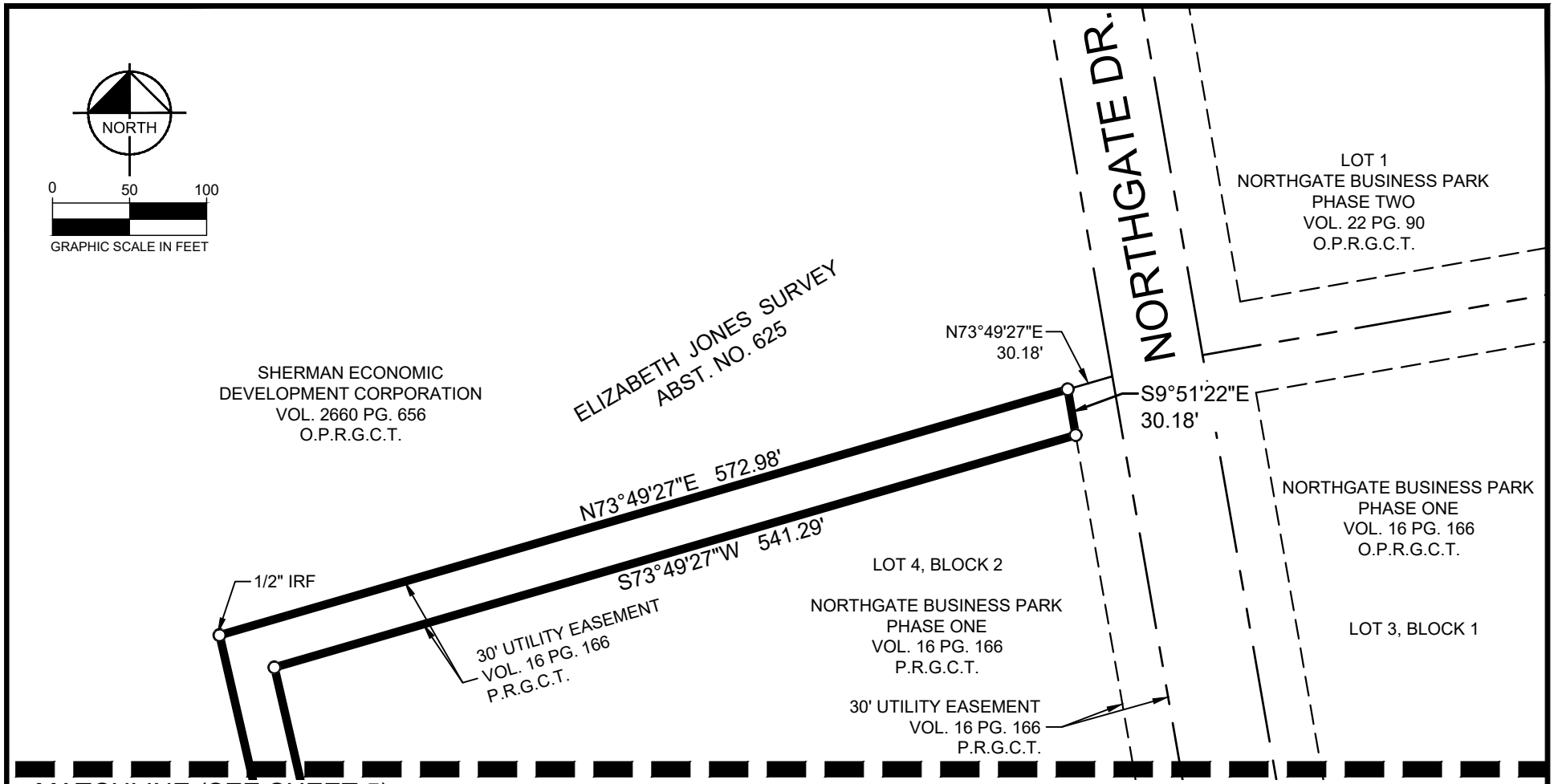
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	SRD	MBM	Jan. 2023	064046018	5 OF 6



UTILITY EASEMENT ABANDONMENT
2.9652 ACRES
NORTHGATE BUSINESS PARK, PHASE ONE
ELIZABETH JONES SURVEY, ABST. NO. 625
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	SRD	MBM	Jan. 2023	064046018	6 OF 6

JOB NO. A4010002

LEGAL DESCRIPTION

Situated in the City of Sherman, Grayson County, Texas, being a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part of the 314.444 acre tract of land conveyed by Sherman Industrial Districts, Inc., to Johnson & Johnson by deed dated November 29, 1960, recorded in Volume 924, Page 40, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a a 1/2" steel rod set for corner at the point of intersection of the north right-of-way line of F. M. No. 1417 and the west right-of-way line of the St. Louis & San Francisco Railway Company service track West of the main plant and facilities of said Johnson & Johnson;

Thence South 74°59'00" West with said north line, a distance of 1,172.50 feet to a set 1/2" steel rod;

Thence North 15°01'00" West, a distance of 820.00 feet to a set 1/2" steel rod;

Thence North 11°54'28" West, a distance of 823.50 feet to a set 1/2" steel rod;

Thence North 74°52'34" East, a distance of 603.10 feet to a set 1/2" steel rod;

Thence North 78°14'40" East, a distance of 60.08 feet to a set 1/2" steel rod;

Thence North 81°11'01" East, a distance of 639.16 feet to a set 1/2" steel rod said west right-of-way line of the St. Louis & San Francisco Railway Company;

Thence South 08°48'59" East, a distance of 1,580.21 feet to a set 1/2" steel rod to the POINT-OF-BEGINNING and containing 46.611 acres of land.

KNOWN ALL MEN BY THESE PRESENTS:

That I, Douglas W. Underwood, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments thereon where properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Sherman, Texas.

Douglas W. Underwood
Registered Professional
Land Surveyor, No. 4709

STATE OF TEXAS
COUNTY OF GRAYSON

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Douglas W. Underwood, known to me to be the person whose name is subscribed to the foregoing instrument acknowledged to me that he executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 30th day of Jan., 2004.

Elaine Jones
Notary Public in and for
the State of Texas

Commission Expires: 5/30/07

Approved this 27th day of January, 2004, by the City Planning and Zoning Commission of the City of Sherman, Texas.

Kelly Bickerstaff, Chairman
Scott Gradden, Secretary

Accepted by the City Council of the City Sherman

Mayor, City of Sherman, Texas — Date 2-2-04

The Undersigned, the City Clerk of the City of Sherman, hereby certifies that the foregoing, Final Plat of Northgate Business Park, to the City of Sherman, Texas, was submitted to the City Council on the 2nd day of February, 2004, and the City Council by formal action then and there accepted the dedication of streets, alleys, easements and public places, as shown and set forth in and upon said map or plat, and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as herein above subscribed.

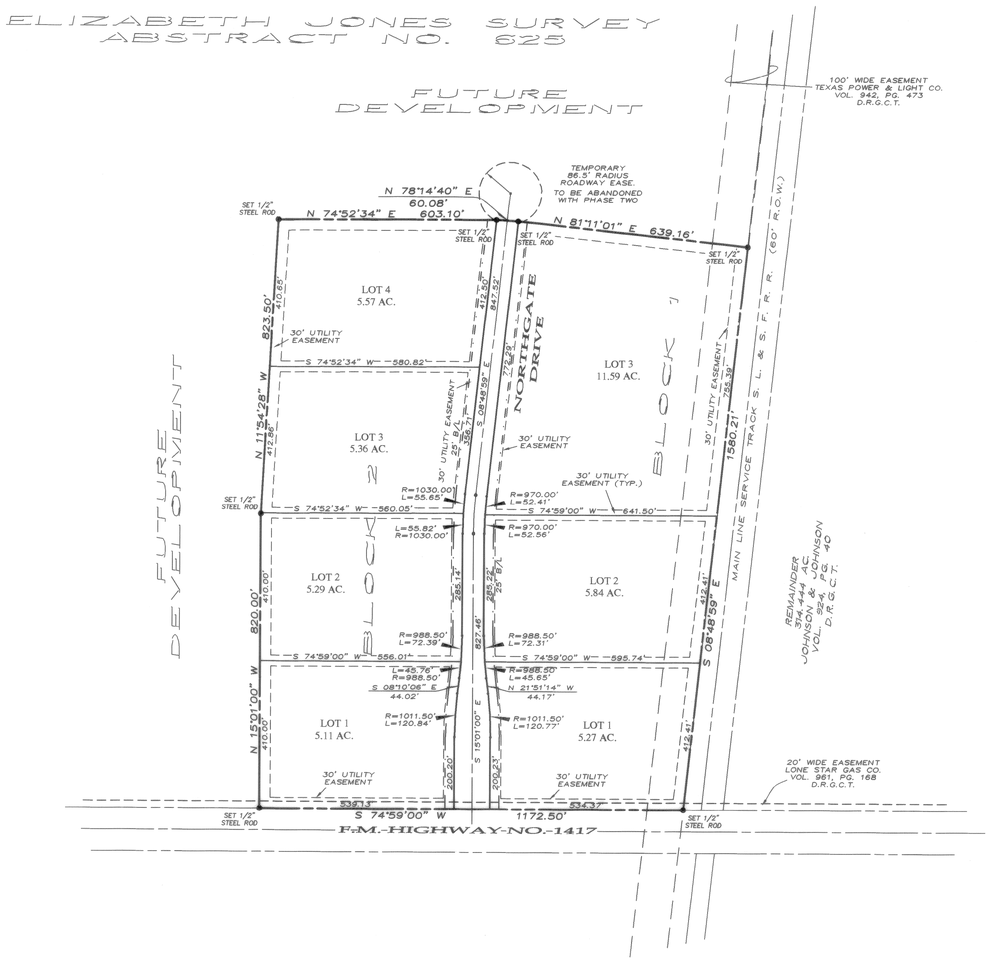
Witness my hand this 2nd day of February, 2004.

Linda Ashby
Clerk, City of Sherman, Texas

GRAPHIC SCALE

200 0 100 200 400 800

(IN FEET)
1 inch = 200 ft.



NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT We, Sherman Economic Development Corporation, being the owner of the hereinabove described property hereby adopt this plat designating said property as Final Plat of Northgate Business Park, Phase One, an addition to the City of Sherman, Texas, and does hereby dedicate to the public use forever the streets and easements shown on this plat for the mutual use and accommodation of all public and private utilities desiring to use or using same. Any public or private utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs or other improvements or growths which in any way may endanger or interfere with the construction, maintenance, or efficiency of its respective systems on any of these easement strips and any public or private utility shall, at all times, have the right of ingress and egress to, from and upon the said easement strips for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or part of its respective system without the permission of anyone. This plat approved subject to all ordinances, rules, regulations and resolutions of the City of Sherman, Texas.

WITNESS MY HAND this 5th day of February, 2004.

John Boswell
Sherman Economic
Development Corporation

SANDRA K. MELTON
Notary Public
STATE OF TEXAS
My Comm. Exp. 11-5-06

STATE OF TEXAS
COUNTY OF GRAYSON

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared John Boswell, known to me to be the person whose name is subscribed to the foregoing instrument acknowledged to me that he executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 5th day of February, 2004.

Sandra K. Melton
Notary Public in and for
the State of Texas

Commission Expires: 11/5/06

3132
FILED FOR RECORD
3-5, 2004
at 2:40 o'clock P M
Recorded in Vol. 16 Page 166
Plat Records Grayson County.
WILMA BLACKSHEAR BUSH
County Clerk, Grayson Co., Texas
By Kimberly Moore
Deputy

FINAL PLAT
OF
NORTHGATE BUSINESS PARK
PHASE ONE
A 46.611 ACRE ADDITION
TO THE CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

16026

SURVEYOR
DOUGLAS W. UNDERWOOD
R.P.L.S. NO. 4709
3404 INTERURBAN ROAD
DENISON, TEXAS

UNDERWOOD
DRAFTING & SURVEYING
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

OWNER
SHERMAN ECONOMIC
DEVELOPMENT CORPORATION

VOL 16 pg 166

E-1-26

JOB NO. 21070663

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 09°12'10" E	44.02

CURVE TABLE

CURVE	RADIUS	ARC	CHORD BEARING	CHORD
C1	1030.00'	53.61'	S 14°53'56" E	53.60'
C2	988.50'	118.15'	S 12°37'37" E	118.08'
C3	988.50'	32.60'	S 15°06'23" E	32.60'
C4	988.50'	85.53'	S 11°20'58" E	85.53'
C5	1011.50'	120.84'	S 12°37'31" E	120.77'

Filed for Record
in the Official Records Of:
Grayson County Clerk
On: 10/28/2021 9:54:47 AM
In the PLAT Records
NORTHGATE BUSINESS PARK ADDN
Doc Number: 2021 – 234
Number of Pages: 2
Amount: 75.00
Order#: 20211028000041
By: MM

REPLAT OF LOTS 1 AND 2 OF NORTHGATE BUSINESS PARK PHASE ONE

BEING A REPLAT OF LOT 1 AND 2, BLOCK 2 OF THE NORTHGATE BUSINESS PARK PHASE ONE ADDITION IN VOLUME 16, PAGE 166, P.R.G.C.T. AN ADDITION TO THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS
BEING 10.371 ACRES

~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE

GRAPHIC SCALE
60 0 30 60 120 240
(IN FEET)
1 inch = 60 ft.

OWNERS/DEVELOPER
SHERMAN ECONOMIC DEV. CORP.
307 WASHINGTON STE. 102.
SHERMAN, TEXAS 75090

SURVEYOR
DOUGLAS W. UNDERWOOD
R.P.L.S. NO. 4709
3404 INTERURBAN ROAD
DENISON, TEXAS 75021

8-24-2021

UNDERWOOD
DRAFTING & SURVEYING
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

SHEET 1 OF 2

22135

JOB NO. 21070663

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being Lots 1 and 2, Block 2, Northgate Business Park, Phase 1, an addition to the City of Sherman Texas as recorded in Volume 16, Page 166, Plat Records, Grayson County, Texas and being described by metes and bounds as follows:

Beginning at a found 1/2" steel rod at the southwest corner of said Lot 1;

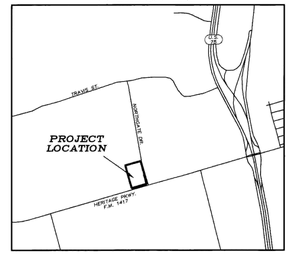
Thence North 16°03'04" West with the west line of said addition, a distance of 820.00 feet to a found 1/2" steel rod at the northwest corner of said Lot 2;

Thence North 73°50'31" East with the north line of said Lot 2, a distance of 560.06 feet to a found 1/2" steel rod at the northeast corner of said Lot 2, in the west right-of-way line of Northgate Drive;

Thence with said west right-of-way line as follows:
Thence with a non-tangent curve to the left having a radius of 1030.00 feet, (chord bears South 14°33'36" East, a distance of 53.60 feet) an arc length of 53.61 feet to a set 1/2" steel rod;
Thence South 16°03'04" East, a distance of 285.14 feet to a set 1/2" steel rod;
Thence with a tangent curve to the right having a radius of 988.50 feet, (chord bears South 12°37'37" East, a distance of 118.08 feet) an arc length of 118.15 feet to a set 1/2" steel rod;
Thence South 09°12'10" East, a distance of 44.02 feet to a set 1/2" steel rod;
Thence with a tangent curve to the left having a radius of 1011.50 feet, (chord bears South 12°37'31" East, a distance of 120.77 feet) an arc length of 120.84 feet to a set 1/2" steel rod;
Thence South 16°02'51" East, a distance of 200.20 feet to a set 1/2" steel rod;

Thence South 73°56'56" West, a distance of 539.13 feet to the Point of Beginning and containing 10.371 acres of land.

LOCATION MAP



(NOT TO SCALE)

ACCEPTANCE

Approved this 21st day of September, 2021, by the City Planning Commission to the City of Sherman, Texas.

Chairman Secretary

CERTIFICATE OF ACCEPTANCE OF DEDICATION

Accepted by the City Council of the City of Sherman

Mayor, City of Sherman, Texas 10/25/2021 Date

SURVEYOR'S CERTIFICATION

KNOWN ALL MEN BY THESE PRESENTS:

That I, Douglas W. Underwood, Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments thereon where properly placed, under my personal supervision, in accordance with the subdivision regulations of the City of Sherman, Texas.

Douglas W. Underwood
Registered Professional
Land Surveyor, No. 4709

10/22/2021 Date

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
SURVEYOR

AVIGATION RELEASE

THE STATE OF TEXAS
COUNTY OF GRAYSON

WHEREAS, SHERMAN ECONOMIC DEVELOPMENT CORPORATION, hereinafter called OWNER (whether one or more), is the owner of a certain parcel of land situated in the City of Sherman, Grayson County, Texas, being more particularly described as REPLAT OF LOTS 1 AND 2 OF NORTHGATE BUSINESS PARK PHASE ONE, an addition to the City of Sherman, Grayson County, Texas.

OWNER does hereby waive, release, remise, quit claim and forever hold harmless the City of Sherman, Texas, a municipal corporation, hereinafter called CITY, and Sherman Municipal Airport, hereinafter called AIRPORT, from any and all claims for damages of any kind that OWNER may now have or may hereinafter have in the future by reason of the passage of all aircraft (aircraft being defined for the purposes of this instrument as any contrivance now known or hereinafter invented, used or designed or navigation of or flight in the air) by whomsoever owned and operated, in the airspace above OWNER'S property. Such release shall include, but not be limited to, any damages to the OWNER's described property, such as noise, vibration, fumes, dust, fuel and lubricant particles, and all other effects that may be caused by the operation of aircraft landing at or taking off from or operating at or on the Sherman Municipal Airport, whether such claim be for injury or death to person or persons damages to or taking off of property; and OWNER does hereby fully remise and release any right or cause of action which it may now have or which it may in the future have against the CITY or AIRPORT, whether such claims be for injury or death to persons or damage to property due to noises, vibration, fumes, dust, fuel and lubricant particles, and all the other effects that may be caused or may have been caused by the operation and/or maintenance of aircraft or aircraft engines at or on said Sherman Municipal Airport.

It is agreed that this Release shall be binding upon OWNER, his successors, heirs, executors, administrators and assigns, in interest with regard to said property located at REPLAT OF LOTS 1 AND 2 OF NORTHGATE BUSINESS PARK PHASE ONE, an addition to the City of Sherman, Texas, and it is further agreed that this instrument shall be a covenant running with the land, and shall be recorded in the Deed Records of Grayson County, Texas.

EXECUTED THIS 25th DAY OF October, 2021

BY: SHERMAN ECONOMIC DEVELOPMENT CORPORATION

BY: _____

OWNERS DEDICATION

NOW THEREFORE KNOWN ALL MEN BY THESE PRESENTS:

THAT I, SHERMAN ECONOMIC DEVELOPMENT CORPORATION. do hereby adopt this plat designating the hereinabove property as REPLAT OF LOTS 1 AND 2 OF NORTHGATE BUSINESS PARK PHASE ONE, an addition to the City of Sherman, and do hereby dedicate to the public use forever the streets and easements shown on this plat for the mutual use and accommodation of all public and private utilities desiring to use or using same. Any public or private utility shall have the right to remove and keep removed all or part or any buildings, fences, trees, shrubs or other improvements or growths which in anyway endanger or interfere with the construction, maintenance, or efficiency of its respective systems on any of these easements strips and any public or private utility shall, at all times, have a right of ingress and egress to and from and upon the said easement strips for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or part of its respective system without the permission of anyone. This plat approved subject to all ordinances, rules regulations and resolutions of the City of Sherman, Texas.

WITNESS MY HAND this 25th day of October, 2021.

SHERMAN ECONOMIC DEVELOPMENT CORPORATION(KENT SHARP)

STATE OF TEXAS
COUNTY OF GRAYSON

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared KENT SHARP, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of October, 2021.

Notary Public in and for
the State of Texas

ASHTON GHAEMI
Notary Public, State of Texas
Comm. Expires 11-17-2023
Notary ID 13044391-0

CERTIFICATE OF COMPLIANCE

The Undersigned, the City Clerk of the City of Sherman, hereby certifies that the foregoing, REPLAT OF LOTS 1 AND 2 OF NORTHGATE BUSINESS PARK PHASE ONE, an addition to the City of Sherman, Texas, was submitted to the City Council on the 18th day of October, 2021, and the City Council by formal action then and there accepted the dedication of streets, alleys, easements and public places, as shown and set forth in and upon said map or plat, and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as herein above subscribed.

Witness my hand this 25th day of October, 2021.

Linda Ashby
Clerk, City of Sherman, Texas

CITY OF SHERMAN, TEXAS

~ GENERAL NOTES ~

1. Water Supply to be provided by the City of Sherman.
2. Sewer Service to be provided by the City of Sherman
3. Electrical service is provided by Oncor Electrical Delivery.
4. Blocking the flow of water or construction of improvements in drainage easements, and filling or obstruction of the floodway is prohibited.
5. Any existing creeks or drainage channels traversing along or across the addition will remain as open channels and will be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage courses along or across said lots.
6. The City of Sherman will not be responsible for the maintenance and operation of said drainage ways or drainage easements for the control of erosion.
7. Neither the City of Sherman nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
8. The owners and builders must comply with all other local, state and federal regulations regarding developments of this type.
9. Bearings are based on the City of Sherman Control Monument Network.
10. The City of Sherman reserves the right to require submission of Development Plat based on proposed use of each lot.

REPLAT OF LOTS 1 AND 2 OF NORTHGATE BUSINESS PARK PHASE ONE

BEING A REPLAT OF LOT 1 AND 2, BLOCK 2 OF THE NORTHGATE BUSINESS PARK PHASE ONE ADDITION IN VOLUME 16, PAGE 166, P.R.G.C.T. AN ADDITION TO THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS
BEING 10.371 ACRES

Filed for Record
in the Official Records Of:
Grayson County Clerk
On: 10/28/2021 9:54:47 AM
In the PLAT Records
NORTHGATE BUSINESS PARK ADDN
Doc Number: 2021 – 234
Number of Pages: 2
Amount: 75.00
Order#: 20211028000041
By: MM

OWNERS/DEVELOPER
SHERMAN ECONOMIC DEV. CORP.
307 WASHINGTON STE. 102.
SHERMAN, TEXAS 75090

SURVEYOR
DOUGLAS W. UNDERWOOD
R.P.L.S. NO. 4709
3404 INTERURBAN ROAD
DENISON, TEXAS 75021

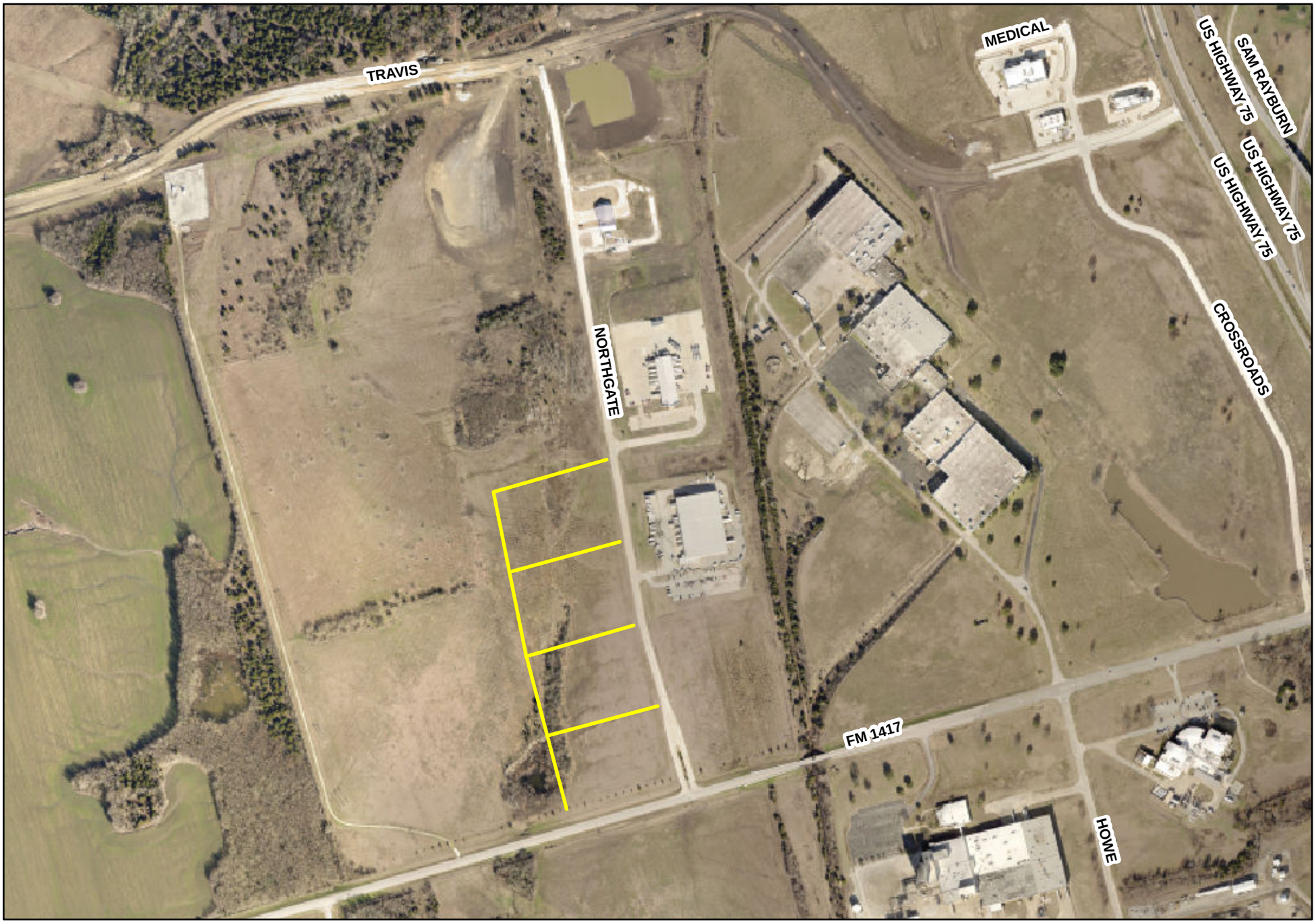
8-24-2021

UNDERWOOD
DRAFTING & SURVEYING
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

SHEET 2 OF 2

E-9-472

Globalwafers Easement Abandonment



SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 3.**

Meeting Date: 03/06/2023

Approved By: Robby Hefton, City Manager

Caption:

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers 6570 & 6571.

Issue:

D. 1. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6570**
Establishing Maximum, Reasonable and Prudent Rates of Speed Along Certain Portions of State Highway 56 in the Corporate Limits of Sherman, Grayson County, Texas; Fixing Penalties for Violation Thereof; Declaring an Emergency; Providing for a Relealer

D. 2. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6571**
Abandoning One (1) Variable Width Utility Easement Located in the Plats of Northgate Business Park, Phase One and Replat of Lots 1 and 2 of Northgate Business Park Phase One, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Utility Easements are Established in Volume 16, Page 166 and Instrument Number 2021-234 of the Plat Records of Grayson County, Texas

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 1.**

Meeting Date: 03/06/2023

Prepared By: Nate Strauch, Community & Support Services Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7038

Authorizing Execution of an Agreement with David Downtain, d/b/a RP Sherman Properties II, LLC under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program for Improvements to 328-330 W Lamar Street

Issue:

An agreement with David Downtain, d/b/a RP Sherman Properties II, LLC for a Building Restoration and Improvement Grant for improvements to a historically significant, Central Business District property at 328-330 W Lamar Street (Porterfield Building)

Background:

The Downtown Building Improvement Grant is designed to stimulate substantial, visible, and permanent improvements to historically significant buildings and to spur interest in vacant and underutilized buildings of historical value in the downtown TIRZ. Grants under the program are awarded at the City Council's sole discretion, in the maximum amount of $50,000 per project, per year.

This application is the second received under the new program. The project is to add residential lofts to the historic structure established in approximately 1908 and located at 328-330 W Lamar Street in Downtown Sherman. This building previously received a grant in 2018 for the downstairs, commercial portion of the structure. This project will restore and renovate the second story, both interior and exterior, of the 8,472-square-foot structure (the residential portion is approximately 2,600 square feet). The expected qualified costs for the proposed renovation work are approximately $224,000. The project qualifies for a matching grant of $50,000.

Origination:

Community and Support Services Manager Nate Strauch

Financial Consideration:

The project is eligible for a DBIG grant in the amount of $50,000.

Staff Recommendation:

As the application meets the requirements of the program, it is recommended that the City Council consider an award to David Downtain, d/b/a RP Sherman Properties II, LLC, in the amount of $50,000.

Alternatives:

As directed by Council

Attachments

Resolution No. 7038
Application packet
Aerial Location Map

RESOLUTION NO. 7038

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH DAVID DOWNTAIN, D/B/A RP SHERMAN PROPERTIES II, LLC UNDER THE CITY OF SHERMAN'S CENTRAL BUSINESS DISTRICT HISTORIC BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM FOR IMPROVEMENTS TO 328-330 W. LAMAR STREET; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an agreement with David Downtain, d/b/a RP Sherman Properties II, LLC for improvements to 328 – 330 w Lamar Street under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of March 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Downtown Building Improvement Grant Application and Agreement

The information requested below will be used to process your application under the terms and conditions of the City of Sherman's Downtown Building Improvement Grant. All grant applications must include pictures of the current building, designs or renderings of the finished product, and historical pictures, if available.

I. Applicant Information

1. Applicant(s) name: RP Sherman Properties II, LLC

   Mailing address: 1200 N East Street

   City: Sherman State: TX Zip: 75090

2. Applicant's daytime telephone number: 972-832-8011

   E-mail address: ddowntain@risenproperties.com

3. Status of applicant (please check one)
   - _X__ Property owner with vacant facility
   - _X__ Property owner with tenant business
   - ____ Property owner/operator of existing business on property
   - ____ Property tenant with property owner consent
   - ____ Property deed, lease, or other document evidencing applicant's status

5. Length of ownership/ lease: 17 Months
   Date purchased/ leased: August 2, 2021

II. Property Information

1. Address of property to be improved: 328-330 W Lamar St. Sherman TX 75090

2. Legal description of subject property:
   LOVING A R ADDN, BLOCK 1, LOT 15, ACRES .2281

3. Grayson County Tax Assessor Parcel Number(s):
   163590

4. Year built: 1908 Square footage: 8472
   (Eligible buildings must be at least 50 years of age.)

6. What are the current types of businesses or other uses occupying the building?
   Fitness Gym and Bail Bonds on 1st floor
   Upstairs is becoming Loft Apartments

7. Name and phone number of tenant(s), if applicable: Fight Time Fitness 903-327-5162
   Liberty Bail Bonds 903-893-2200

(Attach additional names/numbers, if needed)

8. Use of building after construction: Mixed Use – Existing commercial on first floor
LOFT Apartments on 2nd floor

9. Number of parking spaces provided: 8 Proposed: _____ Total: 8

10. Current zoning: Central Business District C-1

11. Is a zoning amendment required? Yes___ No_X_

III. Project Description

1. Description of Proposed Improvements. Please provide a detailed description of your proposed improvements. Attach a copy of your architectural or design plans.

Description: We plan to complete the construction of residential lofts. Construction began prior to covid and additional hurdles concerning fire suppression costs resulted in the project being put on hold. Since then, code changes also require infrastructure upgrades. The exterior renovations include: Complete Interior finish out of 2 Loft Apartments – Sheetrock, trim cabinets, HVAC, Plumbing top-out and fixtures, Electrical top-out and fixtures. Paint, Flooring, New balconies with rear fire escape. Fire Suppression System

X Designs Attached **X "Before" Picture(s) Attached**

2. How many jobs will be **retained** once the project is completed?

_____ Full-time positions _____ Part-time positions

3. How many **new positions** will result from this project?

_____ Full-time positions _____ Part-time positions

IV. Work Estimates

Please attach a minimum of two (2) independent contractor estimates for the proposed improvements. Please note that grant funding shall be based on the lowest bid. Eligible costs shall be the cost of materials, equipment, and contracted labor to complete eligible improvements.

1. Name/Company and Phone Number of Preferred Contractor:
D2 Builders, LP 940-289-0200

Amount: 263,750.00 Budget – Cost Plus

2. Name/Company and Phone Number of Second Contractor:

Joe Tully, PintrailRestoration.com 469-642-9910

Amount: 293,000 Budget - Cost Plus

3. Additional Estimates/Comments: (Please attach additional quotes, as required)

4. Total estimated costs of your improvements: 188,000 to 240,000

5. Estimated completion date for your improvements? June 1st 2023

VI. Agreement of Applicant and Property Owner

I/We, RP Sherman Properties II, LLC, of the City of Sherman, County of Grayson, State of Texas, declare under penalty of perjury that the information contained in this application is true and correct and that the information contained in the documents that accompany this application is true, correct, and complete. I/We certify and warrant that the proposed work described in this Application meets the eligibility requirements of the City of Sherman Downtown Building Improvement Grant Program. In exchange for the City of Sherman's consideration of this application, I/We hereby agree to the following:

I/We hereby authorize City of Sherman employees and agents to perform inspections of my/our property if granted funds under the City of Sherman Downtown Building Improvement Grant Program, both before and during the work for which funds are granted under this Program and after completion of the work to ensure compliance with the terms and conditions of the Program and all other applicable ordinances and other laws.

I/We acknowledge that any work carried out prior to written confirmation of grant approval may not be eligible for reimbursement.

I/We acknowledge receiving, understanding, and accepting the terms and conditions of the City of Sherman Downtown Building Improvement Grant Program, and agree to fully comply with the same along with all other applicable ordinances and other laws, all of which are incorporated herein by reference, if granted funds under the Program. I agree that the City of Sherman is entitled to the immediate return or reimbursement of any and all funds paid to the Applicant or other persons under the Program, plus interest and collection costs, in the event the Applicant fails to complete the work for which the grant was approved or otherwise fails to comply with all applicable Program guidelines and requirements, ordinances and other laws. I/We Applicants further acknowledge and agree that, if funds provided by the City to the Applicant under the Program are determined at any time not to comply with applicable state laws relating to the authorized uses of such funds, all funds paid to the Applicant or other persons under the Program shall be immediately returned or reimbursed to the City.

Chapter 2264 Certification: Pursuant to Chapter 2264 of the Texas Local Government Code, I/We hereby certifies that the Applicant's business, or a branch, division, or department of the Applicant's business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be employed in that manner in the United States. If after receiving this grant from the City of Sherman, Applicant, or a branch, division, or department of Applicant's business, is convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the grant with interest, at the rate and according to the terms provided by this Agreement under Section 2264.053 of the Texas Local Government Code, not later than the 120th day after the date the Applicant is notified of the violation. I/We agree that this document serves as an agreement under Chapter 380 of the Texas Local Government Code.

I/We agree to indemnify, release, defend and hold harmless the City of Sherman and its officers, employees and agents, from and against all claims, losses, liabilities, damages, suits, actions, or proceedings asserted or brought by any person, including Applicant and the property owner and their respective officers, employees, agents, contractors, and subcontractors, arising out of personal injury, death or property damage from any cause whatsoever in whole or in part arising out of this Agreement or the activities completed hereunder.

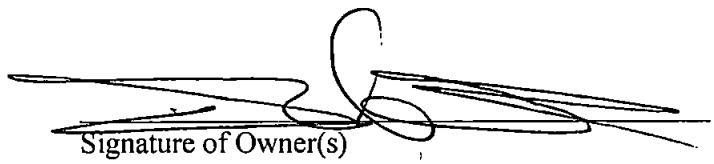
Applicant or Authorized Agent of Applicant

Property Owner (if different from Applicant)
or Authorized Agent of Property Owner

VII. Consent of the Owner to the Use and Disclosure of Information

I/We, _____, am the owner of the land that is the subject of this Application, and I/we authorize and consent to the use by or the disclosure to any person or public body, including the City of Sherman, of any personal or other information that is collected for the purposes of processing this application and administering the grant program. (*Note: Information provided in this application will become a public record, subject to disclosure under the Texas Public Information Act and/or Texas Open Meetings Act.)*

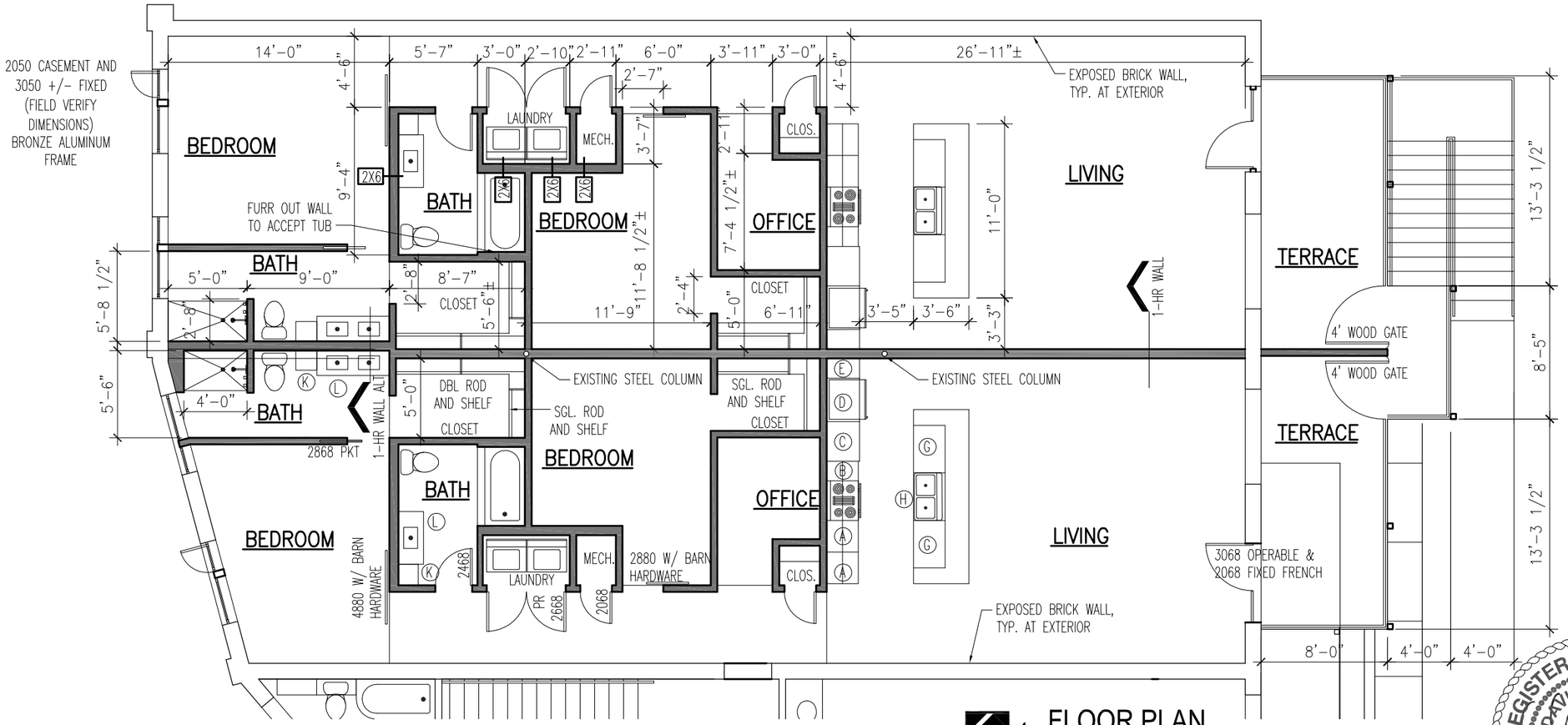
2/27/23
Date



Signature of Owner(s)

Estimated & Projected Project Costs - 328-330 Lamar Loft Apartments

Utility Infrastructure Upgrades		
	Primary Electrical Service	8,610
	Primary Water and Sewer Service Upgrade	4,780
	Primary GAS Update/Meters	3,650
		17,040
Fire Suppression System		
	5,550 sf 13-R Fire Suppression System	31,600
	Monitored Fire Alarm	12,200
		43,800
Fire Escape - Exterior Stair & Balcony		
	Engineered Steel Egress Balcony	31,000
		31,000
Parking Area		
	Concrete Aprons, Curbs, Sidewalks	18,200
	Asphalt Paving	20,000
		38,200
Signage & Landscape		
	Planter Boxes & Landscaping	4,400
	Lighting	5,150
		9,550
Loft Apartments Interior Finish		
	Drywall	10,000
	Trim & Interior Doors	11,000
	Cabinets/Vanities/Tops	18,000
	Paint	8,000
	Tile	7,600
	Flooring	7,200
	Light Fixtures	5,100
	Plumbing Fixtures	7,500
	Hardware	4,500
	Misc.	15,000
		93,900
	Total Improvement Costs	**233,490**



1 FLOOR PLAN
SCALE: 1/8" = 1'-0"

CABINET KEY

MARK	DESCRIPTION
A	IKEA B3D 24" BASE CABINET W/ 3 DRAWERS AND AK1 WALL CABINET ABOVE
B	IKEA B3D 15" BASE CABINET W/ 3 DRAWERS AND AK1 WALL CABINET ABOVE
C	IKEA AKH 30" HIGH CABINET W/ PULL-OUT DRAWERS
D	IKEA AKWRD TOP CABINET FOR REFRIGERATOR
E	IKEA AKH 15" HIGH CABINET W/ PULL-OUT DRAWERS
F	IKEA AKH 15" HIGH CABINET W/ SHELVES, 2 DOORS
G	IKEA B3D 36" BASE CABINET W/ 3 DRAWERS
H	IKEA AKSDD 36" BASE CAB AND DEMSJO 2 BOWL SINK W/ ALSVIK SINGLE LEVER FAUCET
J	IKEA GODMORGON/BREDVIKEN FOUR DRAWER BIRCH VENEER CABINET AND DOUBLE SINK COMBINATION W/ DALSKAR FAUCET
K	IKEA GODMORGON HIGH CABINET
L	IKEA GODMORGON/BREDVIKEN TWO DRAWER BIRCH VENEER CABINET AND SINK COMBINATION W/ DALSKAR FAUCET

GENERAL CABINET NOTES:

1. PROVIDE LIGHT ASH EFFECT DOORS.

2. PROVIDE BIRCH EFFECT SIDE PANELS WHERE SIDES ARE EXPOSED AND BACK PANELS AT ISLAND.

3. PROVIDE BIRCH EFFECT DECO STRIP AT UPPER CABINETS.

4. PROVIDE NUMERAR ALUMINUM EFFECT TOPS. CANTILEVER TOP 1' AT ISLAND.

5. PROVIDE LANSA HARDWARE.

6. PROVIDE 4" TOEKICK. FINISH:

GENERAL NOTES:

1. FLOORING TO BE RECLAIMED WOOD FLOOR W/ SEMI-GLOSS POLYURETHANE SEALER U.N.O.

2. CEILING TO BE EXISTING WOOD TRUSSES PAINTED SHERWIN WILLIAMS SW7505 MANOR HOUSE GRAY U.N.O. ON PLAN.

3. INTERIOR WALLS TO BE TBT&P GYP. BD. WITH LIGHT ORANGE PEEL TEXTURE AND SHERWIN WILLIAMS SW7631 CITY LOFT EGGSHELL.

4. INTERIOR DOORS AND TRIM AT GYP. BD. WALLS TO BE SHERWIN WILLIAMS SW7631 CITY LOFT SEMI-GLOSS.

5. DOORS TO BE PAINTED SINGLE SLAB PANELS U.N.O. USE KWIKSET SATIN CHROME DELTA LEVERS AND BRUSHED STEEL HINGES FOR SWING DOORS. USE STAINLESS STEEL BARN DOOR HARDWARE AND XXX FOR SLIDING PANELS.

REGISTERED ARCHITECT
DAVID L. BACA
22058
STATE OF TEXAS

03.29.18

davidbaca STUDIO
100 NORTH TRAVIS STREET
SUITE NO.500A
SHERMAN, TEXAS 75090
903 893 5800
www.davidbacastudio.com

REVISIONS

NO.	DESCRIPTION	DATE

Porterfield Lofts
2 NEW APARTMENTS
330 West Lamar Street
Sherman, TX 75090

PROJECT NUMBER
1705
DATE
03.29.18
SHEET NUMBER
A1.0

floor plan

PROPOSED NORTH AND WEST ELEVATIONS

Porterfield Building

EXISTING SOUTH ELEVATION

PROPOSED SOUTH ELEVATION

328-330 Lamar

	d2 Built	Pintrail Restorations
Fire Suppression	31,000	32,500
Fire Escape/Balcony	32,000	33,000
Electrical	13,000	17,250
Water/Sewer	12,500	13,000
Gas	3,500	4,750
Exterior -Parking, Landscape, Signs, Lighting	55,000	60,000
Sheetrock	8,750	12,500
Tile	7,500	8,500
Trim	10,000	12,500
Cabinets	17,000	20,000
Paint	7,250	8,500
Flooring	7,000	9,000
Hardware	4,000	5,000
Misc	15,500	20,000
	224,000	256,500

dlagrone H:\ENGINEERING\GIS\ArcGIS Pro Projects\Council Maps\Council Maps.aprx

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Development Services Department

CITY OF SHERMAN
328-330 W Lamar St
(Downtown Grant)

N
W E
S

Date: 3/1/2023 10:32 AM

Scale: 1:1,800

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 2.**

Meeting Date: 03/06/2023

Prepared By: Nate Strauch, Community & Support Services Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7039

Authorizing Execution of an Agreement with David Downtain, d/b/a RP Sherman Properties II, LLC under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program for Improvements to 213 N Travis Street

Issue:

An agreement with David Downtain, d/b/a RP Sherman Properties II, LLC for a Building Restoration and Improvement Grant for improvements to a historically significant, Central Business District property at 213 N Travis Street (Modern Building)

Background:

The Downtown Building Improvement Grant is designed to stimulate substantial, visible, and permanent improvements to historically significant buildings and to spur interest in vacant and underutilized buildings of historical value in the downtown TIRZ. Grants under the program are awarded at the City Council's sole discretion, in the maximum amount of $50,000 per project, per year.

This application is the third received under the new program. The project is to add residential lofts to the historic structure established in approximately 1954 and located at 213 N Travis Street in Downtown Sherman. This building previously received a grant in 2022 for the downstairs, commercial portion of the structure. This project will restore and renovate the second and third stories, both interior and exterior, of the 8,625-square-foot structure. The expected qualified costs for the proposed renovation work are approximately $527,000. The project qualifies for a matching grant of $50,000.

Origination:

Community and Support Services Manager Nate Strauch

Financial Consideration:

The project is eligible for a DBIG grant in the amount of $50,000.

Staff Recommendation:

As the application meets the requirements of the program, it is recommended that the City Council consider an award to David Downtain, d/b/a RP Sherman Properties II, LLC, in the amount of $50,000.

Alternatives:

As directed by Council.

Attachments

Resolution No. 7039
Application Packet
Aerial Location Map

RESOLUTION NO. 7039

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH DAVID DOWNTAIN, D/B/A RP SHERMAN PROPERTIES II, LLC UNDER THE CITY OF SHERMAN'S CENTRAL BUSINESS DISTRICT HISTORIC BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM FOR IMPROVEMENTS TO 213 N TRAVIS STREET; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an agreement with David Downtain, d/b/a RP Sherman Properties II, LLC for improvements to 213 N Travis Street under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of March 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Downtown Building Improvement Grant Application and Agreement

The information requested below will be used to process your application under the terms and conditions of the City of Sherman's Downtown Building Improvement Grant. All grant applications must include pictures of the current building, designs or renderings of the finished product, and historical pictures, if available.

I. Applicant Information

1. Applicant(s) name: RP Sherman Properties II, LLC

   Mailing address: 1200 N East Street

   City: Sherman State: TX Zip: 75090

2. Applicant's daytime telephone number: 972-832-8011

   E-mail address: ddowntain@risenproperties.com

3. Status of applicant (please check one)
   - _X_ Property owner with vacant facility
   - _X_ Property owner with tenant business
   - ____ Property owner/operator of existing business on property
   - ____ Property tenant with property owner consent
   - ____ Property deed, lease, or other document evidencing applicant's status

5. Length of ownership/ lease: 5.5 Years
   Date purchased/ leased: 2/07/2017

II. Property Information

1. Address of property to be improved: 213 N Travis St. Sherman TX 75090

2. Legal description of subject property:
   SHANNON T J SUPPLEMENT, BLOCK D, LOT
   N/2 A, ACRES. 078

3. Grayson County Tax Assessor Parcel Number(s):
   Property ID: 161965 Map ID: S034

4. Year built: 1954 Square footage: 8,625
   (Eligible buildings must be at least 50 years of age.)

6. What are the current types of businesses or other uses occupying the building?
   The first floor tenant is 903 School of Barbery. This grant is specific to
   the construction and completion of four residential loft apartments.

7. Name and phone number of tenant(s), if applicable:

(Attach additional names/numbers, if needed)

8. Use of building after construction: Barber School and Four Residential Lofts

9. Number of parking spaces provided: 7 Proposed: _____ Total: 7

10. Current zoning: Central Business District C-1

11. Is a zoning amendment required? Yes___ No_X_

III. Project Description

1. Description of Proposed Improvements. Please provide a detailed description of your proposed improvements. Attach a copy of your architectural or design plans.

Description: We are building out four residential lofts on the upper stories. The second and third floor will each have two units. The front units will have balconies overlooking Travis St and the rear units will have balconies on the rear of the building. It's an exciting, modern design with very nice finishes. The architectural plans were done by local architect, David Baca. We are planning to have these units available by October 2023.

_X_ **Designs Attached** _X_ **"Before" Picture(s) Attached**

2. How many jobs will be **retained** once the project is completed? ___3_____

_____ Full-time positions _____ Part-time positions

3. How many **new positions** will result from this project? _____3_____

_____ Full-time positions _____ Part-time positions

IV. Work Estimates

Please attach a minimum of two (2) independent contractor estimates for the proposed improvements. Please note that grant funding shall be based on the lowest bid. Eligible costs shall be the cost of materials, equipment, and contracted labor to complete eligible improvements.

1. Name/Company and Phone Number of Preferred Contractor:
D2 Builders, LP 940-289-0200

Amount: $527,000

2. Name/Company and Phone Number of Second Contractor:
Joe Tully, PintrailRestoration.com 469-642-9910

Amount: $556,000

3. Additional Estimates/Comments: (Please attach additional quotes, as required)

4. Total estimated costs of your improvements: $531,000

5. Estimated completion date for your improvements? 12/2024

VI. Agreement of Applicant and Property Owner

I/We, RP Sherman Properties II, LLC, of the City of Sherman, County of Grayson, State of Texas, declare under penalty of perjury that the information contained in this application is true and correct and that the information contained in the documents that accompany this application is true, correct, and complete. I/We certify and warrant that the proposed work described in this Application meets the eligibility requirements of the City of Sherman Downtown Building Improvement Grant Program. In exchange for the City of Sherman's consideration of this application, I/We hereby agree to the following:

I/We hereby authorize City of Sherman employees and agents to perform inspections of my/our property if granted funds under the City of Sherman Downtown Building Improvement Grant Program, both before and during the work for which funds are granted under this Program and after completion of the work to ensure compliance with the terms and conditions of the Program and all other applicable ordinances and other laws.

I/We acknowledge that any work carried out prior to written confirmation of grant approval may not be eligible for reimbursement.

I/We acknowledge receiving, understanding, and accepting the terms and conditions of the City of Sherman Downtown Building Improvement Grant Program, and agree to fully comply with the same along with all other applicable ordinances and other laws, all of which are incorporated herein by reference, if granted funds under the Program. I agree that the City of Sherman is entitled to the immediate return or reimbursement of any and all funds paid to the Applicant or other persons under the Program, plus interest and collection costs, in the event the Applicant fails to complete the work for which the grant was approved or otherwise fails to comply with all applicable Program guidelines and requirements, ordinances and other laws. I/We Applicants further acknowledge and agree that, if funds provided by the City to the Applicant under the Program are determined at any time not to comply with applicable state laws relating to the authorized uses of such funds, all funds paid to the Applicant or other persons under the Program shall be immediately returned or reimbursed to the City.

Chapter 2264 Certification: Pursuant to Chapter 2264 of the Texas Local Government Code, I/We hereby certifies that the Applicant's business, or a branch, division, or department of the Applicant's business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be employed in that manner in the United States. If after receiving this grant from the City of Sherman, Applicant, or a branch, division, or department of Applicant's business, is convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the grant with interest, at the rate and according to the terms provided by this Agreement under Section 2264.053 of the Texas Local Government Code, not later than the 120th day after the date the Applicant is notified of the violation. I/We agree that this document serves as an agreement under Chapter 380 of the Texas Local Government Code.

I/We agree to indemnify, release, defend and hold harmless the City of Sherman and its officers, employees and agents, from and against all claims, losses, liabilities, damages, suits, actions, or

I/We agree to indemnify, release, defend and hold harmless the City of Sherman and its officers, employees and agents, from and against all claims, losses, liabilities, damages, suits, actions, or proceedings asserted or brought by any person, including Applicant and the property owner and their respective officers, employees, agents, contractors, and subcontractors, arising out of personal injury, death or property damage from any cause whatsoever in whole or in part arising out of this Agreement or the activities completed hereunder.

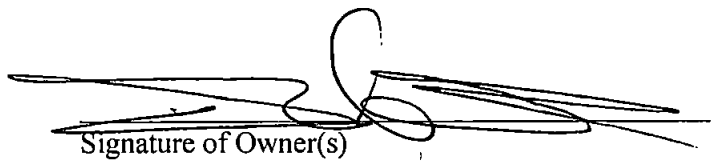
Applicant or Authorized Agent of Applicant

Property Owner (if different from Applicant)
or Authorized Agent of Property Owner

VII. Consent of the Owner to the Use and Disclosure of Information

I/We, _____, am the owner of the land that is the subject of this Application, and I/we authorize and consent to the use by or the disclosure to any person or public body, including the City of Sherman, of any personal or other information that is collected for the purposes of processing this application and administering the grant program. (*Note: Information provided in this application will become a public record, subject to disclosure under the Texas Public Information Act and/or Texas Open Meetings Act.)*

2/27/23
Date

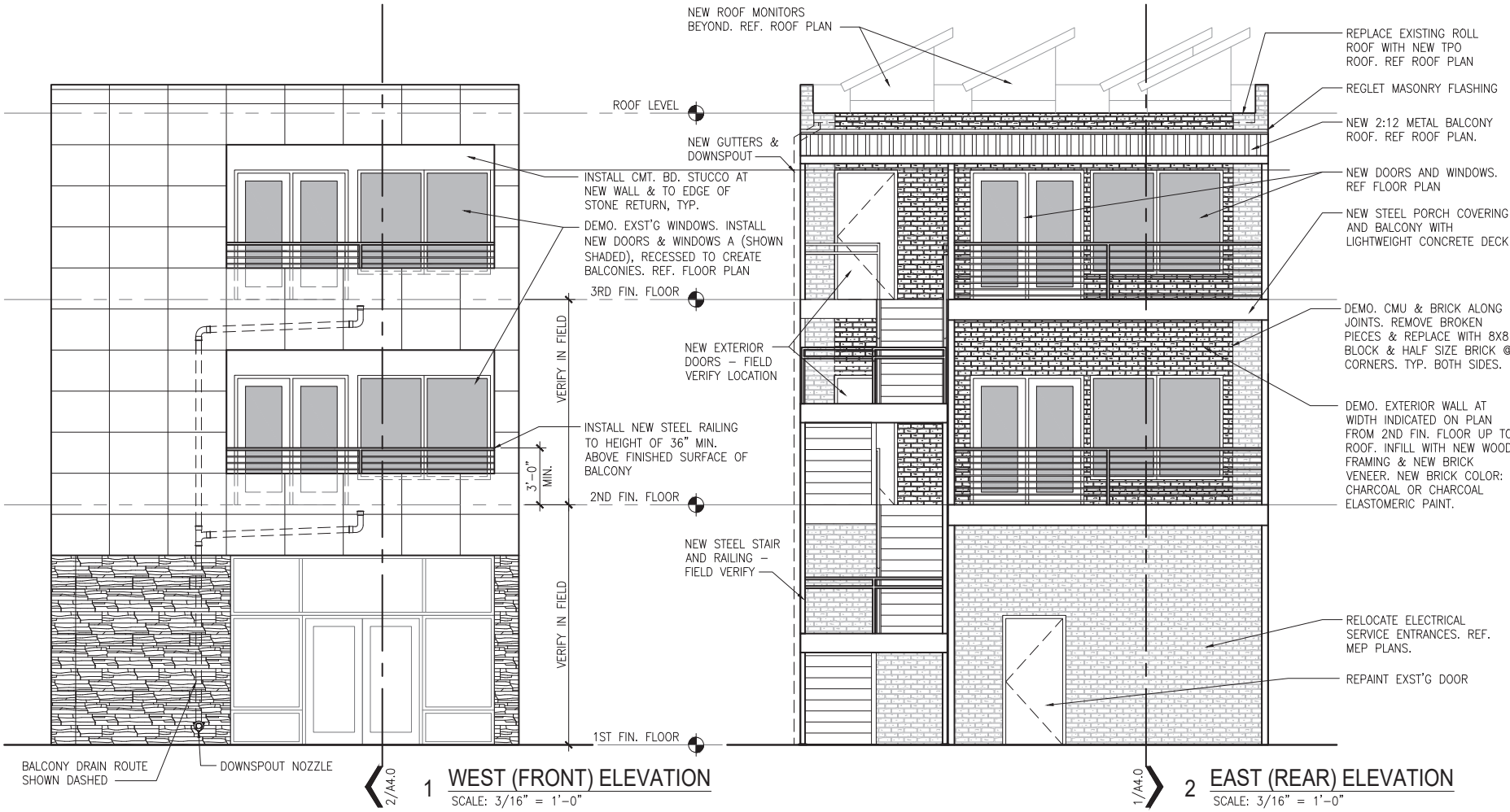


Signature of Owner(s)

213 N Travis St

Renovation Information:

Overall			
	Elevator Final	32,000	
	Balcony/Fire Escape	60,000	
	Fire Sprinkler	42,000	
			134,000
2nd & 3rd Floor - 4 Loft Apartments			
	Framing	21,000	
	Mechanical	33,000	
	Electrical	26,000	
	Plumbing	24,000	
	Interior Finishes	253,000	
	Misc.	40,000	
			397,000
	Projected Total		**531,000**



2/A4.0 1 WEST (FRONT) ELEVATION
SCALE: 3/16" = 1'-0"

1/A4.0 2 EAST (REAR) ELEVATION
SCALE: 3/16" = 1'-0"

BACA

REGISTERED ARCHITECT
DAVID L. BACA
22058
STATE OF TEXAS
03/09/22

REVISIONS		
NO.	DESCRIPTION	DATE

MODERN BUILDING LOFTS
213 N Travis St.
Sherman, Texas 75090

exterior elevations

PROJECT NUMBER
2031
DATE
09.29.21
SHEET NUMBER
A2.0

213 N Travis

Phase 2: 4 Loft Apartments on the 2nd & 3rd Floors

	d2Built	Pintrail Restoration
Elevator Final	32,000	34,250
Balcany/Fire Escape	61,000	62,000
Fire Sprinkler	42,000	45,500
Framing	20,750	22,000
Mechanical	30,250	32,500
Electrical	25,000	26,000
Plumbing	23,500	26,000
Interior Finishes	255,000	267,750
Misc	37,500	40,000
	527,000	556,000

dlagrone H:\ENGINEER\GIS\ArcGIS Pro Projects\Council Maps\Council Maps.aprx

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Development Services Department

CITY OF SHERMAN
213 N Travis St
(Downtown Grant)

N
W E
S

Date: 3/1/2023 10:32 AM

Scale: 1:1,800

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 3.**

Meeting Date: 03/06/2023

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7040

To Adopt the Results of the Annual Rate Review for Water and Wastewater

Issue:

A presentation of the updated Water and Wastewater Rate Study

Background:

At the Budget Workshop on June 18th, Dan Jackson of Willdan presented the results of the Water and Wastewater Rate Study. This presentation updates the rate scenarios for the effects of the over $500M in utility projects and the increased volumes resulting from the City's ongoing growth. Many of these projects relate to enhancing stability to our Water System and treatment capacity to our Wastewater System, projects that were not contemplated in the previously adopted rate study. The result of adding these new projects is a recommended increase in the rate change for the average residential user that will be higher than the 4.5% annual increase contemplated in the initial rate study that was previously adopted by the Council.

Origination:

City Manager

Financial Consideration:

There is no financial impact associated with this presentation.

Staff Recommendation:

This presentation is to assist the City Council in setting water and wastewater rates for the upcoming fiscal year 2024 and planning for the rates in fiscal years 2025 through 2028. Staff recommends that City Council adopt the findings of the Rate Study update performed by Willdan, subject to the results of future annual rate study updates.

Alternatives:

None

Attachments

Resolution No. 7040
Ordinance No. 6415 - amending the Rates

RESOLUTION NO. 7040

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, TO ADOPT THE RESULTS OF THE ANNUAL RATE REVIEW FOR WATER AND WASTEWATER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, The City Council approved Ordinance No. 6415 on September 20, 2021, amending Chapter 13 of the Code of Ordinances, entitled "Utilities", Article 13.08, entitle "Utility Billy", at Section 13.08.005 and 13.08.006, Revise Rates for Water and Sewer Services;

WHEREAS, Ordinance NO. 6415 states the rates for water and sewer shall be reviewed annually and set accordingly by the City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Council of the City of Sherman has reviewed the projected rates for water and sewer utilities and has adopted the findings of the proposed rate structure, subject to a future annual review of such rates.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of March 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____

LINDA ASHBY, CITY CLERK **DAVID PLYLER, MAYOR**

APPROVED AS TO FORM
AND CONTENT:
ABERNATHY, ROEDER, BOYD, & HULLETT, P.C.

BY: _____

RYAN D. PITTMAN, CITY ATTORNEY

ORDINANCE NO. 6415

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, ENTITLED "UTILITIES", ARTICLE 13.08, ENTITLED "UTILITY BILLING", AT SECTIONS 13.08.005 AND 13.08.006, REVISING RATES FOR WATER AND SEWER SERVICES; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That Chapter 13, Article 13.08, Section 13.08.001 of the Code of Ordinances of the City of Sherman, Texas, be and is hereby amended so that such section shall read as follows:

Sec. 13.08.001 Established

(a) The utility bill is defined as the collective charge for utility services of water, sewer, and solid waste collection. The bill may also include, but is not limited to, any unpaid balance due, service charges, late charges, sales tax on solid waste collection and voluntary contributions (where applicable).

(b) The rates for water, sewer, and solid waste collection furnished by the city to a consumer shall be as established by ordinance and collected under the utility bill.

(c) The rates for water and sewer shall be reviewed annually and set accordingly by the City Council.

SECTION 2. That Chapter 13, Article 13.08, Section 13.08.005 of the Code of Ordinances of the City of Sherman, Texas, be and is hereby amended so that such section shall read as follows:

Sec. 13.08.005 Water rates

(a) Water furnished by the city to a customer, other than any customer who dwells or resides in a multiunit dwelling within the city limits shall be charged for at the following rates for the fiscal year beginning October 1, ~~2017~~ *2021* for the first fifteen hundred (1,500) gallons of water used according to meter size and unit of measurement of the meter register:

Meter Sizes (in inches)	***Minimum* Monthly Amount Oct 1, ~~2017~~ *2021***
5/8 or 3/4	~~$22.80~~ *$23.48*

1	~~$44.97~~ *$46.32*
1-1/2	~~$90.36~~ *$93.07*
2	~~$153.94~~ *$158.56*
3	~~$335.62~~ *$345.69*
4	~~$589.92~~ *$607.62*
6	~~$1,316.58~~ *$1,356.08*
8	~~$2,333.88~~ *$2,403.90*
10	~~$3,641.84~~ *$3,751.10*

(b) Volume charge. Except as noted below, the charge for all water consumed in excess of the minimum fifteen hundred (1,500) gallons shall be billed at a rate of ~~three dollars and twenty-seven cents ($3.27)~~ *three dollars and thirty-seven cents ($3.37)* per one thousand (1,000) gallons of water used for the rates beginning October 1, ~~2017~~ *2021*. Water meters utilized for lawn sprinkling systems shall be charged according to meter size plus the consumption rate of ~~three dollars and twenty-seven cents ($3.27)~~ *three dollars and thirty-seven cents ($3.37)* per one thousand (1,000) gallons of water used in excess of the minimum fifteen hundred (1,500) gallons during months of July through October, beginning October 1, ~~2017~~ *2021*. During the billing months of November through June of any fiscal year, such water sprinkler meters shall be billed a minimum monthly charge as would be billed to a 5/8-inch or 3/4-inch meter.

(c) All multiunit dwellings within the city shall be charged for water consumption and availability utilizing the following formula:

Gallons Calculation Beginning October 1, ~~2017~~ *2021*:

(number of units X ~~$22.80~~ *$23.48*) +

$$\frac{\text{(gallons of water used) - (number of units X 1,500 gallons) X}}{1{,}000}$$

~~$3.27~~ *$3.37* = Billing

(d) All customers whose combined average daily use for the past twelve (12) months exceeds 700,000 gallons per day shall be charged for water consumption at the same rates as stated in the above subsections. Customers that qualify for this subsection shall receive a rebate, to be paid annually, calculated as follows:

Water Rebate = Total annual water revenues for previous twelve (12) months X .05.

(e) Bulk water sales. Upon the approval of the City of Sherman *Customer & Utility Services* Department, commercial customers may purchase bulk water from a designated meter or hydrant. Bulk water sales will be metered by the City and purchased in advance. Water sales will be calculated using outside the city rates. Bulk water sales will be for one-time purchases. Customers needing water for multiple occurrences or days must establish a Fire Hydrant Meter account,

following the required procedures to establish such account, set forth in Section 13.08.003 of this Code.

SECTION 3. That Chapter 13, Article 13.08, Section 13.08.006 of the Code of Ordinances of the City of Sherman, Texas, be and is hereby amended so that such section shall read as follows:

Sec. 13.08.006 Sewer charges

(a) All persons using the sanitary sewer system and lines of the city shall be charged as follows:

(1) Sewage charges. The sewage charge will be based upon the amount of water used. Each sanitary sewer system customer, except multiunit dwelling complexes, shall be charged for sewage at the following rates:

Amount	**Minimum Charge, Whether 1,500 Gallons of Water are Used**
	Oct 1, ~~2017~~ *2021*
First 1,500 gallons of water used	$ ~~8.19~~ *$8.68*

Additional charges shall be ~~three dollars and forty-eight cents ($3.48)~~ *three dollars and sixty-nine cents ($3.69)* for each one thousand (1,000) gallons used above the fifteen hundred (1,500) gallons minimum charge for fiscal year beginning October 1, ~~2017~~ *2021*. For residential living units, the maximum sewer charge will be ~~thirty-four dollars and twenty-nine cents ($34.29)~~ *thirty-six dollars and thirty-five cents ($36.35)* per residential living unit for fiscal year beginning October 1, ~~2017~~ *2021*.

(b) For multiunit dwelling complexes, the total sewage charge will be based on the amount of water used and will be the lower figure calculated from either of the two (2) following formulas:

Gallons Calculation Beginning October 1, ~~2017~~ *2021*:

(number of dwelling units X $~~8.19~~ *$8.68*) +

$$\frac{\text{(gallons of water used) - (number of units X 1,500 gallons)}}{1{,}000} \text{ X } \$\sout{3.48}\ \textit{\$3.69}$$

or

number of dwelling units X ~~34.29~~ *$36.35*

SECTION 4. That it is the intention of the City Council of the City of Sherman, Texas, that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Sherman, Texas, and that sections of this ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 5. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity of effectiveness of the remainder of the ordinance.

SECTION 6. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 7. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the _____ day of _____, 2021.

ADOPTED on this the _____ day of _____, 2021.

EFFECTIVE DATE on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 4.**

Meeting Date: 03/06/2023

Prepared By: Jana Garner, Grants Coordinator

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7041***

Authorizing Submission of a Grant Application and the Acceptance of the Energy Efficiency and Conservation Block Grant (EECBG) Program through the Department of Energy (DOE) for the City of Sherman

Issue:

Seeking approval to submit to the Energy Efficiency and Conservation Block Grant Program, PY2024 through the Department of Energy

Background:

The Energy Efficiency and Conservation Block Grant (EECBG) Program is designed to assist local governments in implementing strategies to reduce energy use, to reduce fossil fuel emissions, and to improve energy efficiency. The City is planning to use the grant funds for park solar lighting.

Origination:

Jana Garner, Grants Coordinator

Financial Consideration:

There is no match required for this grant. The City of Sherman is eligible for an allocation of $76,610

Staff Recommendation:

Request approval from the City Council to apply to the Department of Energy for the Energy Efficiency and Conservation Block Grant Program

Alternatives:

The Council could deny the grant opportunity

Attachments

Resolution No. 7041
EECBG Program
NOFO Announcement

RESOLUTION NO. 7041

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING SUBMISSION OF A GRANT APPLICATION AND THE ACCEPTANCE OF THE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) PROGRAM, THROUGH THE DEPARTMENT OF ENERGY (DOE) FOR THE CITY OF SHERMAN OPERATIONS. FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT SO RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized, subject to all contract documents being properly completed and approved as to form and content by City Attorney, seeking approval to submit a grant application for the Energy Efficiency and Conservation Block Grant Program, through the Department of Energy to fund energy projects within the City of Sherman.

SECTION 2. That the City Manager is hereby authorized to apply for, accept, reject, alter, or terminate a grant.

SECTION 3. That it is hereby approved that in the event of loss or misuse of the EECBG funds, the City of Sherman assures that the funds will be returned to the Department of Energy in full.

SECTION 4. That the City Council understands there is no matching requirement for said project by the Commission on State Emergency Communications' application; and

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of March 2023.

CITY OF SHERMAN, TEXAS

BY: _____

DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

ATTACHMENT 1A: DOE FORMULA GRANT FUNDING ALLOCATIONS TO LOCAL GOVERNMENTS FOR THE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) PROGRAM

This document presents the final formula grant funding allocations by Local Government (Table 1a) for the EECBG Program - Sec. 40552(b) of the Infrastructure Investment and Jobs Act (IIJA) of 2021.

Table 1a. FINAL EECBG Program Formula Grant Funding Allocations to Local Governments Listed Alphabetically by State and Local Government

#	State/Territory	Entity Name	Level of Government	Allocation
1659	TX	San Marcos	City	$127,080
1660	TX	Schertz	City	$76,400
1661	TX	Sherman	City	$76,610
1662	TX	Sugar Land	City	$164,210
1663	TX	Temple	City	$140,420
1664	TX	Texarkana	City	$76,440
1665	TX	Texas City	City	$114,390
1666	TX	The Colony	City	$76,380
1667	TX	Tyler	City	$162,770
1668	TX	Victoria	City	$126,590
1669	TX	Waco	City	$187,120
1670	TX	Waxahachie	City	$76,430
1671	TX	Weslaco	City	$76,470
1672	TX	Wichita Falls	City	$155,820
1673	TX	Wylie	City	$114,380
1674	UT	Box Elder	County	$76,950
1675	UT	Cache	County	$77,620
1676	UT	Davis	County	$248,800
1677	UT	Salt Lake	County	$80,390
1678	UT	Summit	County	$76,520
1679	UT	Tooele	County	$76,190
1680	UT	Uintah	County	$76,240
1681	UT	Utah	County	$80,710
1682	UT	Washington	County	$77,810
1683	UT	Weber	County	$79,480
1684	UT	Bountiful	City	$76,530
1685	UT	Cedar City	City	$76,240
1686	UT	Draper	City	$117,010
1687	UT	Eagle Mountain	City	$76,330
1688	UT	Herriman	City	$111,860
1689	UT	Kearns, Metro Township of	City	$76,130
1690	UT	Layton	City	$134,230
1691	UT	Lehi	City	$132,310
1692	UT	Logan	City	$117,590

ADMINISTRATIVE AND LEGAL REQUIREMENTS DOCUMENT (ALRD)

U.S. Department of Energy
Office of the Under Secretary for Infrastructure
Golden Field Office

Energy Efficiency and Conservation Block Grant (EECBG) Program

Infrastructure Investment and Jobs Act (IIJA) of 2021

Energy Efficiency and Conservation Block Grant (EECBG) Program Formula Awards

(EECBG Program Formula) - IIJA ALRD

CFDA Number: 81.128, Energy Efficiency and Conservation Block Grant Program

PURPOSE

The purpose of this Administrative and Legal Requirements Document (ALRD) is to provide guidance to States, Local Governments, and Indian tribes for preparation of EECBG Program Formula Grant applications submitted in response to Section 40552 of the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL).

Issue Date: January 18, 2023

Application Due Dates:

- All Applicants**:** *Pre-Award Information Sheet* due by **April 28, 2023,** 8:00 PM Eastern Time ET
- For State and Territory Applicants Only: *Application* due by **July 31, 2023,** at 8:00 PM ET
- Local and Tribal Government Applicants Only**:** *Application* due by **January 31, 2024,** at 8:00 PM ET

DOE will accept applications using four application periods. Applications meeting DOE priority criteria (see application instructions section 6.2 for more information) may apply in application Periods 1 and 2. All other applicants may apply in Periods 3 and 4:

Application Period	Application Submittal Timeframe	Applications Accepted
1	January 18, 2023 – April 28, 2023	State, Local and Tribal applications in one or more priority categories
2	June 1, 2023 – July 31, 2023	
3	Sept 1, 2023 – Oct 31, 2023	All Other Local and Tribal applications
4	December 1, 2023 – Jan 31, 2024	

Note: Due to the volume of applications, DOE may not review your application immediately upon submittal. Once a complete application is received and reviewed by DOE, it typically takes up to 60 days to process an EECBG Program formula grant. Applications are not necessarily considered complete upon submission. For additional information on application requirements, see Section 6.0 of the application instructions.

REGISTRATION/SUBMISSION REQUIREMENTS

Registration Requirements (GRANT APPLICANTS ONLY): Allow at least 21 days to complete.

If you have not already registered, there are several one-time actions grant applicants must complete:

1. Register with the System for Award Management (SAM) at https://www.sam.gov. Designating an Electronic Business Point of Contact (EBiz POC) and obtaining a special password called an MPIN are important steps in SAM registration. **Please update your SAM registration annually.** Upon registration, SAM will automatically assign a Unique Entity ID (UEI).

   Unique Entity ID and System for Award Management (SAM) — Each applicant (unless the applicant is excepted from those requirements under 2 CFR 25.110) is required to: (1) be registered in the SAM at https://www.sam.gov before submitting its application, (2) provide a valid UEI number in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. DOE may not make a federal award to an applicant until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time DOE is ready to make a federal award, the DOE will determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

   NOTE: Due to the high demand of UEI requests and SAM registrations, entity legal business name and address validations are taking longer than expected to process. Entities should start the UEI and SAM registration process as soon as possible. If entities have technical difficulties with the UEI validation or SAM registration process, they should utilize the HELP feature on SAM.gov. SAM.gov will work on entity service tickets in the order in which they are received and asks that entities not create multiple service tickets for the same request or technical issue. Additional entity validation resources can be found here: GSAFSD Tier 0 Knowledge Base - Validating your Entity.

2. Register in FedConnect to receive and acknowledge your award at https://www.fedconnect.net/. See the Quick Start Guide at https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf For additional questions, email support@fedconnect.net or call 1-800-899-6665.

3. Have a login for the Performance and Accountability for Grants in Energy (PAGE) System at https://www.page.energy.gov/default.aspx in order to submit your application. For questions regarding PAGE, refer to the Help Menu in PAGE or contact the PAGE hotline at PAGE-Hotline@ee.doe.gov or 1-866-492-4546.

Electronic Signatures: Acknowledgement of award documents by the Grantee's authorized representative through electronic systems used by the Department of Energy, including FedConnect, constitutes the Grantee's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Grantee's authorized representative constitutes the Grantee's electronic signature.

IMPORTANT: The electronically signed Assistance Agreement with attached award documents distributed via FedConnect is the formal authorization and approval from the Contracting Officer. Grantees may not rely on PAGE as the formal authorization and approval. Award documents in the initial award and any modifications to the award must be reviewed and acknowledged by the Grantee in FedConnect.

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PART I AUTHORITY

The EECBG Program is authorized by Title V, Subtitle E of the Energy Independence and Security Act of 2007 (EISA), as amended,[1] and signed into Public Law (PL 110-140) on December 19, 2007. All awards made under this program shall comply with applicable laws and regulations including, but not limited to, 2 CFR Part 200 as amended by 2 CFR Part 910 and Section 40552 of the Infrastructure Investment and Jobs Act (IIJA) (PL 117-58).

PART II AWARD INFORMATION

A. TYPE OF AWARD INSTRUMENT

DOE will award grants or vouchers.

Entities eligible for formula EECBG Program allocations, including state, local, and Tribal governments can apply to DOE for an EECBG Program award. States are eligible to apply for a grant. Local and Tribal governments can apply for either a grant or a voucher. Vouchers may be used for technical assistance and/or equipment rebates. Local governments and Tribal entities must **choose either a grant or voucher and must allocate 100% of their EECBG Program funding to either a voucher or a grant**. States are not eligible to apply for a voucher. Local and Tribal governments are encouraged to indicate whether they are choosing a grant or a voucher as soon as possible, but no later April 28, 2023, by submitting the Pre-Award Information Sheet. See "EECBG Program Application Instructions" for additional details.

B. ESTIMATED FUNDING

Entities shall administer DOE funds received under the EECBG Program in accordance with Federal rules and regulations as well as applicable state, local or Tribal policies and procedures. The Grantee is to manage Federal Funds in a prudent, effective, and efficient manner to accomplish program objectives.

The Infrastructure Investment and Jobs Act, Section 40552 provides $550 million for EECBG Program for fiscal year 2022, to remain available until expended. DOE will distribute $440 million in formula and competitive EECBG Program funding to eligible units of local government, states, and Indian tribes. Of the amount appropriated by IIJA, DOE will allocate funds as prescribed in section 543 of EISA:

- 34% to eligible units of local government-alternative 1 through formula grants;
- 34% to eligible units of local government-alternative 2 through formula grants;
- 28% to states through formula grants;
- 2% to Indian tribes through formula grants; and
- 2% for competitive grants to ineligible local governments and Indian tribes.[2]

IIJA allocations for EECBG Program direct formula awards from the DOE, as adjusted, are based on the following funding amounts:

- $299,200,000 for formula awards to eligible units of local government
    - $149,600,000 to eligible units of local government-alternative 1
    - $149,600,000 to eligible units of local government-alternative 2
- $123,200,000 for formula awards to states

[1] 42 U.S.C. 17151 et seq.
[2] 42 U.S.C. 17153(a).

- Each state (except for those noted as exempt in Section 6.3.E of the application instructions) is required to pass not less than 60% of its allocation through to cities and counties within the state that are ineligible for direct formula grants from DOE.

- $8,800,000 for formula awards to eligible Indian tribes

DOE also intends to allocate $8.8 million for competitive grants available to units of local government (including Indian tribes) and consortia of units of local government that are not eligible to receive direct formula grants from DOE. Availability of competitive grants will be announced through a separate future Funding Opportunity Announcement (FOA).

Prior to distributing funding to eligible entities, DOE intends to utilize $110 million to ensure delivery of an effective and efficient EECBG Program and to provide technical assistance to eligible entities throughout the lifetime of the EECBG Program.

Funding Amount: Funding allocations to states, local governments, and Indian tribes are included as attachments to this document.

C. PERIOD OF PERFORMANCE

Grants will consist of a **3-year** Project and Budget Period for States, and a **2-year** Project and Budget Period for Local Governments and Indian tribes. Vouchers to Local Governments and Indian tribes will be for a **2-year** Project and Budget Period. Recipients may request a no-cost time extension (or a modification to shorten the period of performance) of their grant or voucher.

PART III ELIGIBILITY INFORMATION

A. ELIGIBLE APPLICANTS

In accordance with Section 543 of EISA, eligible entities for EECBG Program formula allocations include States (including U.S. Territories, and the District of Columbia, hereinafter referred to as "states"), local governments, and Indian tribes.[3] Eligibility for this award is restricted to eligible states, local governments and Indian tribes applying for formula grant financial assistance under the EECBG Program. No other entity types may be considered for this funding.

B. COST MATCHING

Cost match is not required for these awards.

PART IV APPLICATION AND SUBMISSION INFORMATION

A. CONTENT AND FORM OF APPLICATION: GRANTS

The application must be submitted via the PAGE online system at https://www.page.energy.gov/default.aspx. DOE reserves the right to request additional or clarifying information for any reason deemed necessary. Applications will be reviewed for consistency with the EECBG Program objectives.

[3] 42 U.S.C. 17153(a).

The EECBG Program Grant Application consists of:

- Standard Form 424 (Application form)
- Standard Form 424A (Budget summary)
- Budget Justification
- Energy Efficiency and Conservation Strategy
- EECBG Program Activity File
- Required certifications
- Electronic copy (or web link) to the applicant's latest single or program-specific audit as required by 2 CFR 200 Subpart F
- An environmental questionnaire (if applicable)
- Pre-Award Information Sheet

Please see Section 6.3 in the Application Instructions for more detail.

Note: applicants choosing a Voucher do not need to submit a grant application at this time. Additional Guidance on the Voucher application process will be forthcoming from DOE and made available on the following website, https://www.energy.gov/clean-energy-infrastructure/energy-efficiency-and-conservation-block-grant-program.

PART V AWARD ADMINISTRATION INFORMATION

A. AWARD NOTICES

An Assistance Agreement issued by the Contracting Officer is the authorizing award document. The Assistance Agreement normally includes, either as an attachment or by reference: (1) Special Terms and Conditions; (2) Application as approved by DOE; (3) DOE Financial Assistance regulations at 2 CFR Part 200 as amended by 2 CFR Part 910; (4) National Policy Assurances To Be Incorporated As Award Terms; (5) Budget Summary; (6) Intellectual Property Provisions; (7) Federal Assistance Reporting Checklist, which identifies the Reporting Requirements; and (8) National Environmental Policy Act (NEPA) Determination. These documents are sent to the Recipient via FedConnect.

B. FUNDING RESTRICTIONS

All expenditures must be allowable, allocable, and reasonable in accordance with the applicable Federal cost principles. Refer to the following Federal cost principles for more information: 2 CFR Part 200 as amended by 2 CFR Part 910.

Under 2 CFR Part 200 as amended by 2 CFR Part 910 regulations, the cost principles are contained in Subpart E–Cost Principles within 2 CFR Part 200.

C. REPORTING

Reporting requirements are identified on the Federal Assistance Reporting Checklist (FARC), attached to the award agreement.

Awards initiated since 10/1/2010 are subject to the requirement of Reporting Subawards and Executive Compensation to comply with the Federal Funding and Transparency Act of 2006 (FFATA). Additional information about this requirement can be found in the Special Terms and Conditions of the recipient's award, at https://www.fsrs.gov, and in 2 CFR Part 170.

Additional information regarding reporting will be available from the EECBG Program website, at: https://www.energy.gov/clean-energy-infrastructure/energy-efficiency-and-conservation-block-grant-program.

D. ADMINISTRATIVE AND NATIONAL POLICY REQUIREMENTS

1. Administrative Requirements

- The administrative requirements for DOE grants and cooperative agreements are contained in:
  - 2 CFR Part 200 as amended by 2 CFR Part 910 and 10 CFR Part 420
  - 2 CFR Part 25 – Universal Identifier and Central Contractor Registration
  - 2 CFR Part 170 – Reporting Subaward and Executive Compensation

  The Electronic Code of Federal Regulations is found at www.ecfr.gov.

2. National Policy Requirements

The National Policy Assurances to be incorporated as Award Terms are located at http://www.nsf.gov/awards/managing/rtc.jsp.

Intellectual Property Provisions. The standard DOE financial assistance intellectual property provisions applicable to the various types of recipients are located at http://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards

3. Environmental Review in Accordance with National Environmental Policy Act (NEPA)

The Office of the Under Secretary for Infrastructure's decision whether and how to distribute Federal funds is subject to the National Environmental Policy Act (42 U.S.C. 4321, et seq.). NEPA requires Federal agencies to integrate environmental values into their decision-making processes by considering the potential environmental impacts of their proposed actions.

For further information on NEPA requirements, see section 6.3.G in the Application Instructions.

4. Build America, Buy America Requirements

Federally assisted projects which involve infrastructure work, undertaken by applicable recipient types, require that:

- All iron, steel, and manufactured products used in the infrastructure work are produced in the United States; and
- All construction materials used in the infrastructure work are manufactured in the United States.

Whether a given project must apply this requirement is project-specific and dependent on several factors, such as the recipient's entity type, whether the work involves "infrastructure," as that term is defined in Section 70914 of the BIL, and whether the infrastructure in question is publicly owned or serves a public function.

Applicants are strongly encouraged to consult the Build America, Buy America Guidance and Resources[4] to determine whether their project may have to apply this requirement, both to make an early determination as to the need of a waiver, as well as to determine what impact, if any, this requirement may have on the proposed project's budget.

[4] See: https://www.madeinamerica.gov and https://www.whitehouse.gov/omb/management/made-in-america/build-america-buy-america-act-federal-financial-assistance/

5. Definitions

a. For purposes of the Buy America requirements, the following definitions apply:

- ***Construction materials*** includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives —that is or consists primarily of:
    - non-ferrous metals;
    - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
    - glass (including optic glass);
    - lumber; or
    - drywall.

- ***Infrastructure*** includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

  In addition to the above, the infrastructure in question must be publicly owned or must serve a public function; privately owned infrastructure that is solely utilized for private use is not considered "infrastructure" for purposes of Buy America applicability. The Agency, not the applicant, will have the final say as to whether a given project includes infrastructure, as defined herein. Accordingly, in cases where the "public" nature of the infrastructure is unclear, DOE strongly recommends that applicants complete their full application with the assumption that Buy America requirements will apply to the proposed project.

- ***Project*** means the construction, alteration, maintenance, or repair of infrastructure in the United States.

b. Buy America Requirements for Infrastructure Projects ("Buy America" Requirements)

In accordance with Section 70914 of the BIL, none of the project funds (includes federal share and recipient cost share) may be used for a project for infrastructure unless:

(1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

(3) all construction materials[5] are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America requirements only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor do Buy America requirements apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

These requirements must flow down to all sub-awards, all contracts, subcontracts, and purchase orders for work performed under the proposed project. For additional information related to the application and implementation of these Buy America requirements, please see OMB Memorandum M-22-11, issued April 18, 2022: https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf.

c. DOE Submission Requirements for Full Application

Within the activity file, applicants must provide a short statement on whether the project will involve the construction, alteration, and/or repair of infrastructure in the United States. The ultimate determination about whether a project includes infrastructure remains with DOE. However, the applicant's statement will assist project planning and integration of domestic preference requirements, which may impact the project's proposed budget.

Waivers[6]

In limited circumstances, DOE may waive the application of the Buy America requirements where DOE determines that:

(1) applying the Buy America requirements would be inconsistent with the public interest;

(2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or,

(3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

If an applicant is seeking a waiver of the Buy America requirements, it must include a written waiver request with the Full Application. A waiver request must include:

- A detailed justification for the use of "non-domestic" iron, steel, manufactured products, or construction materials to include an explanation as to how the non-domestic item(s) is essential to the project
- A certification that the applicant or recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers
- Applicant /Recipient name and Unique Entity Identifier (UEI)
- Total estimated project cost, DOE and cost-share amounts

[5] Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

[6] As of the date this guidance was written, OMB guidance on waivers and the waiver process is still relatively sparse. As more information is provided to the Agencies, this guidance will be updated.

- Project description and location (to the extent known)
- List and description of iron or steel item(s), manufactured goods, and construction material(s) the applicant or recipient seeks to waive from Domestic Content Procurement Preference requirement, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each.
- Waiver justification including due diligence performed (e.g., market research, industry outreach) by the applicant or recipient
- Anticipated impact if no waiver is issued DOE may require additional information before considering the waiver request.

DOE may require additional information before considering the waiver request. See DOE Buy America Requirement Waiver Requests | Department of Energy

Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at https://www.madeinamerica.gov/waivers/.

5. Davis Bacon Prevailing Wage Requirements

Projects awarded under this ALRD will be funded under Division D of the BIL. Accordingly, per section 41101 of that law, all laborers and mechanics employed by the applicant, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work funded in whole or in part under this ALRD shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

By accepting an award as a result of this ALRD, the Applicant is acknowledging the DBA requirements above, and confirming that the laborers and mechanics performing construction, alteration, or repair work on projects funded in whole or in part by awards made as a result of this ALRD are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). Applicants acknowledge that they will comply with all of the Davis-Bacon Act requirements, including but not limited to:

(1) Ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.

(2) Ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from contracts and subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.

(3) Being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.

(4) Receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.

(5) Maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).

(6) Conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.

(7) Cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

(8) Posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(9) Notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(10) Preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (https://doeibenefits2.energy.gov) or its successor system.

Recipients of funding under this ALRD will also be required to undergo DBA compliance training and to maintain competency in DBA compliance. The Contracting Officer will notify the recipient of any DOE sponsored DBA compliance trainings. The U.S. Department of Labor ("DOL") offers free Prevailing Wage Seminars several times a year that meet this requirement, at https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events.

For additional guidance on how to comply with the DBA provisions and clauses, see https://www.dol.gov/agencies/whd/government-contracts/construction and https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction.

PART VI OTHER INFORMATION

A. INTERGOVERNMENTAL REVIEW

Program Subject to Executive Order 12372

This program is subject to Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations at 10 CFR Part 1005.

One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by state and local governments for coordination and review of proposed Federal financial assistance.

Applicants should contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the state's process under Executive Order 12372. The names and addresses of the SPOCs are listed on the Web site of the Office of Management and Budget at Intergovernmental Review (SPOC List) (whitehouse.gov) Intergovernmental Review (SPOC List) (whitehouse.gov).

B. GOVERNMENT RIGHT TO REJECT OR NEGOTIATE

DOE reserves the right, without qualification, to reject any or all applications received in response to this ALRD and to select any application, in whole or in part, as a basis for negotiation and/or award.

C. COMMITMENT OF PUBLIC FUNDS

The Contracting Officer is the only individual who can make awards or commit the Government to the expenditure of public funds. A commitment by other than the Contracting Officer, either explicit or implied, is invalid.

D. LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

E. EXPENDITURE RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to support or oppose union organizing.

F. MODIFICATIONS

Modifications to this ALRD will be processed and disseminated in the same manner as other EECBG Program Notices.

G. PROPRIETARY APPLICATION INFORMATION

DOE will use data and other information contained in applications strictly for evaluation purposes. Applicants should not include confidential, proprietary, or privileged information in their applications unless such information is necessary to convey an understanding of the proposed project.

Applications containing confidential, proprietary, or privileged information must be marked as described below. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose.

The cover sheet of the application must be marked as follows and identify the specific pages containing confidential, proprietary, or privileged information:

Please be aware that all information provided to DOE (including confidential proprietary or confidential commercial information) is subject to public release under the Freedom of Information Act (FOIA). (5 U.S.C. § 552(a) (3) (A) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524). When a FOIA request covers information submitted to DOE by an applicant, and the cognizant DOE FOIA Officer cannot make an independent determination regarding the public releasability of this information, the cognizant DOE FOIA Officer will contact the submitter and ask for comment regarding the redaction of information under one or more of the nine FOIA exemptions. However, the cognizant DOE FOIA Officer will make the final decision regarding FOIA redactions. Submitters are given a minimum of 7 days to provide redaction comments and if DOE disagrees with the submitter's comment, DOE will notify the submitter of the intended public release no less than seven (7) days prior to the public disclosure of the information in question." (10 CFR Part 1004.11).

H. PROTECTED PERSONALLY IDENTIFIABLE INFORMATION

In responding to this ALRD, Applicants must ensure that Protected Personally Identifiable Information (PII) is not included in the application documents. PII is defined by the Office of Management and Budget (OMB) and DOE as:

Any information about an individual maintained by an agency, including but not limited to, education, financial transactions, medical history, and criminal or employment history and information that can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information that is linked or linkable to an individual.

This definition of PII can be further defined as: (1) Public PII and (2) Protected PII.

Public PII: PII found in public sources such as telephone books, public websites, business cards, university listing, etc. Public PII includes first and last name, address, work telephone number, email address, home telephone number, and general education credentials.

Protected PII: PII that requires enhanced protection. This information includes data that if compromised could cause harm to an individual such as identity theft.

Listed below are examples of Protected PII that Applicants must not include in their application.

- Social Security Numbers in any form
- Place of birth associated with an individual
- Date of birth associated with an individual
- Mother's maiden name associated with an individual
- Biometric record associated with an individual
- Fingerprint
- Iris scan
- DNA
- Medical history information associated with an individual
- Medical conditions, including history of disease
- Metric information, e.g., weight, height, blood pressure
- Criminal history associated with an individual
- Employment history and other employment information associated with an individual
- Ratings
- Disciplinary actions
- Performance elements and standards (or work expectations) are PII when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal
- Financial information associated with an individual
- Credit card numbers
- Bank account numbers
- Security clearance history or related information (not including actual clearances held)

PART VII REFERENCE MATERIAL

IIJA EECBG Program Formula Allocations

IIJA EECBG Program Application Instructions

IIJA EECBG Program Formula Pre-Award Information Sheet

IIJA EECBG Program Energy Efficiency and Conservation Strategy Templates

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 5.**

Meeting Date: 03/06/2023

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7042*** **(NO ACTION TAKEN AT THE JANUARY 3, 3023 REGULAR CITY COUNCIL MEETING)**

Accepting the Contract with Piazza Construction, LLC as Complete for the Construction of the WWTP Operations Building Addition & Remodel

Issue:

To consider and act upon a resolution approving the Greater Texoma Utility Authority's (GTUA) acceptance of the contract with Piazza Construction, LLC as complete for the construction of the City of Sherman's WWTP Operations Building Addition & Remodel.

Background:

This was project #4 of the $13,595,000 Texas Water Development Board Clean Water State Revolving Fund program undertaken at the Wastewater Treatment Plant for various projects. It was awarded May 17, 2021, and consisted of modifications to the existing building to include new laboratory, building additions with men's and women's locker rooms with facilities, pavement, barrier free accessible sidewalks, water and sewer lines, plumbing, HVAC, and electrical improvements.

Origination:

Engineering Department

Financial Consideration:

The staff recommends accepting the $1,258,637.00 plus two change orders totaling $8,484.30 for a total project of $1,267,121.30 contract with Piazza Construction, LLC. as complete for the construction of the WWTP Operations Building Addition & Remodel, concurrent with the Greater Texoma Utility Authority (GTUA).

Staff Recommendation:

It is recommended that the City Council approve the resolution and accept the contract as complete for this project.

Alternatives:

As may be directed by the Council

Attachments

Resolution No. 7042
Completion Certificate
Location Map

RESOLUTION NO. 7042

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ACCEPTING THE CONTRACT WITH PIAZZA CONSTRUCTION, LLC AS COMPLETE FOR THE CONSTRUCTION OF THE WWTP OPERATIONS BUILDING ADDITION & REMODEL; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman, Texas, has entered into a Contract for Water Supply and Sewer Service with the Greater Texoma Utility Authority; and

WHEREAS, the Greater Texoma Utility Authority has entered into a contract with Piazza Construction, LLC for the construction of the WWTP Operations Building Addition & Remodel for the City of Sherman, Texas; and

WHEREAS, representatives of the City of Sherman, the Greater Texoma Utility Authority, and the project engineer have inspected the WWTP Operations Building Addition & Remodel and found it to be complete;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Council of the City of Sherman, Texas, hereby formally accepts the contract with Piazza Construction, LLC for construction of the WWTP Operations Building Addition & Remodel as complete.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TX on this the 6th day of March 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
NAME: _____
CITY ATTORNEY

CERTIFICATE OF PROJECT COMPLETION

Project: TWDB 73846: GTUA for City of Sherman: WWTP Operations Building Addition & Remodel

Date of Issuance: 02/20/2023

Owner: Greater Texoma Utility Authority

Contractor: Piazza Construction LLC

Engineer: Freeman-Millican, Inc.

This Certificate of Project Completion applies to all Work under Contract Documents or to the following specified parts thereof:

All specified work

To: Greater Texoma Utility Authority/City of Sherman
OWNER

And to Piazza Construction LLC
CONTRACTOR

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be complete in accordance with Contract Documents on

August 30, 2022
Date of Completion

From the date of Completion the responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

RESPONSIBILTIES:

OWNER: Security, operation, safety, maintenance, heat, utilities, insurance

_____

_____

CONTRACTOR: Contractor's Guarantee (from the date of completion),

Payment and Performance Bonds, if applicable

The following documents are attached to and made a part of this Certificate:

Contractor's Guarantee, Consent of Surety, Final Pay Estimate

---

This certificate does not constitute an acceptance of work not in accordance with the Contract Documents nor is it a release of CONTRACTOR'S obligations to complete the Work in accordance with the Contract Documents.

Executed by ENGINEER on February 20, 2023, 2022.

Freeman-Millican, Inc.

ENGINEER

By: _____

John Gattis, AIA

VIETNAM VETERANS
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Renovation of
WWTP Control Building
Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 6.**

Meeting Date: 03/06/2023

Prepared By: Theresa Hutchinson, Parks & Recreation Manager

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7043***

Authorizing Execution of a Contract with American Ramp Company for Construction of an Asphalt Pump Track at Binkley Park Through the Sourcewell Purchasing Cooperative

Issue:

To obtain authorization to execute a contract with American Ramp Company of Joplin, Missouri, to replace the dirt pump track at Binkley Park with an asphalt pump track.

Background:

The current dirt pump track at Binkley Park can only accommodate bicycles and requires frequent maintenance. Replacing the existing track with an asphalt pump track will expand usage to include skateboards, etc. Additionally, less maintenance will increase the useful life and lower costs.

Contracts awarded under the Sourcewell purchasing cooperative fully satisfy statutory competitive bidding requirements.

Origination:

Parks and Recreation Department

Financial Consideration:

Total projected costs for this project are $356,000.00. Funding was approved in the fiscal year (FY) 2023 Capital Improvement Program (CIP) budget for this purchase.

Staff Recommendation:

Staff recommends the City Council authorize execution of the contract with American Ramp Company to construct an asphalt pump track at Binkley Park.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7043
AIA Standard Agreement_blank
AIA Exhibit A_blank
AIA Exhibit B_blank
Sourcewell NJPA Certificate of Membership

RESOLUTION NO. 7043

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CONTRACT WITH AMERICAN RAMP COMPANY FOR CONSTRUCTION OF AN ASPHALT PUMP TRACK AT BINKLEY PARK THROUGH THE SOURCEWELL PURCHASING COOPERATIVE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed to execute a contract with American Ramp Company, of Joplin, Missouri, through the Sourcewell purchasing cooperative for construction of an asphalt pump track at Binkley Park for a total purchase price of Three Hundred Fifty Thousand Dollars and No Cents ($350,000.00). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2022-2023 budget.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the 6th day of March 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____
LINDA ASHBY, CITY CLERK **DAVID PLYLER, MAYOR**

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____

NAME: _____
RYAN PITTMAN, CITY ATTORNEY

AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the ___ day of _____ in the year Two Thousand Twenty-Three (2023)
(In words, indicate day, month and year.)

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

City of Sherman
P.O. Box 1106
Sherman, TX 75091

and the Design-Builder:
(Name, legal status, address and other information)

American Ramp Company
601 S. McKinley Avenue
Joplin, MO 64801

for the following Project:
(Name, location and detailed description)

ARBH File No. 6262.0022 City of Sherman/Sherman Pump Track

Binkley Park
101 Binkley Park Dr.
Sherman, TX

Construction of Binkley Park Pump Track and as further described in Exhibit "D" – Design Criteria

The Owner and Design-Builder agree as follows.

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's requirements for the Project (the "Design Criteria) set forth in Exhibit "D" – Design Criteria.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

See Exhibit "D" – Design Criteria

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§ 1.1.2 The Owner's design requirements for the Project and related documentation:
(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

See Exhibit "D" – Design Criteria

§ 1.1.3 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

See Exhibit "D" – Design Criteria

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:
(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™–2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

None.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are excluded.
(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

§ 1.1.6 The Design-Builder's conceptual estimate for the Work to be provided by the Design-Builder is set forth below in:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Three Hundred Fifty-Six Thousand and No/100 Dollars ($356,000.00)

§ 1.1.7 The Design-Builder's design and construction milestone dates are attached as Exhibit "F" – Design-Builder's Project Schedule:

.1 Design phase milestone dates:

See Exhibit "F" – Design-Builder's Project Schedule

.2 Submission of Design-Builder Proposal:

See Exhibit "F" – Design-Builder's Project Schedule

.3 Phased completion dates:

See Exhibit "F" – Design-Builder's Project Schedule

.4 Substantial Completion date:

See Exhibit "F" – Design-Builder's Project Schedule

.5 Other milestone dates:

See Exhibit "F" – Design-Builder's Project Schedule

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§ 1.1.8 The Owner requires the Design-Builder to retain an Architect, Consultants and Contractors at the Design-Builder's cost as necessary to complete the Work:
(List name, legal status, address and other information.)

.1 Architect

See Exhibit "G" – Key Firms and Personnel

.2 Consultants

See Exhibit "G" – Key Firms and Personnel

.3 Contractors

See Exhibit "G" – Key Firms and Personnel

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

See Exhibit "D" – Design Criteria

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria is, without limitation, sufficient; reasonably achievable; and complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria is not sufficient; reasonably achievable; or conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict in writing, together with the Design-Builder's recommendations for modifications to resolve such conflicts, as further described in Section 4.2.2.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit any information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

Theresa Hutchinson
903-892-7344
TheresaH@cityofsherman.com

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

Wayne Lee, City of Sherman Engineering Department

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

.1 Geotechnical Engineer

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.2 Commissioning Agent

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Evan Moss

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten (10) days' written notice to the other party. The Design-Builder's proposed replacement representative shall be approved by the Owner in writing prior to being assigned to the project. Such Owner's approval shall not be unreasonably withheld.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 14.4

[**X**] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of the documents defined in Article 16 of this Agreement, other documents listed in and incorporated into this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment, supplies, skill, supervision, transportation, support services, facilities and other resources necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the Work identified by the Design-Build Documents. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Design Documents. Design Documents are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

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§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative, including by not limited to the Owner's Independent Representative defined in Section 1.4.16.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor; a Subcontractor of or vendor to the Contractor; or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ 1.4.16 Owner's Independent Representative

Pursuant to and in accordance with Chapter 2269 of the Texas Government Code, the Owner has selected or designated an architect or engineer independent of the Design-Builder to act as the Owner's representative for the duration of the project. This "Owner's Independent Representative" shall provide such services as the Owner deems necessary to protect its interests, and comply with statutory requirements. The Owner's Independent Representative shall provide review and recommendation services, but shall not have the authority to execute Modifications or other documents on behalf of the Owner that change the Contract Time or Contract Sum.

§ 1.4.17 Design Criteria

The information in Exhibit "D" - Design Criteria specifies criteria the Owner considers necessary to describe the project. It may (or may not) include, as appropriate to the project, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirements the Owner, at its sole discretion believes the Design-Builder requires to describe the project. The Owner, by providing the Design Criteria, makes no representation or warranty the information in it is complete; unambiguous; or in compliance with current design, engineering, or code and statutory requirements. The Owner does not warrant and will not be held responsible for errors or omissions in the Design Criteria not specifically identified in the Design-Builder's report required by Section 4.2.2.

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§ 1.4.18 The Drawings
The Drawings are the graphic and pictorial portions of the Design-Build Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.4.19 The Specifications
The Specifications are that portion of the Design-Build Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.4.20 The Indemnitees
The Owner, which includes the Mayor, members of the City Council, employees, agents, assigns, and other city officers, the Owner's consultants and the Owner's Independent Representative or the agents and employees of any of them shall hereafter be collectively known as the "Indemnitees".

§ 1.4.21 Construction Management Plan
The Construction Management Plan is prepared by the Design-Builder for its use in managing the Work and is not a Contract Document. The Construction Management Plan must include, at a minimum and without limitation, the following separate deliverables, which are subject to review and approval by the Owner:

.1 Safety and Logistics Plan;
.2 Design-Builder's Construction Schedule;
.3 Cost Management Plan, Control Estimate and Schedule of Values;
.4 Quality Management, Commissioning and Turnover Plan; and
.5 Information Management System.

§ 1.4.22 As-Built Documents
The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the Design-Builder to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, responses to the Design-Builder's requests for information, Architect's supplemental instructions, field modifications, and other similar changes made to the Work during construction. The As-Built documents shall conform to the format and compatibility requirements of Section 12.4.

§ 1.4.23 Work Breakdown Structure
The project's Work Breakdown Structure ("WBS") is a deliverable-oriented, hierarchical organization of the Project components to be executed by the Design-Builder, and its accompanying numbering system. The WBS will be mutually agreed upon by the Owner and used by the Design-Builder.

§ 1.4.24 Equal to (or Approved Equal)
Products by manufacturers and information about those products other than those products required to meet the Design Criteria which the Design-Builder may submit for substitution as equal to those products required to meet in the Design Criteria; which may be incorporated in the Work after review and acceptance by the Owner and Owner's Independent Representative.

§ 1.4.25 Force Majeure
An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Design-Builder's control, not caused by the negligent act or omission of Design-Builder or breach of this Agreement, the Architect, the Contractor, its Subcontractors, or anyone else for whom Design-Builder is responsible, and not caused by Design-Builder's breach of a project labor or a "no strike" agreement.

§ 1.4.26 Knowledge
The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Design-Build Documents, as used in reference to the Design-Builder, shall be interpreted to mean that which the Design-Builder knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent design-builder familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms in the Design-Build Documents shall be interpreted to mean reasonably inferable by a diligent and prudent design-builder familiar with the Work and in accordance with nationally recognized standards in the construction profession.

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ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

See Exhibit "H" – Design-Builder's Fee & Cost Proposal

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

N/A

Individual or Position	Rate
Not Used	

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Fees paid for securing approval of authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, standard form documents;
.5 Postage, handling and delivery;
.6
.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner; and
.8
.9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses prior to the execution of the Design-Build Amendment, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred; will be billed at actual cost as supported by receipts and other similar documentation; and will not exceed the topset shown in Exhibit "H" – Design-Builder's Fee & Cost Proposal.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable

(Paragraphs deleted)

within thirty (30) days of the submission of the Design-Builder's properly formatted invoice. Amounts unpaid shall bear interest at the legal rate allowed by Texas Government Code Ch. 2251.

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Work or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

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ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located, Sherman, Texas.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall in a good workmanlike manner, fully execute the Work described in, and reasonably inferable from the Design-Build Documents. The Design-Builder shall at its sole cost, risk, and expense construct, equip, provide purchase, pay for, and furnish all of the Work necessary to provide the results intended by the Design-Build Documents, except as specifically indicated in the Design-Build Documents to be the responsibility of others. The Work shall be in accordance with such Design-Build Documents, as well as all local, state and federal governmental codes, ordinances and regulations as they apply to performance of the Work.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Exhibit "D" – Design Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing, together with the Design-Builder's written recommendation for modifying Exhibit "D" – Design Criteria to eliminate such violation. Upon verification by the Owner that a change to the Exhibit "D" – Design Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.3.3 The Design-Builder shall not be entitled to any adjustments in the Contract Sum or the Contract Time as a result of any action, or failure to act, in connection with any work or other services performed by the Design-Builder, or any entity affiliated with the Design-Builder, for portions of the Project other than the Work, such as, without limitation, other projects for this Owner or nearby this site, whether such work or other services are performed under contract with the Owner or an independent third party.

§ 3.1.3.4 The Design-Builder shall proceed with performance of the Work as required by the Design-Build Documents and shall not modify such requirements in accordance with any substitution request, value engineering, or other recommendations unless such recommendations are accepted by the Owner in a Modification. The Design-Builder shall not be entitled to receive any additional fees as a result of substitution request, value engineering, or other recommendations submitted by the Design-Builder.

§ 3.1.3.5 During the performance of the Work including, but not limited to, weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the Owner, until all punch list items have been completed, the Design-Builder shall keep a competent superintendent at the Project site, fully authorized to act on behalf of the Design-Builder. Notice from the Owner to such superintendent, in connection with defective Work, instructions for performance of the work or any and all other issues arising under this Agreement shall be considered notice of such issues to the Design-Builder.

§ 3.1.3.6 All of the Design-Builder's proposed on-site personnel must be approved by the Owner. The Design-Builder shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Design-Builder shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the Design-Builder's on-site personnel must be preceded by written notification of the Owner no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Owner. The Design-Builder shall designate a second person in charge in writing in the event the superintendent is temporarily absent due to illness, vacation, or any other cause(s).

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§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner and Design-Builder agree that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Owner.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

.1 Work completed for the period;
.2 Project schedule status;
.3 Submittal schedule and status report, including a summary of outstanding Submittals;
.4 Responses to requests for information to be provided by the Owner;
.5 Approved Change Orders and Change Directives;
.6 Pending Change Order and Change Directive status reports;
.7 Tests and inspection reports;
.8 Status report of Work rejected by the Owner;
.9 Status of Claims previously submitted in accordance with Article 14;
.10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
.11 Current Project cash-flow and forecast reports; and
.12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

.1 Design-Builder's work force report;
.2 Equipment utilization report; and
.3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include adequate periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in accordance with the most recent schedules submitted to and approved by the Owner.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner

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and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 No less than thirty (30) days prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's and Owner's Independent Representative's approval. The Owner's and Owner's Independent Representative's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner and Owner's Independent Representative reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of local, State and Federal codes, statutes, ordinances, and all authorities having jurisdiction; the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner and Owner's Independent Representative has reviewed the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with reviewed Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents, and the impact of such deviation on the Owner's future costs of ownership at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's and Owner's Independent Representative's review of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE DESIGN-BUILDER SHALL DEFEND AND HOLD THE OWNER HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, OR DAMAGE BY ANY BREACH OF THIS WARRANTY, AND DESIGN-BUILDER ACKNOWLEDGES IT SHALL NOT LIMIT SUCH WARRANTY BY THE PROVISIONS OF SECTION 11.2.**

§ 3.1.12.1 All material, equipment, or other special warranties required by the Design-Build Documents shall be issued in the name of the Owner and shall commence in accordance with Section 9.8.5.

§ 3.1.12.2 When written warranties are specified, the document shall include the following information:

Name and address of Project and Owner;

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Article, materials, or systems covered;
Name and address of Installer;
Name and address of Design-Builder; and
Signature of individual authorized to sign contracts for the company issuing the warranty.

§ 3.1.12.3 The following minimum warranty terms shall be incorporated:

.1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;
.2 The article, material or system is free from defective materials and workmanship;
.3 Costs of repair or replacement shall not accrue to the Owner, including without limitation repair or replacement of other work disturbed by, or because of, repair or replacement; and
.4 The warranty period of one year, or as otherwise specified, shall recommence upon the identification and completion by Design-Builder and acceptance by Owner of any warranty claim during the initial one-year warranty period.

§ 3.1.12.4 Warranties which are provided by a manufacturer for its product shall be received by the Design-Builder, filled out and filed with the manufacturer or other appropriate entity for the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer's warranties/guarantees after expiration of the Design-Builder's warranty.

§ 3.1.12.5 Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Design-Build Documents before final completion and written acceptance by the Owner shall not be construed as evidence of the Owner's acceptance of same, or the commencement of any warranty periods.

§ 3.1.12.6 The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner deems proper. The Design-Builder shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship. However, trials shall only be conducted with the Design-Builder's prior approval and under its observation

§ 3.1.12.7 The Design-Builder may, without cost to the Owner, also make such trial usage. Equipment and/or materials shall be replaced or returned to "as new" condition by the Design-Builder prior to acceptance by the Owner.

§ 3.1.12.8 The Design-Builder agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.1.12.9 If necessary as a matter of law, the Design-Builder may retain the right to enforce directly any such manufacturers' warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.2.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required Exhibit "D" – Design Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner in writing. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AS DEFINED IN SECTION 1.4.20 FROM

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AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE DESIGN-BUILDER, ARCHITECT, CONSULTANT, CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.1.14.

§ 3.1.14.2 THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION 3.1.14 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR DESIGN-BUILDER, ARCHITECT, CONSULTANT, CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.1.14.3 THE DESIGN-BUILDER'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 3.1.14 SHALL ALSO SPECIFICALLY INCLUDE, WITHOUT LIMITATION, ALL FINES, PENALTIES, DAMAGES, LIABILITY, SAFETY VIOLATIONS, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), AND PUNITIVE DAMAGES (IF ANY) ARISING OUT OF, OR IN CONNECTION WITH ANY:

- **.1 VIOLATION OF OR FAILURE COMPLY WITH ANY LAW, STATUTE, ORDINANCE, RULE, REGULATION, CODE OR REQUIREMENT OF A PUBLIC AUTHORITY THAT BEARS UPON THE PERFORMANCE OF THE WORK BY THE DESIGN-BUILDER, A SUBCONTRACTOR OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE;**
- **.2 MEANS, PROCEDURES, TECHNIQUES, SAFETY PRECAUTIONS, OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK; AND**
- **.3 FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES, AND INSPECTION AS REQUIRED UNDER THE DESIGN-BUILD DOCUMENTS, OR ANY VIOLATION OF ANY PERMIT OR OTHER APPROVAL OF A PUBLIC AUTHORITY APPLICABLE TO THE WORK, BY THE DESIGN-BUILDER, A SUBCONTRACTOR, OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE.**

§ 3.1.14.4 THE DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS ALL OF THE INDEMNITEES AS DEFINED IN SECTION 1.4.20 FROM AND AGAINST ANY COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY ANY OF THE INDEMNITEES IN ENFORCING ANY OF THE DESIGN-BUILDER'S DEFENSE, INDEMNITY, AND HOLD-HARMLESS OBLIGATIONS UNDER THIS CONTRACT.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, or termination by the Owner for convenience, pursuant to Section 13.2.4; and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other

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entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit "B" – Insurance and Bonds.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider, without limitation, cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

.1 allocations of program functions, detailing each function and their square foot areas;

.2 a proposed Control Estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;

.3 a proposed Design-Builder's Project Schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and

.4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

a. Anything in the Owner's Criteria that may conflict with the requirements of local, State and Federal codes, statutes, ordinances, and all authorities having jurisdiction;

b. Anything in the Owner's Criteria that conflicts with best practices for design, engineering, or other industry standards that would prevent the Design-Builder from fully implementing and being completely responsible for their intended results; and

c. Other information and draft Exhibits to this Agreement as the Owner and Design-Builder agree are appropriate in the meeting described in Section 4.2.1.

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written notice to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

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.1 Confirmation of the allocations of program functions;
.2 Site plan;
.3 Building plans, sections and elevations;
.4 Structural system;
.5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems;
.6 Outline specifications or sufficient drawing notes describing construction materials; and
.7 Such other information the Owner and Design-Builder agree in writing to be appropriate.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner and Owner's Independent Representative shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written notice to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written notice to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

.1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
.2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, proposed Control Estimate detailing cost organized by trade categories, allowances, contingencies, updates to Exhibit "H" – Design-Builder's Fee and Cost Proposal, and other items that comprise the Control Estimate detailing the proposed Contract Sum;
.3 The proposed Design-Builder's Project Schedule showing the detailed work plan supporting date the Design-Builder shall achieve Substantial Completion;
.4 An enumeration of any qualifications and exclusions, if applicable;
.5 A list of the Design-Builder's proposed Exhibit "G" – Key Firms & Personnel;
.6 The date on which the Design-Builder's Proposal expires and;
.7 Such other information the Owner and Design-Builder agree in writing to be appropriate.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed. Prior to execution of the Agreement, the Design-Builder and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Design-Builder shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Design-Builder or any Subcontractor to have complied with the requirements of this Section 4.4.2.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall, without limitation, establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents. Prior to execution of the Agreement, the Design-Builder and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii)

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anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Design-Builder shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Design-Builder or any Subcontractor to have complied with the requirements of this Section 5.1.1.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment and issuance by the Owner of a written Notice to Proceed.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.2.5 The Design-Builder shall carefully check its own work and that of Subcontractors as the work is being performed.

§ 5.2.6 During the finishing stages of the project, the Design-Builder shall make frequent inspections of the Work in the presence of the Owner, the Contractor, and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work.

§ 5.2.7 The Design-Builder shall ensure that incorrect or faulty Work is corrected immediately.

§ 5.2.8 The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Design-Build Documents either by activities or duties of the Owner or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Design-Builder.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is required to meet the Design Criteria or is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6. The Design-Builder shall also submit to the Owner, for each proposed substitution:

.1 A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog "cut sheets", warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;

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.2 A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;

.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable;

.4 The adjustment, if any, in the time of completion of the Contract and the Contractor's Construction Schedule in the event the substitution is acceptable; and

.5 Proposals for substitutions shall be submitted electronically to the Owner in sufficient time to allow no less than ten (10) business days for review.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

§ 5.3.4 All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.

§ 5.3.5 The Design-Builder shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Design-Builder shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Design-Builder shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Design-Build Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Design-Build Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 5.3.6 Pursuant to Chapter 2258, Texas Government Code, all Contractors and any Subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. The Design-Builder shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of Owner, that the prevailing wage rates be paid.

§ 5.3.7 The Design-Builder shall be provided an applicable Department of Labor Wage Rate Determination for use on the Project required by Chapter 2258.022, Texas Government Code.

§ 5.4 Taxes

The Design-Builder shall, to the extent the Owner is not exempted under this Agreement, pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. In no event should the Owner pay the Design-Builder for taxes that were not properly due and duly paid or for which the Owner is exempt from paying under Texas law.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Owner shall secure and pay for the building permit. The Owner shall also pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar

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taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.2.1 If the Design-Builder performs Work that it knew or should have known to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with Design-Build Documents, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Design-Build Documents, except where the Design-Build Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Design-Build Documents shall govern. Nothing contained in the Design-Build Documents shall be construed as authority for the Design-Builder to violate any applicable codes or ordinances in effect at the site.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.3.1 In no event shall any adjustment in the Contract Sum or Contract Time be made for conditions which should have been known to the Design-Builder or would have been noticed by a Design-Builder of similar size and experience pursuant to its on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the site which have been made available to the Design-Builder or have been performed by the Design-Builder or its Subcontractors; are part of the Design-Build Documents; or are part of the materials provided by the Design-Builder to be used in constructing the improvements.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.5.5 The Design-Builder shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including but not limited to all applicable immigration, employment, environmental and safety laws, statutes, rules, codes, orders and regulations.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

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.1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within fourteen (14) days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the fourteen (14) day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within fourteen (14) days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the fourteen (14) day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed. The Design-Builder shall make available to the Owner for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the Design-Builder in electronic format, upon reasonable request of the Owner and, in any event, within twenty-four (24) hours of receipt by Design-Builder of a request from Owner for such review and/or copying. The Owner may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the Owner's expense. The Owner may require the Design-Builder to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner's expense.

(Paragraphs deleted)

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§ 5.8.1 The Design-Builder shall provide final electronic files and one "hard" copy of the Drawings and Specifications to the Owner updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

§ 5.9 Use of Site, Delivery, & Storage

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.9.1 The Design-Builder shall coordinate the Design-Builder's operations with, and secure the approval of, the Owner before using any portion of the site.

§ 5.9.2 The Design-Builder shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto.

.1 The Design-Builder acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract.

.2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions.

.3 The Design-Builder shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Architect, have an adverse affect on the quality of life or productivity for Project stakeholders, the Owner's current operations, or the Owner's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the Owner.

.4 The Design-Builder shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner. Repeat offenses will cause the Owner to require, through the Design-Builder, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site.

.5 The Design-Builder shall, at a minimum, secure the site by erecting and maintaining a 6'-0" chain link fence around the perimeter of the construction site. This fence shall remain intact until such time the site becomes secure in the opinion of the Design-Builder, as a result of construction progress (by way of example, and without limitation, completion of site grading and backfill, installation of doors and windows, etc.).

.6 The Design-Builder shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use.

.7 The Design-Builder is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Design-Builder shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

§ 5.9.3 The Design-Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas.

.1 The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements.

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.2 The Design-Builder shall inform the Owner and any officials referenced in Section 5.9.5 in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to Owner's approval, such approval not to be unreasonably withheld.

.3 The Owner shall be responsible for storm debris and snow removal to the limits of the construction site only so far that the Design-Builder will have access to the entrance to the construction area.

.4 Storm debris and snow removal within the limits of work and/or for the purpose of performing and protecting work by individual contractors shall be up to the Design-Builder.

§ 5.9.4 During the performance of the Work, the Design-Builder, its Subcontractors, Sub-subcontractors, suppliers and their employees agree they shall:

.1 Use such entrances to the construction site that may be designated by the Owner;

.2 Perform the Work at such times of the day and days of the week as may be designated by the Owner; and

.3 Accept that these entrances and times may be reviewed and changed from time to time by the Owner.

§ 5.9.5 The Design-Builder shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Design-Builder. If the utility service must be interrupted, the Design-Builder shall, at Design-Builder's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication on the Owner's website or in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.

§ 5.9.6 The Design-Builder shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed for the Work, and shall properly store and protect same at the Design-Builder's expense.

§ 5.9.7 Notwithstanding any other provision herein, the Design-Builder shall take all necessary measures to store materials on site for which payment has been requested by the Design-Builder or been made by the Owner so that they shall not deteriorate, be damaged or be stolen.

.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Design-Builder.

.2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the Design-Builder.

.3 The Design-Builder shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the Owner.

.4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

§ 5.9.8 The Design-Builder shall not deliver any materials to the site which are not to be installed by same Design-Builder without fifteen (15) day's advance notice in writing to the Owner of the location, date, and time of

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such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Design-Builder and a representative of the Owner, who shall agree, and the Design-Builder shall document such agreement in writing:

.1 the materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);

.2 they are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;

.3 the storage conditions are adequate for the purposes; and

.4 the Design-Builder has accepted responsibility for insurance and ongoing protection per Section 10.2.8 for such material until it is released to a third party authorized in writing by the Owner to receive it.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work. The Design-Builder shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Design-Build Documents. The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate

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with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.13.1.5 The Design-Builder accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Design-Build Documents. The Design-Builder shall be responsible for such pre-purchased items, if any, as if the Design-Builder were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Design-Build Documents shall also apply to any pre-purchased items, unless the Design-Build Documents specifically provide otherwise.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.14.6 Should the Design-Builder wrongfully delay or cause damage to the work or property of any separate contractor, the Design-Builder shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such separate contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Design-Builder, the Owner shall notify the Design-Builder who shall defend such proceedings at the Design-Builder's expense. The Owner may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Design-Builder shall pay to satisfy it to the extent of Design-Builder's responsibility.

§ 5.14.7 SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE DESIGN-BUILDER OR PERSONS FOR WHOM THE DESIGN-BUILDER IS RESPONSIBLE PER SECTION 5.14.6 MAKE A CLAIM AGAINST THE INDEMNITEES, OR BRING ANY ACTION AGAINST THE INDEMNITEES, ON ACCOUNT OF THE DAMAGE ALLEGED TO HAVE BEEN SO SUSTAINED, THE DESIGN-BUILDER SHALL HOLD THE INDEMNITEES HARMLESS AND DEFEND THEM AGAINST ANY SUCH CLAIM OR SUIT, AND SHALL REIMBURSE TO THE INDEMNITEES THE COST INCLUDING, WITHOUT LIMITATION, REASONABLE, ADDITIONAL ATTORNEY'S FEES INCURRED DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES

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ARISES THERE FROM, THE DESIGN-BUILDER SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

§ 5.14.8 Should the Design-Builder be caused damage by any separate contractor, by reason of such separate contractor's failure to perform properly under its contract with the Owner, no action will lie against the Owner, and the Owner shall have no liability therefore, but the Design-Builder may assert its claims for damages directly against such separate contractor and the Owner shall assign such rights to Design-Builder, as allowed under Texas law to pursue such claims.

§ 5.14.9 Inasmuch as the completion of the Project within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each Design-Builder shall lay out and install its work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.

§ 5.14.10 Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing protective covering for painting, providing adequate bracing of door jambs, etc., the Design-Builder performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform its work.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. Except as permitted in Section 1.4.1 and Section 6.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Design-Builder or a change in any time period provided for in the Design-Builder.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and

.3 The extent of the adjustment, if any, in the Contract Time.

§ 6.2.1 Methods used in determining adjustments to the Contract Sum may include those listed in Sections 6.3.3, 6.3.7 and 6.3.10.

§ 6.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and

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consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 6.2.3 Change Orders Requiring City Council Approval

The Contract Sum shown in the final Exhibit "A" – Design Build Amendment may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Sherman City Council is required if a Change Order involves a decrease or an increase of $50,000.01 or more. The original Contract Sum shown in the final Exhibit "A" – Design Build Amendment also shall not be increased under this Section 6.2.3 by more than twenty-five percent (25.0%) for any reason over the entire duration of the Project. The original Contract Sum shown in the final Exhibit "A" – Design Build Amendment also shall not be decreased by more than twenty-five percent (25%) without the consent of the Design-Builder, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the Design-Builder under this Section 6.2.3, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed ; or

.4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the

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Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit calculated using the sum of the actual costs allowed in Sections 6.3.7.1 through 6.7.3.5, and using the percentages shown in Section 6.3.12 below. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

.1 Additional verifiable and reasonable costs of professional services;

.2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

.5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.6 Additional verifiable payroll and subsistence costs incurred by the Design-Builder, Subcontractor and Subcontractors of field personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.3.11 If the Owner and Design-Builder do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination. The Architect may consult with the Owner in connection with such determination either at the direction of the Owner or at the Architect's discretion.

§ 6.3.12 In Section 6.3.7, the allowance for the combined total of onsite and offsite overhead, insurance and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Design-Builder, for Work performed by the Design-Builder's own forces, ten percent (10%) of the cost;

.2 For the Design-Builder, for Work performed by the Design-Builder's Subcontractor, five percent (5%) of the amount due the Subcontractor;

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.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 6.3.7;

.6 Under no circumstance shall costs of the Design-Builder's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 6.3.7. Conversely, the Design-Builder shall be compensated for their labor within the overhead and profit percentage specified in this Section 6.3.12.

.7 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also.

.8 When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.

.9 Overtime, when specifically authorized by the Owner and not as a requirement for the Design-Builder to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

§ 6.4 Supporting Information

Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner. The Design-Builder shall also comply with all provisions of Articles 8 and 14 with respect to claims. The required information shall be provided by the Design-Builder in less than twenty-one (21) days from the Design-Builder's request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within fifteen (15) days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.1.3 The Owner may obtain independent review(s) of the Design-Builder's Design Documents, or of any document or other materials submitted by the Design-Builder, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Design-Builder shall cooperate with such Owner's other consultants fully, and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Design-Builder.

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§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. Omissions and conflicts thus discovered by the Design-Builder will be promptly communicated to the Owner in writing, after the Design-Builder has carefully scrutinized such information for consistency with other information about the Work. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 As required by the provisions of Chapter 56 of the Texas Business and Commerce Code, the Owner has represented that it has sufficient funds available to undertake the Project.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. 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 and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit "B" – Insurance and Bonds.

§ 7.2.11 The Owner shall furnish information and services under the Owner's control when (1) such services are reasonably required by the scope of the Work; (2) are scheduled by the Design-Builder in the approved Design-Builder's Project Schedule; (3) and requested by the Design-Builder in writing reasonably in advance of the date required by the Design-Builder to allow the Owner to procure of the requested information and/or consultant(s), and such consultant(s) to provide the requested information and/or services in the normal course of the consultant(s)' business.

§ 7.2.12 The Owner shall furnish the following information to a person, including the Architect or Contractor, who makes a request for information under Texas Government Code Chapter 2253, related to a payment or performance

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bond: (1) a certified copy of a payment bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.

§ 7.2.13 Notwithstanding the foregoing, the Design-Builder expressly understands, acknowledges and agrees that such reports, analyses and assessments have been provided for the Design-Builder's bidding and informational purposes only. The City does not warrant or guarantee the information contained in those documents. The Design-Builder shall not be entitled to rely solely on the aforementioned documents in performing any portion of the Work, but shall conduct its own testing, inspections and investigations as part of the final Project design. The Design-Builder agrees that nothing contained in any Owner-provided reports, analyses or assessments, nor any provision of the Design-Build Agreement, shall have the effect of releasing, diminishing, discharging or otherwise absolving Design-Builder of the responsibility for performing any testing, inspections or evaluations necessary to ensure the structural integrity of the foundation and compliance with the Design-Build Documents.

PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE DESIGN-BUILDER AT ITS OWN RISK. THE OWNER AND THE OWNER'S CONSULTANTS DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

§ 7.2.14 The Design-Builder shall be the party with primary responsibility for securing necessary site, building, and other permits, licenses and inspections required by regulatory agencies, unless otherwise provided herein or required by law. The Owner shall cooperate with the Design-Builder in securing permits. The Design-Builder will include the fees for such permits, licenses and inspections in the Contract Sum.

§ 7.2.15 If the Owner observes or otherwise becomes aware of any fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall, as soon as possible but not later than fifteen (15) days after the Owner becomes aware of such fault or defect, give written notice thereof to the Design-Builder.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of 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; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

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§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a four (4) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 7.10 Extent of Owner Rights

§ 7.10.1 The rights stated in this Article 7 and elsewhere in the Design-Build Documents are cumulative and not in limitation of any rights of the Owner granted in the Design-Build Documents; at law; or in equity.

§ 7.10.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, the providing of the Design Criteria; any review(s), independent or otherwise, or approval(s) by the Owner or Owner's Independent Representative of the Design-Build Documents, the Contract Documents, the Design-Builder's Construction Management Plan(s), the Design-Builder's Construction Schedule, shop drawings, submittals, meeting minutes or other Design-Builder's services, deliverables or activities; nor the exercising of any of the rights and authority granted the Owner in the Design-Build Documents shall in any way reduce, diminish, or otherwise affect the Design-Builder's responsibilities, duties and accountability to the Owner for, without limitation, the design, engineering, construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Design-Build Documents.

§ 7.10.3 The Owner reserves the right to have the Design-Builder and/or subcontractors remove person(s) and/or personnel from any and all work on the Project for cause but without cost to the Owner. Such requests from the Owner will be made in writing. "Cause" may include, but is not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the project, the facility or others, poor management, cause delay or delays, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Design-Builder shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

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ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract. Unless the date of commencement is established by a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any documents or notices required of the Owner prior to such commencement of the Work.

§ 8.1.3 Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason it shall be agreed that the Design-Builder will substantially complete all Work under the Contract within the time established in the Design-Build Documents and the most recently approved Design-Builder's Construction Schedule. The Design-Builder shall begin the Work on the date of commencement as defined in Exhibit "A" – Design-Build Amendment; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved Design-Builder's Construction Schedule.

§ 8.1.4 The Design-Builder shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in Exhibit "A" – Design Build Amendment, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.

§ 8.1.5 The Design-Builder understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Design-Builder as well as the respective Multiple Prime Contractors.

§ 8.1.6 The Design-Builder shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in transportation, unavoidable casualties or other causes beyond the Design-Builder's reasonable control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

§ 8.2.4 Any claims for extension of time shall be made in writing to the Owner not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Design-Builder shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Design-Builder should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.

§ 8.2.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at

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https://www.ncdc.noaa.gov/cag/regional/mapping/-1/pcp/201804/60/value or other data as mutually agreed by the Owner and Design-Builder for the Project area. In allowing delays for weather, the Owner will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis actual impacts of those work days lost with each separate extension figured to the nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Design-Builder's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

§ 8.3 Design-Builder's Obligations after Delay

§ 8.3.1 If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Design-Builder's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Owner that the Work will not be completed within the Contract Time or in accordance with the Design-Builder's Construction Schedule, the Design-Builder agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the Owner, as required to substantially eliminate, in the judgement of the Owner, the backlog of Design-Builder's Work on the Project:

.1 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;

.2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;

.3 Reschedule activities to achieve maximum practical concurrence of accomplishment; and

.4 Do whatever else is reasonably required by the Owner.

§ 8.3.2 These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Design-Build Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Design-Builder's compliance with the Design-Builder's Construction Schedule.

§ 8.3.3 In the event of a delay, the Owner may also require the Design-Builder to immediately submit a Proposed Recovery Schedule as specified in Section 8.3.1 above. If the Proposed Recovery Schedule is not satisfactory, the Owner may unilaterally establish a new Proposed Recovery Schedule acceptable to the Owner; issue it as a Construction Change Directive; and the Design-Builder shall comply therewith. The Owner may also require the Design-Builder to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the Owner.

§ 8.3.4 Failure of the Design-Builder to substantially comply with the requirements of this Section 8.3 shall be considered grounds for a determination by the Owner that the Design-Builder is in breach of this Agreement by failing to prosecute the Work and that of the Project so as to ensure its completion within both the Contract Time and the updated Design-Builder's Construction Schedule.

§ 8.3.5 Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the Design-Builder, the Owner may request, and the Design-Builder agrees to take one or more of the Extraordinary Measures, with the Owner bearing the cost for such actions per Article 6 herein.

§ 8.3.6 The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.3, except as specifically noted otherwise in Section 8.3.5.

§ 8.4 Owner's Rights after Delay

§ 8.4.1 Likewise, in the event the Design-Builder fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Design-Builder's Construction Schedule, the Owner shall have the right to impose any or all of the following options:

.1 Require the Design-Builder to substantiate the capability to get back on schedule within ten (10) business

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days;

.2 Require the Design-Builder to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner until Design-Builder confirms, to the satisfaction of the Owner, the progress of the Work is in compliance and congruence with the most recently approved Design-Builder's Construction Schedule, such measures being at no extra cost to Owner;

.3 Withhold progress payment, or portions thereof, until such time as the Design-Builder is in compliance with the most recently approved Design-Builder's Project Schedule; and

.4 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at Design-Builder's expense.

§ 8.5 Liquidated Damages

§ 8.5.1 Should the Design-Builder fail to substantially complete the Work on, or before, the original date set forth in the Contract, or on or before the revised date as granted by extensions to Contract Time, the Owner may at its sole discretion permit the Design-Builder to proceed, and in such case, there shall be deducted from any monies due or which may become due the Design-Builder, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the Owner. Liquidated damages are intended to compensate the Owner for the Design-Builder's failure to meet the deadlines set forth herein, and shall not excuse the Design-Builder from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The Design-Builder agrees that the sums in Section 8.5.2 are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. Design-Builder further acknowledges and agrees that Liquidated Damages may be owing even though no termination has occurred.

§ 8.5.2 The Design-Builder shall pay Owner five hundred dollars ($ 500.00) for each day that expires after the date set forth in the Contract for substantially completing the work to be "ready for use, beneficial occupancy and operation" by the Owner and five hundred dollars ($ 500.00) for each day that expires after the date set forth in the Contract for Final Completion of the Work.

§ 8.5.3 The parties acknowledge, covenant and agree that the daily basis and the amount set forth above for liquidated damages are reasonable and equitable due to increased Owner personnel efforts in administrating the Contract; increased consultants' expenses; inconvenience and expense caused to Project stakeholders; and loss of confidence and diminished trust in the Owner's management abilities by the local and national community, the Owner's peers, and by financial institutions necessary to the Owner's future endeavors; all incurred by delays in the completion time.

§ 8.5.4 Permitting the Design-Builder to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract. The Design-Builder acknowledges the Owner receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Sum for such early completion are hereby waived by the Design-Builder.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder, shall meet with the Owner, at the Preconstruction Conference with a proposed Schedule of Values. The Design-Builder's Schedule of Values will be reviewed by the Owner in the context of the Design-Builder's proposed Construction Management Plan, including but not limited to the Design-Builder's Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Design-Builder's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to the Design-Builder's and Subcontractor's contract amount(s). The Schedule of Values shall

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allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Owner may require. This Schedule of Values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment; supported by AIA Document G703, Continuation Sheet; and other documentation as reasonably required by the Owner; submitted electronically.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with all applicable statutes:

.1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Design-Builder has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the Design-Builder from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;

.2 Duly executed unconditional waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the Design-Builder on behalf of such entities or persons in any previous Application for Payment;

.3 Duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors conditional upon and establishing payment or satisfaction of payment of all amounts requested by the Design-Builder on behalf of such entities or persons in the current Application for Payment;

.4 An updated Design-Builder's Construction Schedule clearly showing the actual progress of the Work for each activity against the Work previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and

.5 Notwithstanding the above, Applications for Payment shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner, and shall include, at a minimum, an updated monthly Design-Builder's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the Owner.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the stored

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materials and equipment are properly tagged as to material and job identification; are available for inspection by the Owner; and such requests for payment must be accompanied by documentary evidence as specified, without limitation, in Sections 5.9 and the insurance required by Exhibit "B" – Insurance and Bonds, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner's interests. Such request, shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Such materials shall be:

.1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, and the Lender (if any);

.2 Specifically marked for use on the Project; and

.3 Segregated from other materials at the storage facility.

§ 9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation into the construction or receipt of payment by the Design-Builder, whichever occurs first . The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

.1 **THE DESIGN-BUILDER FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE DESIGN-BUILDER'S SOLE EXPENSE, AGAINST ANY ACTIONS, LAWSUITS, OR PROCEEDINGS BROUGHT AGAINST THE INDEMNITEES AS A RESULT OF LIENS OR VERIFIED CLAIMS FILED AGAINST THE WORK, THE SITE OF ANY OF THE WORK, THE PROJECT SITE AND ANY IMPROVEMENTS THEREON, PAYMENTS DUE THE DESIGN-BUILDER, THE PROJECT BOND OR ANY PORTION OF THE PROPERTY OF ANY OF THE INDEMNITEES (REFERRED TO COLLECTIVELY AS "LIENS OR VERIFIED CLAIMS" IN THIS SECTION 9.3.3). THE DESIGN-BUILDER HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH LIENS OR VERIFIED CLAIMS AND AGREES TO PAY ANY JUDGMENT OR LIENS OR VERIFIED CLAIMS RESULTING FROM ANY SUCH ACTIONS, LAWSUITS, OR PROCEEDINGS.**

.2 The Owner shall release any payments withheld due to a lien or verified claim if the Design-Builder obtains security acceptable to the Owner or a lien bond that is (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than two hundred percent (200%) of such lien or verified claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Design-Builder shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Design-Builder and shall not be part of, or cause any adjustment to, the Contract Sum.

.3 Notwithstanding the foregoing, the Owner reserves the right to settle any disputed lien or verified claim by payments to the claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Design-Builder shall promptly reimburse the Owner, upon demand, for any payments so made if the amount paid exceeds the amount remaining owed under the subcontract.

§ 9.4 Certificates for Payment

The Owner shall, within seven (7) days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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§ 9.4.1 The issuance of a Application for Payment will constitute a representation by the Design-Builder to the Owner, based on the Design-Builder's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Design-Builder's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Design-Build Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Design-Build Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Design-Build Documents prior to completion and to specific qualifications expressed by the Design-Builder. The issuance of a Certificate for Payment will further constitute a representation that the Design-Builder is entitled to payment in the amount certified.

§ 9.4.2 Certification will be issued for ninety-five percent (95%) of the amount requested by the Design-Builder and approved by the Owner to be properly due until the Design-Builder is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that should the Design-Builder at any time fail to keep current with the approved progress schedule; fail to assure payment to Subcontractors, Sub-subcontractors and suppliers as required hereunder; or fails to promptly and diligently correct Work that does not comply with the Design-Build Documents, certification of ninety-five percent (95%) shall automatically again become effective and shall apply as long as the Design-Builder lags behind such progress or fails to assure such payment.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

.1 defective Work, including design and construction, not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
.3 failure of the Design-Builder to assure payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a separate contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Design-Build Documents.
.8 Design-Builder's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;
.9 failure to fully execute the Contract with all associated documents as required;
.10 liens filed for any portion of the Work; or
.11 failure of the Design-Builder to comply with any provisions of the Design-Build Documents, including without limitation Section 8.3.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld less all associated damages, costs and expenses, suffered or accrued by the Owner. In the event the Owner nullifies a previously issued Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Design-Builder shall promptly reimburse to the Owner amounts the latter had paid pursuant to the nullified Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued Certificate for Payment have been remedied and all associated damages, costs, and expenses of Owner have been paid by the Design-Builder.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment

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suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.4 The Design-Builder shall not stop work or terminate the Contract if the Owner's Lender (if any) should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of this Agreement herein.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven (7) days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 The Design-Builder shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner. Sums withheld by the Owner from the Design-Builder for deficiencies solely attributable to the Design-Builder shall not be grounds for the Design-Builder to withhold sums due to any Subcontractor. All sums paid to the Design-Builder for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Design-Builder for payment to those persons and entities to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision. In addition to this contractual trust requirement, Design-Builder understands and acknowledges that all payments under this Contract are considered construction trust fund payments for the purposes of application of Chapter 162 of the Texas Property Code.

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§ 9.6.8 The Design-Builder agrees to keep the Work and the site of the Project and all project bonds free and clear of all liens and verified claims related to labor and materials furnished in connection with the Work.

§ 9.6.9 Notwithstanding anything to the contrary contained in the Design-Build Documents , if any lien or verified claim is filed or there is evidence to believe that any lien or verified claim may be filed at any time during the progress of the Work or the duration of this Contract, the Owner may refuse to make any payment otherwise due the Design-Builder or may withhold from any payment due the Design-Builder a sum sufficient in the opinion of the Owner to pay all obligations and expenses necessary to satisfy such lien or verified claim. The Owner may withhold such payment unless or until the Design-Builder, within ten (10) calendar days after demand therefore by the Owner, shall furnish satisfactory evidence that the indebtedness and any lien or verified claim in respect thereof has been satisfied, discharged, and released of record, or that the Design-Builder has legally caused such lien or verified claim to be released of record pending the resolution of any dispute between the Design-Builder and the person or persons filing the lien or verified claim. If the Design-Builder fails to furnish satisfactory evidence within ten (10) calendar days of the demand thereof, the Design-Builder and the Owner shall meet within two (2) additional business days to review and agree in writing on the Design-Builder's action plan for disposing of the lien or verified claim in question. Failing an agreement satisfactory to the Owner, the Owner may discharge such indebtedness in any manner and may deduct the amount thereof, together with any and all losses, costs, damages, and attorney's fees suffered or incurred by the Owner from any sum payable to the Design-Builder under the Design-Build Documents, including but not limited to final payment and retained amounts.

§ 9.6.10 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (ii) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use, all major systems are operational, and all safety features are completed and Owner's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Design-Build Documents, and without limitation the Design-Builder must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the Contractor shall be deemed to have achieved Substantial Completion.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. The Design-Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents. The Design-Builder will also provide the Owner a comprehensive list of all claims previously and properly made in writing and identified by the Design-Builder as unsettled at the time of Substantial Completion.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an observation to determine whether the Work or designated portion thereof is substantially complete. If the Owner's observation discloses any item, whether or not

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included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another observation by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion. Such determination shall be documented in writing by the Design-Builder; provided to the Owner for approval.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.6 The Design-Builder's acceptance of payment per Section 9.8.5 shall constitute a waiver for all purposes of all claims by the Design-Builder against the Owner, except those previously and properly made in writing and identified in the list provided by the Design-Builder as unsettled at the time of Substantial Completion per Sections 9.8.2.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, as such occupancy or use has been consented to by the Design-Builder in advance herein, the Design-Builder shall obtain by endorsement or otherwise, similar consent from the insurer providing property insurance and secure authorization for such use from the public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final observation and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such observation. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less

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amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents and will not be cancelled or allowed to expire until at least forty-five (45) days written notice is given the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Design-Builder shall deliver a permanent certificate of occupancy from local authorities having jurisdiction.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** bond claims, Claims, liquidated damages, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Design-Build Documents;
- **.3** terms of special warranties required by the Design-Build Documents;
- **.4** audits performed by the Owner, if permitted by the Design-Build Documents, after final payment; or
- **.5** gross negligence, willful misconduct, or fraudulent concealment in connection with the performance of the Contract.

§ 9.10.5 Application for and acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder against the Owner except those previously made in writing and identified by the Design-Builder as arising after the waiver given at Substantial Completion payment described in Sections 9.8.2 and 9.8.6.

§ 9.10.6 In addition to any other damages, failure of the Design-Builder to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Design-Builder being responsible for excess Owner's consultant(s)' fees beyond their original scope of services required to achieve final completion ("Excess Fees"). Excess Fees will be deducted from the amount due the Design-Builder.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Design-Builder's and all Subcontractors' Safety Programs shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations.

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§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to all of the following:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Design-Builder.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel, and the Design-Builder shall give the Owner reasonable advance written notice of such planned activities.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Design-Builder shall immediately report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the Owner.

§ 10.3 Hazardous Materials

§ 10.3.1 Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including but not limited to ignitability or toxicity, so as to be capable of posing an unreasonable risk to

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health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order duly processed and approved, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up, both as specified in Article 6. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including but not limited to asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Design-Builder, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Design-Builder agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 Not Used.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

§ 10.5 Site Visits

Anyone other than the Owner's designated representatives and other consultants visiting the job site who is not employed by a Design-Builder shall be required to register with the Design-Builder's site office before proceeding onto the job site.

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ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, specifically including but not limited to additional testing and inspections, the cost of uncovering and replacement the cost of any additional supervision, material, labor, equipment, rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of both the Design-Builder and the Project, and restore Work by the Design-Builder and others necessarily damaged in the course of rectifying the non-complying conditions; as well as, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.1.1 If prior to the date of Substantial Completion the Design-Builder, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Design-Builder shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Design-Builder shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Design-Builder, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable or for which the Design-Builder is otherwise responsible.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, or within such longer period as may be prescribed by law, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the condition is reasonably discoverable, during the one-year period for correction of the Work, and the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9, and charge the reasonable costs to the Design-Builder.

§ 11.2.2.2 The one-year period for correction of Work shall also be extended by the period of time between Substantial Completion and the actual completion of the corrective Work performed by the Design-Builder pursuant to this Section 11.2, but only with respect to the corrected portions of the Work.

§ 11.2.2.3 Not Used.

§ 11.2.3 Not Used.

§ 11.2.4 The Design-Builder shall bear the costs of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office

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overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work, and restore Work by the Design-Builder and others necessarily damaged in the course of rectifying the non-complying conditions.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§11.2.6 The Design-Builder's obligations under this Section 11.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. In the event final payment has been made by the Owner subsequent to accepting such non-conforming Work, the Design-Builder shall pay the Owner, the reduction in the Contact Sum occasioned by such acceptance.

ARTICLE 12 OWNERSHIP & USE OF DRAWINGS, SPECIFICATIONS, & OTHER DESIGN DOCUMENTS

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Design Documents. Design Documents are the product of work made for hire. These are and shall remain the sole property of the Owner. The Design-Builder assigns to Owner all remaining proprietary rights that the Design-Builder may possess in the Design Documents including, without limitation, all copyright and other intellectual property rights. Disputes between the parties shall not impact this transfer of ownership, neither will a termination of this Agreement. In the event of a dispute between the parties regarding payment for Basic or Additional Services, the Design-Builder is not obligated to deliver additional Design Documents or services for which it claims that it has not been paid, but the Owner's right to use the Design Documents and other services in its possession shall not be restricted.

§ 12.2 The Project is the property of the Owner, and, without limitation, the Design-Builder may not use the Design Documents for any purpose not related to the Project without the Owner's prior written consent.

§ 12.3 Upon execution of the Agreement, the Design-Builder, the Architect, Consultants, Subcontractor and any other person or entity providing services or work for any of them are authorized to use and reproduce the Design Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The Design-Builder, Architect, Consultants, Subcontractor and any other person or entity providing services or work for any of them may not use the Design Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 12.3.1 The Design-Builder shall include in its agreements with the Architect, Consultants, and Subcontractors, commitments that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12.

§ 12.3.2 In the event the Owner alters the Design Documents without the author's written authorization or uses the Design Documents without retaining the authors of the Design Documents, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.4 When requested by the Owner, the Design-Builder shall furnish to the Owner the most current Design Documents, to include, without limitation all the most current drawings, design and engineering calculations, specifications, and any other information which the Design-Builder, Architect or the Design-Builder's Consultant(s)

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have created in connection with or for the Project. At a minimum this information shall be provided in electronic format compatible with the most recent versions of the industry standard software for such information. Specifically, drawings shall be compatible with AutoCADD; design and engineering calculations compatible with MS Excel; and specifications with MS Word. All layers and information shall be fully accessible (not "PDF", "protected", or "plot" files).

§ 12.5 Submittal or distribution of the Design Documents or any portion thereof to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 12.6 The Design-Builder, at any time upon the request of the Owner, shall immediately return and surrender to the Owner, without limitation, all electronic and hard copies of any Project-related materials, records, notices, memoranda, recordings, drawings, specifications, mock-ups and any other documents furnished by the Architect to the Design-Builder.

§ 12.7 The representations and warranties contained in the Design-Build Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven (7) days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any verifiable expenses reasonably and properly incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for verifiable expenses reasonably and properly incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted as mutually agreed upon in writing by the Owner and Design-Builder.

§ 13.1.3 If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven (7) days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven (7) 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.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their

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agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or

.3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred and twenty (120) days in any three hundred and sixty-five (365) day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven (7) days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven (7) additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

.1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;

.2 refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

.3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;

.4 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven (7) days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

.1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

.2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages

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exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall be as specified in Article 7 profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 Upon such termination for the Owner's convenience, the Design-Builder shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Design-Build Documents and Owner's further instructions. The Design-Builder waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs. The Owner shall be credited for (1) payments previously made to the Design-Builder for the terminated portion of the Work; (2) claims that the Owner has against the Design-Builder under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Design-Builder that are part of the Contract.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim.

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§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by the Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated within one hundred and eighty (180) days from the date of Final Payment by written notice to the Owner as a condition precedent to the Design-Builder's right to sue on the Contract.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided in Section 8.3.4 and 8.3.5 shall be given.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.5.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder for principal office expenses including but not limited to the compensation of personnel stationed there, for losses of financing, business and reputation, impairment to or loss of bonding capacity, loss of business opportunities unabsorbed home office overhead, and for loss of profit except profit arising directly from properly completed Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been initiated with no decision having been rendered. The Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten (10) days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten (10) days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten (10) days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

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§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten (10) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision or request another method of alternative dispute resolution (ADR) other than mediation, as the parties may agree in writing at any time, subject to the terms of Section 14.2.6.1, except that under no circumstances shall the agreed upon ADR include binding arbitration or binding mediation.

§ 14.2.6.1 Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation or join in another method of ADR within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation agree to ADR within the time required, then both parties waive their rights to mediate or pursue ADR proceedings with respect to the initial decision, and will default to litigation.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract may be subject to nonbinding mediation or other ADR as mutually agreed by the parties.

§ 14.3.2 Not Used.

§ 14.3.3 The parties shall share the mediator's or ADR's costs and fees and any filing fees equally if such process is utilized. The mediation or ADR shall be held in the place where the Project is located, unless another location is mutually agreed upon.

(Paragraphs deleted)

§ 14.4.4.3

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. The exclusive venue for contract disputes and all other matters related to this Agreement shall be in a state district court having jurisdiction in Grayson County, Texas.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract, or any rights under the contract, in

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whole or in part without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Subcontractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least fourteen (14) days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least fourteen (14) days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections, and Quality Management

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder. As required by the provisions of Texas Government Code, Section 2269.058(a), the Owner shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the Owner. To the extent that any of the provisions of this Section 15.5 or other provisions of this Agreement conflict with any of the provisions of Section 2269.058(a) such conflict is unintentional, and the provisions of the Texas Government Code shall control.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses and all costs specified in Section 11.2 shall be at the Design-Builder's expense. The Design-Builder also

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agrees the cost of testing, inspection, and approval services required for the convenience of the Design-Builder in scheduling and performance of the Work, and the cost of such similar services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Design-Builder.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.5.7 It is the intent of the Design-Build Documents to require the Design-Builder to control the quality of the Work using the processes specified in the Design-Builder's Quality Management, Commissioning and Turnover Plan contained within the most recent Construction Management Plan approved by the Owner. Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work., and shall conform to the most recently approved Design-Builder's Construction Schedule.

§ 15.5.8 The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the Design-Builder's, as is the obligation to provide the Work and a complete and functional project per the Design-Build Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the Owner's approval of such plan(s) does not relieve the Design-Builder in any way of this responsibility.

§ 15.5.9 The Design-Builder shall be in charge of testing and inspections of the Work, including but not limited to, the services of a certified testing laboratory which shall be contracted to and paid for by the Owner and which will perform the tests as called for in the Design-Build Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:

.1 The frequency and type of Quality Control testing shall be established by the Design-Builder, and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Design-Build Documents. The type and amount of testing required by the Design-Build Documents shall be seen as the minimum required, and shall be increased, if in the opinion of the Design-Builder, more testing is needed to meet the above requirements of the Design-Builder.

.2 The Design-Builder shall concurrently provide the Owner copies of all test results it receives within three (3) business days of receipt of same.

.3 The Owner shall provide such Quality Assurance testing as it deems adequate for its own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Design-Builder under this Agreement.

§ 15.5.10 The Design-Builder shall facilitate and conduct weekly (or more frequent if necessary) meetings on site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the Design-Builder decides another trade or the Design-Builder should take the lead. The Owner shall be informed of the meetings at least seven (7) days in advance, and the appropriate Owner's consultants should be invited to attend by the Design-Builder, as supplemented and coordinated by the Owner.

§ 15.5.11 The Design-Builder's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes, Design-Builder will review, in detail, the steps for completing testing of all building systems with the Owner. This plan shall be coordinated with and shall be made part of the Design-Builder's Construction Schedule. All testing shall

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be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate Owner's consultant(s), representatives of the Owner, and at its option.

§ 15.5.12 When heating, air conditioning, ventilating, exhaust, or other items of mechanical, electrical or other similar equipment are installed, or other systems or equipment requiring testing as may be specified in the Design-Builder's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the Design-Builder, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the Owner prior to acceptance and before the start of Warranty. The duration of such operation shall be as the Owner, Owner's consultant(s), Owner' employees and other Owner's representatives (the Turnover Team) shall reasonably require for proper testing of the respective system and thorough instruction of the Owner's operating personnel.

§ 15.5.13 All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner's operating personnel on each system's operations and maintenance shall be provided by the Design-Builder, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the Turnover Meetings), which shall be coordinated and managed by the Design-Builder, who shall show their dates in the Design-Builder's Construction Schedule at least sixty (60) days prior to occurrence. The Design-Builder shall schedule the Turnover Meetings at times reasonably convenient for the Owner's consultant(s), Owner's employees and other Owner's representatives that the Owner agrees are necessary to attend for each system. The Owner may attend such Turnover Meetings at its discretion.

§ 15.5.14 The Design-Builder shall provide a digital video record to the Owner, with copies to the Owner of all meetings for the purpose of Owner operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.

§ 15.5.15 The Design-Builder shall prepare a digital video record of the project for the Owner at such stages as shall be indicated by the Owner for the purpose of documenting the location of piping, conduit, equipment, or other construction to be concealed at a later date; recording key inspections and tests; providing evidence of unforeseeable conditions encountered by the Design-Builder on site; and other construction issues as the Owner may reasonably require from time to time.

§ 15.5.16 The Design-Builder shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Design-Builder shall notify the Owner in writing immediately upon completion of this marking, and the Owner will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the Owner. The Owner will then give permission for removal in writing to the Design-Builder. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.6.2 See AIA Document A141™–2014, Exhibit A, Design-Build Amendment's Exhibit "A.5" – Confidentiality of the Project for more direction on confidentiality.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

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§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.9 Release of Retainage at Substantial Completion

Notwithstanding any other provision in the Design-Build Documents to the contrary, upon Substantial Completion of the Work the Owner shall be entitled to retain from the Contract Sum due to the Design-Builder an amount equal to the greater of: (a) the product obtained by multiplying eight (8) times the total cost of completion of the Punch List items as estimated by the Owner; or (b) twenty-five thousand dollars ($25,000).

§ 15.10 Measurement

Before ordering any material or doing any Work, the Design-Builder shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Owner for consideration before proceeding with the Work. The Design-Builder shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner of these prior to commencing any Work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

§ 15.11 Expediting Materials

The Design-Builder shall immediately, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Owner evidence that such orders have been placed in accordance with the Design-Builder's Construction Schedule.

§ 15.12 Addressing the Owner's Additional Needs and Concerns

§ 15.12.1 Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Design-Builder must completely and successfully address to the satisfaction of the Owner in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:

.1 The Design-Builder shall provide the superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled for 4pm or shortly thereafter on a standard business day.

.2 The Design-Builder may be required to provide the superintendent for one meeting per month with the Owner in preparing a newsletter for distribution to the Project stakeholders. The actual preparation and distribution of the newsletter shall be performed by the Owner.

.3 In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Design-Builder shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

§ 15.13 Additional Provisions

§ 15.13.1 In the event that any provision herein is held to be unlawful or against public policy, or a violation of the Code of Ordinances of the City of Sherman, Texas, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.

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§ 15.13.2 Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Design-Build Documents.

§ 15.13.3 All exhibits referred to in the Design-Build Documents are, by reference, incorporated herein for all purposes.

§ 15.13.4 The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Design-Build Documents.

§ 15.13.5 Any specific requirement in this Agreement that require responsibilities or obligations of the Design-Builder also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Design-Builder's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Design-Build Documents or the applicable subcontract.

§ 15.13.6 The provisions of the Design-Build Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Design-Build Documents or any of the Design-Builder's duties or obligations under or arising out of the Design-Build Documents. Any change, waiver, approval, or consent granted to the Design-Builder shall be limited to the specific material restated in the written document signed by Owner, and shall not relieve Design-Builder of any other of the duties and obligations under the Design-Build Documents. No "constructive" changes under any Agreement with the Owner shall be allowed.

§ 15.13.7 The Design-Builder shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Design-Builder shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 15.13.8.1 The Design-Builder shall provide Owner with copies of all notices received by Design-Builder from Subcontractors, Sub-subcontractors, and/or suppliers to Design-Builder.

§ 15.13.8.2 Notices. All legal notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:
City of Sherman
P.O. Box 1106
Sherman, TX 75091
Attn: Theresa Hutchinson
Phone: 903-892-7344
Email: TheresaH@cityofsherman.com

And with a copy to City Attorney's point of contact:
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Blvd., Suite 300
McKinney, TX 75069
Attn: Christopher C. Zillmer
Phone: 214-544-4000
Email: czillmer@abernathy-law.com

If to Design-Builder:

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American Ramp Company
601 S. McKinley Avenue
Joplin, MO 64801
Attn: Evan Moss
Phone:
Email

§15.13.9 Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Design-Builder subject to the terms and conditions of the Design-Build Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Design-Builder, (other than that contemplated by the Design-Build Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner's governing body.
§15.13.10 Design-Builder shall comply with the requirements in Texas Government Code Sec. 2252.032.

§ 15.13.11 In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Design-Builder shall notify the Owner of such requirement(s) in writing not less than thirty (30) days in advance, and attach a copy of the specific advertising and noticing required.

§15.13.12 The Design-Builder shall, in addition to compliance with the requirements of Section 5.5.5 and Section 5.5.6 and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The Design-Builder shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the Design-Builder that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.

§15.13.12.1 The Design-Builder has verified or attempted to verify through participation in the basic pilot program of the State of Texas ("Basic Pilot Program") that the Design-Builder does not employ any illegal aliens or the Design-Builder verifies that the Design-Builder has not been accepted into the Basic Pilot Program prior to entering into this Agreement. The Design-Builder further verifies that if the Design-Builder has not been accepted into the Basic Pilot Program, the Design-Builder will apply to participate in the Basic Pilot Program every three months until the Design-Builder is accepted or this Agreement is completed, whichever is earlier. If the Basic Pilot Program is discontinued, this Section 15.13.12.1 shall not be required or be effective.

§15.13.12.2 The Design-Builder shall not use Basic Pilot Program procedures to undertake pre-employment screening of job applicants while performing under this Agreement.

§15.13.12.3 The Design-Builder shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.

§15.13.12.4 In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Design-Build Document the Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Design-Builder's breach of the obligations set forth above in this Section 15.13.12 Design-Builder shall be liable for actual damages to the Owner.

§ 15.13.13 It is the express intention of the parties that this Agreement is not to be construed as a waiver of any immunities or defenses of the Owner under Texas law.

§ 15.13.14 This Agreement is and shall be subject to those provisions required of political subdivisions by the laws of the State of Texas. The Design-Builder understands that the Owner is a Texas home rule municipality and that the project is subject to applicable provisions of Texas law including bid requirements, bonding, and final settlement provisions.

§ 15.13.15 Design-Builder understands that certain information, including this Agreement, are public records available for public inspection and copying under the Texas Open Records Act., Texas Government Code Ch. 552, as amended, and other applicable laws.

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§ 15.13.16 Design-Builder certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement. Design-Builder warrants that to the best of Design-Builder's knowledge, there exists no actual or potential conflict of interest, and no financial or substantial interest as may be prohibited by Texas law, the Charter, or Code of Ordinances of the City of Sherman between Design-Builder and Owner.

§ 15.13.17 Design-Builder shall comply with the disclosure and reporting requirements in Local Government Code Chapters 171 and 176, and Texas Government Code Sec. 2252.908. Under Sec. 2252.908, if City Council approval is required to award this Agreement or if this Agreement has a value of at least $1,000,000, the City may not enter into the Agreement unless the Design-Builder submits a disclosure of interested parties to the City at the time the executed Agreement is presented to the City. The disclosure must be made on the form prescribed by the Texas Ethics Commission and the City is required to submit a copy of the disclosure statement to the Texas Ethics Commission not later than the thirtieth (30th) day after the disclosure is received by the City.

§ 15.13.18 The Owner is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the Owner for this public works project. Design-Builder shall confirm that the Owner is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the Owner.

§ 15.13.19 Some or all of the Owner's duties, approvals and actions required under this Agreement may be provided by third parties by mutual agreement of the Owner and such third parties. When notified in writing of the specific duties and responsibilities of such third party, the Design-Builder will recognize the actions and approvals of the third party as sufficient to fulfill the Owner's responsibilities under this Agreement.

§ 15.13.20 The Design-Builder shall provide sufficient supporting documentation in form and with a level of detail wholly acceptable to the Owner and Design-Builder to substantiate any Application for Payment, request for Change to the Contract Sum or Contract Time, and all contract Allowances provided within the Design-Builder's Contract Sum for this scope of work. Failure to timely provide all supporting documentation, in and of itself, may result in rejection of the Application for Payment or requested change to the Contract Sum or Contract Time, or payment for work charged to the Allowance(s).

§ 15.13.21 Proof of purchase and warehouse insurance naming the Owner and Design-Builder as additional insureds, together with inspection rights for the Owner and Design-Builder is to be provided for any billed materials by the Design-Builder for the work not physically stored at the Project site.

§ 15.13.22 Time limits set out in or under this Agreement are solely for the protection and benefit of the Owner and create no third-party beneficiary rights in any other party.

§ 15.13.23 The parties agree that they will execute any further instrument or instruments, and that they will perform any act or acts, which are or may become necessary to effectuate any of the terms or provisions of this Agreement.

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

§ 15.13.25 This Agreement has been created jointly and ambiguity cannot be construed against either party.

§ 15.13.26 Financial obligations of the Owner payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

§ 15.13.27 No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or soverign immunities, rights, benefits, or protections of the Owner.

§ 15.13.28 Design-Builder warrants that the products, processes, techniques and methodologies provided by Design-Builder shall not infringe upon the copyright, patent or other proprietary rights of others.

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§ 15.13.29 In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

§ 15.13.30 Design-Builder understands and agrees that time is of the essence.

§ 15.13.31 This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

§ 15.13.32 Design-Builder makes the following representations and warranties to Owner, each of which is true and correct as of the Effective Date of this Agreement:

.1 Design-Builder is a corporation duly organized, existing and in good standing under the laws of the State of Texas; Design-Builder possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein; and Design-Builder has all legal power and authority to own and use its properties and to transact the business in which it is engaged and holds or expects to obtain in a timely manner all material franchises, licenses and permits required hereunder;

.2 Design-Builder's execution, delivery and performance of this Agreement have been duly authorized by, and are in accordance with, its limited partnership agreement; this Agreement has been duly executed and delivered for it by the signatories so authorized; and this Agreement constitutes Design-Builder's legal, valid and binding obligation;

.3 Design-Builder is not currently in breach of, in default under, or in violation of, and the execution and delivery of this Agreement and the performance of its obligations hereunder will not constitute or result in any breach of, default under or violation of, any Governmental Rule, or the provisions of Design-Builder's limited partnership agreement, or any franchise or license, or any provision of any indenture or any evidence of indebtedness or security therefor, lease, contract, license or other agreement by which it is bound, except for such breaches, defaults or violations as will not, either individually or in the aggregate, result in a material adverse effect on the ability of Design-Builder to perform its obligations hereunder;

.4 No suit, claim, action, arbitration, or legal, administrative or other proceeding is pending or, to the best knowledge of Design-Builder, threatened against Design-Builder that could affect the validity or enforceability of this Agreement, the ability of Design-Builder to fulfill its commitments hereunder in any material respect, or that would result in any material adverse change in the business or financial condition of Design-Builder;

.5 Design-Builder certifies that it (i) is a duly qualified, capable and otherwise bondable business entity, (ii) is not in receivership and does not contemplate same, (iii) has not filed for bankruptcy, and is not currently delinquent with respect to payment of property taxes to the City of Sherman or within Grayson County, and (iv) is duly licensed and/or registered in the State of Texas, to the extent required by the laws of the State of Texas, to perform the design-build services described or referenced in this Agreement.

§ 15.13.33 Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

.1 This AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder

.2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment and its Attachments as specified in Exhibit "Z" – Schedule of Exhibits, if executed

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.3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds

.4 Exhibit C, Project Management Process, or the following:

N/A

.6 Other:

Exhibit "D" – Design Criteria
Exhibit "F" – Design-Builder's Project Schedule
Exhibit "G" – Key Firms and Personnel
Exhibit "H" – Design-Builder's Fee & Cost Proposal
Exhibit "Z" – Schedule of Exhibits

§ 16.2 Entire Agreement

This Agreement represents the entire and integrated Agreement between Owner and Design-Builder and supersedes all prior negotiations, representations, or agreements, either oral or written.

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IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

OWNER:

CITY OF SHERMAN, TEXAS
Approved by the Sherman City Council

By: _____
City Manager

Date: _____

Attest: _____
City Secretary

CITY OF SHERMAN
P.O. Box 1106
Sherman, TX 75091

APPROVED AS TO FORM:

_____
Christopher C. Zillmer, City Attorney

DESIGN-BUILDER:

AMERICAN RAMP COMPANY

By: _____

601 S. McKinley Avenue
Joplin, MO 64801

Date: _____

_____
Telephone Number

_____
E-mail Address

_____
Federal Tax ID Number

Attest:

_____

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Additions and Deletions Report for

AIA® Document A141® – 2014

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:11:19 CT on 02/10/2023.

PAGE 1

AGREEMENT made as of the ____day of _____in the year Two Thousand Twenty-Three (2023)

...

City of Sherman
P.O. Box 1106
Sherman, TX 75091

...

American Ramp Company
601 S. McKinley Avenue
Joplin, MO 64801

...

(Name, location and detailed description)

ARBH File No. 6262.0022 City of Sherman/Sherman Pump Track

Binkley Park
101 Binkley Park Dr.
Sherman, TX

Construction of Binkley Park Pump Track and as further described in Exhibit "D" – Design Criteria

PAGE 2

This Agreement is based on the Owner's ~~Criteria set forth in this Section 1.1.~~ requirements for the Project (the "Design Criteria) set forth in Exhibit "D" – Design Criteria.

...

See Exhibit "D" – Design Criteria

PAGE 3

See Exhibit "D" – Design Criteria

...

See Exhibit "D" – Design Criteria

...

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None.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are ~~as follows:~~excluded.

...

§ 1.1.6 The ~~Owner's budget~~ Design-Builder's conceptual estimate for the Work to be provided by the Design-Builder is set forth ~~below:~~ below in:

...

Three Hundred Fifty-Six Thousand and No/100 Dollars ($356,000.00)

§ 1.1.7 The ~~Owner's design and construction milestone dates:~~Design-Builder's design and construction milestone dates are attached as Exhibit "F" – Design-Builder's Project Schedule:

...

See Exhibit "F" – Design-Builder's Project Schedule

...

See Exhibit "F" – Design-Builder's Project Schedule

...

See Exhibit "F" – Design-Builder's Project Schedule

...

See Exhibit "F" – Design-Builder's Project Schedule

...

See Exhibit "F" – Design-Builder's Project Schedule

§ 1.1.8 The Owner requires the Design-Builder to retain ~~the following~~ an Architect, Consultants and Contractors at the Design-Builder's ~~cost:~~cost as necessary to complete the Work:

PAGE 4

See Exhibit "G" – Key Firms and Personnel

...

See Exhibit "G" – Key Firms and Personnel

...

See Exhibit "G" – Key Firms and Personnel

...

See Exhibit "D" – Design Criteria

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§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria is, without limitation, sufficient; reasonably achievable; and complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria is not sufficient; reasonably achievable; or conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of ~~the conflict.~~ the conflict in writing, together with the Design-Builder's recommendations for modifications to resolve such conflicts, as further described in Section 4.2.2.

...

§ 1.1.12 If the Owner and Design-Builder intend to transmit ~~Instruments of Service or~~ any ~~other~~ information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. ~~Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.~~

...

Theresa Hutchinson
903-892-7344
TheresaH@cityofsherman.com

...

Wayne Lee, City of Sherman Engineering Department

...

.1 Geotechnical Engineer
.2 Commissioning Agent

PAGE 5

Evan Moss

...

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten (10) days' written notice to the other party. The Design-Builder's proposed replacement representative shall be approved by the Owner in writing prior to being assigned to the project. Such Owner's approval shall not be unreasonably withheld.

...

[**X**] Litigation in a court of competent jurisdiction

...

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of ~~this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in~~ the documents defined in Article 16 of this Agreement, other documents listed in and incorporated into this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

...

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, ~~equipment and services provided or to be provided by the Design-Builder.~~ equipment,

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supplies, skill, supervision, transportation, support services, facilities and other resources necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the Work identified by the Design-Build Documents. The Work may constitute the whole or a part of the Project.

...

§ 1.4.5 ~~Instruments of Service.~~ ~~Instruments of Service~~ **Design Documents.** Design Documents are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. ~~Instruments of Service~~ Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.
PAGE 6

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized ~~representative.~~representative, including by not limited to the Owner's Independent Representative defined in Section 1.4.16.

...

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a ~~Contractor~~ Contractor; a Subcontractor of or vendor to the Contractor; or an authorized representative of the Contractor.

...

§ 1.4.16 Owner's Independent Representative
Pursuant to and in accordance with Chapter 2269 of the Texas Government Code, the Owner has selected or designated an architect or engineer independent of the Design-Builder to act as the Owner's representative for the duration of the project. This "Owner's Independent Representative" shall provide such services as the Owner deems necessary to protect its interests, and comply with statutory requirements. The Owner's Independent Representative shall provide review and recommendation services, but shall not have the authority to execute Modifications or other documents on behalf of the Owner that change the Contract Time or Contract Sum.

§ 1.4.17 Design Criteria
The information in Exhibit "D" - Design Criteria specifies criteria the Owner considers necessary to describe the project. It may (or may not) include, as appropriate to the project, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirements the Owner, at its sole discretion believes the Design-Builder requires to describe the project. The Owner, by providing the Design Criteria, makes no representation or warranty the information in it is complete; unambiguous; or in compliance with current design, engineering, or code and statutory requirements. The Owner does not warrant and will not be held responsible for errors or omissions in the Design Criteria not specifically identified in the Design-Builder's report required by Section 4.2.2.

§ 1.4.18 The Drawings
The Drawings are the graphic and pictorial portions of the Design-Build Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.4.19 The Specifications
The Specifications are that portion of the Design-Build Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

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§ 1.4.20 The Indemnitees
The Owner, which includes the Mayor, members of the City Council, employees, agents, assigns, and other city officers, the Owner's consultants and the Owner's Independent Representative or the agents and employees of any of them shall hereafter be collectively known as the "Indemnitees".

§ 1.4.21 Construction Management Plan
The Construction Management Plan is prepared by the Design-Builder for its use in managing the Work and is not a Contract Document. The Construction Management Plan must include, at a minimum and without limitation, the following separate deliverables, which are subject to review and approval by the Owner:

.1 Safety and Logistics Plan;
.2 Design-Builder's Construction Schedule;
.3 Cost Management Plan, Control Estimate and Schedule of Values;
.4 Quality Management, Commissioning and Turnover Plan; and
.5 Information Management System.

§ 1.4.22 As-Built Documents
The As-Built Documents are the Drawings, Specifications, and addenda thereto that may be updated by the Design-Builder to accurately reflect the actual Work in place, including without limitation, the incorporation of Change Orders, responses to the Design-Builder's requests for information, Architect's supplemental instructions, field modifications, and other similar changes made to the Work during construction. The As-Built documents shall conform to the format and compatibility requirements of Section 12.4.

§ 1.4.23 Work Breakdown Structure
The project's Work Breakdown Structure ("WBS") is a deliverable-oriented, hierarchical organization of the Project components to be executed by the Design-Builder, and its accompanying numbering system. The WBS will be mutually agreed upon by the Owner and used by the Design-Builder.

§ 1.4.24 Equal to (or Approved Equal)
Products by manufacturers and information about those products other than those products required to meet the Design Criteria which the Design-Builder may submit for substitution as equal to those products required to meet in the Design Criteria; which may be incorporated in the Work after review and acceptance by the Owner and Owner's Independent Representative.

§ 1.4.25 Force Majeure
An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Design-Builder's control, not caused by the negligent act or omission of Design-Builder or breach of this Agreement, the Architect, the Contractor, its Subcontractors, or anyone else for whom Design-Builder is responsible, and not caused by Design-Builder's breach of a project labor or a "no strike" agreement.

§ 1.4.26 Knowledge
The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Design-Build Documents, as used in reference to the Design-Builder, shall be interpreted to mean that which the Design-Builder knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent design-builder familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms in the Design-Build Documents shall be interpreted to mean reasonably inferable by a diligent and prudent design-builder familiar with the Work and in accordance with nationally recognized standards in the construction profession.

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See Exhibit "H" – Design-Builder's Fee & Cost Proposal

...

N/A

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...

Not Used

...

.6 ~~Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner; and
.8 ~~All taxes levied on professional services and on reimbursable expenses; and~~

...

§ 2.1.3.2 For Reimbursable ~~Expenses,~~ Expenses prior to the execution of the Design-Build Amendment, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors ~~incurred, plus an administrative fee of ___ percent (___ %) of the expenses incurred.~~incurred; will be billed at actual cost as supported by receipts and other similar documentation; and will not exceed the topset shown in Exhibit "H" – Design-Builder's Fee & Cost Proposal.

...

§ 2.1.4.1 Payments are due and payable ~~upon presentation of the Design-Builder's invoice. Amounts unpaid ___ (___) 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 Design-Builder.~~
~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~___ %~~ within thirty (30) days of the submission of the Design-Builder's properly formatted invoice. Amounts unpaid shall bear interest at the legal rate allowed by Texas Government Code Ch. 2251.

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the ~~Design-Build Amendment~~ Work or termination of this Agreement, whichever occurs first.
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§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is ~~located.~~ located, Sherman, Texas.

...

§ 3.1.3.1 The Design-Builder shall ~~perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.~~in a good workmanlike manner, fully execute the Work described in, and reasonably inferable from the Design-Build Documents. The Design-Builder shall at its sole cost, risk, and expense construct, equip, provide purchase, pay for, and furnish all of the Work necessary to provide the results intended by the Design-Build Documents, except as specifically indicated in the Design-Build Documents to be the responsibility of others. The Work shall be in accordance with such Design-Build Documents, as well as all local, state and federal governmental codes, ordinances and regulations as they apply to performance of the Work.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the ~~Owner's~~ Exhibit "D" – Design Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in ~~writing.~~ writing, together with the Design-Builder's written recommendation for modifying

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Exhibit "D" – Design Criteria to eliminate such violation. Upon verification by the Owner that a change to the ~~Owner's~~ Exhibit "D" – Design Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.3.3 The Design-Builder shall not be entitled to any adjustments in the Contract Sum or the Contract Time as a result of any action, or failure to act, in connection with any work or other services performed by the Design-Builder, or any entity affiliated with the Design-Builder, for portions of the Project other than the Work, such as, without limitation, other projects for this Owner or nearby this site, whether such work or other services are performed under contract with the Owner or an independent third party.

§ 3.1.3.4 The Design-Builder shall proceed with performance of the Work as required by the Design-Build Documents and shall not modify such requirements in accordance with any substitution request, value engineering, or other recommendations unless such recommendations are accepted by the Owner in a Modification. The Design-Builder shall not be entitled to receive any additional fees as a result of substitution request, value engineering, or other recommendations submitted by the Design-Builder.

§ 3.1.3.5 During the performance of the Work including, but not limited to, weekends, evenings and nights, or as otherwise reasonably and mutually agreed in writing with the Owner, until all punch list items have been completed, the Design-Builder shall keep a competent superintendent at the Project site, fully authorized to act on behalf of the Design-Builder. Notice from the Owner to such superintendent, in connection with defective Work, instructions for performance of the work or any and all other issues arising under this Agreement shall be considered notice of such issues to the Design-Builder.

§ 3.1.3.6 All of the Design-Builder's proposed on-site personnel must be approved by the Owner. The Design-Builder shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Design-Builder shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Substitution or other significant personnel changes which may affect the Design-Builder's on-site personnel must be preceded by written notification of the Owner no less than seven (7) business days before the anticipated event. Such proposed changes must be approved by the Owner. The Design-Builder shall designate a second person in charge in writing in the event the superintendent is temporarily absent due to illness, vacation, or any other cause(s).

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§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner ~~understands and agrees~~ and Design-Builder agree that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the ~~Design-Builder.~~Owner.

...

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include ~~allowances for~~ adequate periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in ~~general~~ accordance with the most recent schedules submitted to and approved by the Owner.

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§ 3.1.11.1 ~~Prior~~ No less than thirty (30) days prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's and Owner's Independent Representative's approval. The Owner's and Owner's Independent Representative's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner and Owner's Independent Representative reasonable time to review Submittals,

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and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of local, State and Federal codes, statutes, ordinances, and all authorities having jurisdiction; the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner ~~has approved~~ and Owner's Independent Representative has reviewed the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with ~~approved~~ reviewed Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build ~~Documents~~ Documents, and the impact of such deviation on the Owner's future costs of ownership at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's ~~approval~~ and Owner's Independent Representative's review of the Submittals.

...

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **THE DESIGN-BUILDER SHALL DEFEND AND HOLD THE OWNER HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, OR DAMAGE BY ANY BREACH OF THIS WARRANTY, AND DESIGN-BUILDER ACKNOWLEDGES IT SHALL NOT LIMIT SUCH WARRANTY BY THE PROVISIONS OF SECTION 11.2.**

§ 3.1.12.1 All material, equipment, or other special warranties required by the Design-Build Documents shall be issued in the name of the Owner and shall commence in accordance with Section 9.8.5.

§ 3.1.12.2 When written warranties are specified, the document shall include the following information:

Name and address of Project and Owner;
Article, materials, or systems covered;
Name and address of Installer;
Name and address of Design-Builder; and
Signature of individual authorized to sign contracts for the company issuing the warranty.

§ 3.1.12.3 The following minimum warranty terms shall be incorporated:

.1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;
.2 The article, material or system is free from defective materials and workmanship;
.3 Costs of repair or replacement shall not accrue to the Owner, including without limitation repair or replacement of other work disturbed by, or because of, repair or replacement; and
.4 The warranty period of one year, or as otherwise specified, shall recommence upon the identification and completion by Design-Builder and acceptance by Owner of any warranty claim during the initial one-year warranty period.

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§ 3.1.12.4 Warranties which are provided by a manufacturer for its product shall be received by the Design-Builder, filled out and filed with the manufacturer or other appropriate entity for the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer's warranties/guarantees after expiration of the Design-Builder's warranty.

§ 3.1.12.5 Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Design-Build Documents before final completion and written acceptance by the Owner shall not be construed as evidence of the Owner's acceptance of same, or the commencement of any warranty periods.

§ 3.1.12.6 The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner deems proper. The Design-Builder shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship. However, trials shall only be conducted with the Design-Builder's prior approval and under its observation

§ 3.1.12.7 The Design-Builder may, without cost to the Owner, also make such trial usage. Equipment and/or materials shall be replaced or returned to "as new" condition by the Design-Builder prior to acceptance by the Owner.

§ 3.1.12.8 The Design-Builder agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.1.12.9 If necessary as a matter of law, the Design-Builder may retain the right to enforce directly any such manufacturers' warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.2.

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§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required ~~in the Owner's~~ Exhibit "D" – Design Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the ~~Owner.~~ Owner in writing. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

...

§ 3.1.14.1 ~~To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.~~**TO THE FULLEST EXTENT PERMITTED BY LAW, THE DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AS DEFINED IN SECTION 1.4.20 FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE DESIGN-BUILDER, ARCHITECT, CONSULTANT, CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.1.14.**

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§ 3.1.14.2 ~~The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.~~**THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION 3.1.14 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR DESIGN-BUILDER, ARCHITECT, CONSULTANT, CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**

§ 3.1.14.3 THE DESIGN-BUILDER'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 3.1.14 SHALL ALSO SPECIFICALLY INCLUDE, WITHOUT LIMITATION, ALL FINES, PENALTIES, DAMAGES, LIABILITY, SAFETY VIOLATIONS, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), AND PUNITIVE DAMAGES (IF ANY) ARISING OUT OF, OR IN CONNECTION WITH ANY:

.1 VIOLATION OF OR FAILURE COMPLY WITH ANY LAW, STATUTE, ORDINANCE, RULE, REGULATION, CODE OR REQUIREMENT OF A PUBLIC AUTHORITY THAT BEARS UPON THE PERFORMANCE OF THE WORK BY THE DESIGN-BUILDER, A SUBCONTRACTOR OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE;

.2 MEANS, PROCEDURES, TECHNIQUES, SAFETY PRECAUTIONS, OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK; AND

.3 FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES, AND INSPECTION AS REQUIRED UNDER THE DESIGN-BUILD DOCUMENTS, OR ANY VIOLATION OF ANY PERMIT OR OTHER APPROVAL OF A PUBLIC AUTHORITY APPLICABLE TO THE WORK, BY THE DESIGN-BUILDER, A SUBCONTRACTOR, OR ANY PERSON OR ENTITY FOR WHOM EITHER IS RESPONSIBLE.

§ 3.1.14.4 THE DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS ALL OF THE INDEMNITEES AS DEFINED IN SECTION 1.4.20 FROM AND AGAINST ANY COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY ANY OF THE INDEMNITEES IN ENFORCING ANY OF THE DESIGN-BUILDER'S DEFENSE, INDEMNITY, AND HOLD-HARMLESS OBLIGATIONS UNDER THIS CONTRACT.

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.1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, or termination by the Owner for convenience, pursuant to Section 13.2.4; and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and

...

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than ~~30~~ thirty (30) days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

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§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit ~~B.~~ "B" – Insurance and Bonds.

...

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in ~~Section 1.1.The~~ Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling,

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procurement, or phased construction. The preliminary evaluation shall ~~consider~~ consider, without limitation, cost information, constructability, and procurement and construction scheduling issues.

...

.2 a ~~preliminary estimate~~ proposed Control Estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;

.3 a ~~preliminary schedule,~~ proposed Design-Builder's Project Schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and

...

(List additional information, if any, to be included in the Design-Builder's written report.)

a. Anything in the Owner's Criteria that may conflict with the requirements of local, State and Federal codes, statutes, ordinances, and all authorities having jurisdiction;

b. Anything in the Owner's Criteria that conflicts with best practices for design, engineering, or other industry standards that would prevent the Design-Builder from fully implementing and being completely responsible for their intended results; and

c. Other information and draft Exhibits to this Agreement as the Owner and Design-Builder agree are appropriate in the meeting described in Section 4.2.1.

...

§ 4.3.1 Upon the Owner's issuance of a written ~~consent~~ notice to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

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.5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; ~~and~~

.6 Outline specifications or sufficient drawing notes describing construction ~~materials.~~materials; and

.7 Such other information the Owner and Design-Builder agree in writing to be appropriate.

...

§ 4.3.2 The Owner and Owner's Independent Representative shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written ~~consent~~ notice to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

...

§ 4.4.1 Upon the Owner's issuance of a written ~~consent~~ notice to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

...

.2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, ~~a written statement of estimated~~ proposed Control Estimate detailing cost organized by trade categories, allowances, contingencies, ~~Design-Builder's Fee,~~ updates to Exhibit "H" – Design-Builder's Fee and Cost Proposal, and other items that comprise the Control Estimate detailing the proposed Contract Sum;

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.3 The proposed Design-Builder's Project Schedule showing the detailed work plan supporting date the Design-Builder shall achieve Substantial Completion;

...

.5 A list of the Design-Builder's ~~key personnel, Contractors and suppliers; and~~proposed Exhibit "G" – Key Firms & Personnel;
.6 The date on which the Design-Builder's Proposal ~~expires.~~ expires and;
.7 Such other information the Owner and Design-Builder agree in writing to be appropriate.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed. Prior to execution of the Agreement, the Design-Builder and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Design-Builder shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Design-Builder or any Subcontractor to have complied with the requirements of this Section 4.4.2.

...

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents ~~shall~~ shall, without limitation, establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents. Prior to execution of the Agreement, the Design-Builder and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Design-Builder shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Design-Builder or any Subcontractor to have complied with the requirements of this Section 5.1.1.
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§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build ~~Amendment.~~Amendment and issuance by the Owner of a written Notice to Proceed.

...

§ 5.2.5 The Design-Builder shall carefully check its own work and that of Subcontractors as the work is being performed.

§ 5.2.6 During the finishing stages of the project, the Design-Builder shall make frequent inspections of the Work in the presence of the Owner, the Contractor, and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work.

§ 5.2.7 The Design-Builder shall ensure that incorrect or faulty Work is corrected immediately.

§ 5.2.8 The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Design-Build Documents either by activities or duties of the Owner or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Design-Builder.

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...

§ 5.3.2 When a material or system is required to meet the Design Criteria or is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6. The Design-Builder shall also submit to the Owner, for each proposed substitution:

.1 A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog "cut sheets", warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;

.2 A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;

.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable;

.4 The adjustment, if any, in the time of completion of the Contract and the Contractor's Construction Schedule in the event the substitution is acceptable; and

.5 Proposals for substitutions shall be submitted electronically to the Owner in sufficient time to allow no less than ten (10) business days for review.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

§ 5.3.4 All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.

§ 5.3.5 The Design-Builder shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Design-Builder shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Design-Builder shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Design-Build Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Design-Build Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 5.3.6 Pursuant to Chapter 2258, Texas Government Code, all Contractors and any Subcontractor involved in the construction of a public work project shall pay not less than the prevailing rates as per diem wages in the locality at the time of construction to all laborers, workmen and mechanics employed by them in the execution of this contract. The Design-Builder shall assure that these requirements are met for the Project and shall insure that every contract or subcontract relating to the Work requires, on behalf of Owner, that the prevailing wage rates be paid.

§ 5.3.7 The Design-Builder shall be provided an applicable Department of Labor Wage Rate Determination for use on the Project required by Chapter 2258.022, Texas Government Code.

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The Design-Builder ~~shall~~ shall, to the extent the Owner is not exempted under this Agreement, pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. In no event should the Owner pay the Design-Builder for taxes that were not properly due and duly paid or for which the Owner is exempt from paying under Texas law.

...

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the ~~Design-Builder~~ Owner shall secure and pay for the building ~~permit as well as any~~ permit. The Owner shall also pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees, unless exempted under Texas law. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

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§ 5.5.2.1 If the Design-Builder performs Work that it knew or should have known to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with Design-Build Documents, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the Design-Build Documents, except where the Design-Build Documents call for Work or materials of higher standards than those required by codes or ordinances, in which case, the Design-Build Documents shall govern. Nothing contained in the Design-Build Documents shall be construed as authority for the Design-Builder to violate any applicable codes or ordinances in effect at the site.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than ~~21~~ twenty-one (21) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.3.1 In no event shall any adjustment in the Contract Sum or Contract Time be made for conditions which should have been known to the Design-Builder or would have been noticed by a Design-Builder of similar size and experience pursuant to its on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the site which have been made available to the Design-Builder or have been performed by the Design-Builder or its Subcontractors; are part of the Design-Build Documents; or are part of the materials provided by the Design-Builder to be used in constructing the improvements.

...

§ 5.5.5 The Design-Builder shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including but not limited to all applicable immigration, employment, environmental and safety laws, statutes, rules, codes, orders and regulations.

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§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within ~~14~~ fourteen (14) days to the Design-Builder in writing, stating

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(1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the ~~14-day~~ fourteen (14) day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within ~~14~~ fourteen (14) days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the ~~14-day~~ fourteen (14) day period shall constitute notice of no reasonable objection.

...

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed. The Design-Builder shall make available to the Owner for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the Design-Builder in electronic format, upon reasonable request of the Owner and, in any event, within twenty-four (24) hours of receipt by Design-Builder of a request from Owner for such review and/or copying. The Owner may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the Owner's expense. The Owner may require the Design-Builder to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner's expense.

~~**§ 5.9 Use of Site**~~

~~The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.~~

§ 5.8.1 The Design-Builder shall provide final electronic files and one "hard" copy of the Drawings and Specifications to the Owner updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

§ 5.9 Use of Site, Delivery, & Storage

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.9.1 The Design-Builder shall coordinate the Design-Builder's operations with, and secure the approval of, the Owner before using any portion of the site.

§ 5.9.2 The Design-Builder shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto.

.1 The Design-Builder acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract.

.2 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions.

.3 The Design-Builder shall be responsible for the mitigation and/or abatement of all noise, dust,

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fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Architect, have an adverse affect on the quality of life or productivity for Project stakeholders, the Owner's current operations, or the Owner's employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the Owner.

.4 The Design-Builder shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner. Repeat offenses will cause the Owner to require, through the Design-Builder, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site.

.5 The Design-Builder shall, at a minimum, secure the site by erecting and maintaining a 6'-0" chain link fence around the perimeter of the construction site. This fence shall remain intact until such time the site becomes secure in the opinion of the Design-Builder, as a result of construction progress (by way of example, and without limitation, completion of site grading and backfill, installation of doors and windows, etc.).

.6 The Design-Builder shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use.

.7 The Design-Builder is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Design-Builder shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

§ 5.9.3 The Design-Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas.

.1 The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements.

.2 The Design-Builder shall inform the Owner and any officials referenced in Section 5.9.5 in writing a minimum of thirty (30) calendar days prior to any disruption of access, specifically and graphically showing the nature of the disruption, as well as the hours it will be disrupted. Such disruption will be subject to Owner's approval, such approval not to be unreasonably withheld.

.3 The Owner shall be responsible for storm debris and snow removal to the limits of the construction site only so far that the Design-Builder will have access to the entrance to the construction area.

.4 Storm debris and snow removal within the limits of work and/or for the purpose of performing and protecting work by individual contractors shall be up to the Design-Builder.

§ 5.9.4 During the performance of the Work, the Design-Builder, its Subcontractors, Sub-subcontractors, suppliers and their employees agree they shall:

.1 Use such entrances to the construction site that may be designated by the Owner;

.2 Perform the Work at such times of the day and days of the week as may be designated by the Owner; and

.3 Accept that these entrances and times may be reviewed and changed from time to time by the Owner.

§ 5.9.5 The Design-Builder shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until

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the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Design-Builder. If the utility service must be interrupted, the Design-Builder shall, at Design-Builder's sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication on the Owner's website or in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give the most effective notice to such utility users.

§ 5.9.6 The Design-Builder shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed for the Work, and shall properly store and protect same at the Design-Builder's expense.

§ 5.9.7 Notwithstanding any other provision herein, the Design-Builder shall take all necessary measures to store materials on site for which payment has been requested by the Design-Builder or been made by the Owner so that they shall not deteriorate, be damaged or be stolen.

.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Design-Builder.

.2 Protection of construction materials and equipment stored at the Project site from fire, weather, burglary, pilferage, vandalism and mischief, damage, and all other adversity; and the care and protection of materials and Work installed in the building is solely the responsibility of the Design-Builder.

.3 The Design-Builder shall bear sole responsibility for the restoration of damaged Work and replacement of damaged or stolen materials at no additional cost to the Owner.

.4 After equipment is no longer required for the Work, it shall be promptly removed from the Project site.

§ 5.9.8 The Design-Builder shall not deliver any materials to the site which are not to be installed by same Design-Builder without fifteen (15) day's advance notice in writing to the Owner of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Design-Builder and a representative of the Owner, who shall agree, and the Design-Builder shall document such agreement in writing:

.1 the materials delivered are undamaged, or if damaged, such damage is documented by digital photo(s);

.2 they are in the quantities shown on the purchase order, invoice or bill of lading accompanying the shipment or delivery or otherwise provided;

.3 the storage conditions are adequate for the purposes; and

.4 the Design-Builder has accepted responsibility for insurance and ongoing protection per Section 10.2.8 for such material until it is released to a third party authorized in writing by the Owner to receive it.

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work. The Design-Builder shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Design-Build Documents. The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation.

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§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the ~~Contract.~~ Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about ~~the Project.~~the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

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§ 5.13.1.5 The Design-Builder accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Design-Build Documents. The Design-Builder shall be responsible for such pre-purchased items, if any, as if the Design-Builder were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Design-Build Documents shall also apply to any pre-purchased items, unless the Design-Build Documents specifically provide otherwise.

...

§ 5.14.6 Should the Design-Builder wrongfully delay or cause damage to the work or property of any separate contractor, the Design-Builder shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such separate contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Design-Builder, the Owner shall notify the Design-Builder who shall defend such proceedings at the Design-Builder's expense. The Owner may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Design-Builder shall pay to satisfy it to the extent of Design-Builder's responsibility.

§ 5.14.7 SHOULD ANY SUCH SEPARATE CONTRACTOR WRONGFULLY DELAYED OR DAMAGED BY THE DESIGN-BUILDER OR PERSONS FOR WHOM THE DESIGN-BUILDER IS RESPONSIBLE PER SECTION 5.14.6 MAKE A CLAIM AGAINST THE INDEMNITEES, OR BRING ANY ACTION AGAINST THE INDEMNITEES, ON ACCOUNT OF THE DAMAGE ALLEGED TO HAVE BEEN SO SUSTAINED, THE DESIGN-BUILDER SHALL HOLD THE INDEMNITEES HARMLESS AND DEFEND THEM AGAINST ANY SUCH CLAIM OR SUIT, AND SHALL REIMBURSE TO THE INDEMNITEES THE COST INCLUDING, WITHOUT LIMITATION, REASONABLE, ADDITIONAL ATTORNEY'S FEES INCURRED DEFENDING SUCH SUIT, AND IF ANY JUDGMENT AGAINST THE INDEMNITEES ARISES THERE FROM, THE DESIGN-BUILDER SHALL PAY OR SATISFY IT AND SHALL PAY ALL COSTS INCURRED BY THE INDEMNITEES.

§ 5.14.8 Should the Design-Builder be caused damage by any separate contractor, by reason of such separate contractor's failure to perform properly under its contract with the Owner, no action will lie against the Owner, and the Owner shall have no liability therefore, but the Design-Builder may assert its claims for damages directly against such separate contractor and the Owner shall assign such rights to Design-Builder, as allowed under Texas law to pursue such claims.

§ 5.14.9 Inasmuch as the completion of the Project within the prescribed time is dependent very largely upon the close and active cooperation of all those engaged therein, it is, therefore expressly understood and agreed that each Design-Builder shall lay out and install its work at such time(s) and in such manner as to not delay or interfere with the carrying forward of the work of the other contractors.

§ 5.14.10 Where the work of one contractor directly affects the conditions of the work of another contractor including, as examples only, and not limited to, providing shoring for backfilling, providing protective covering for painting, providing adequate bracing of door jambs, etc., the Design-Builder performing the work which will adversely affect another contractor's work shall be responsible for providing adequate protection based upon methods used to perform its work.

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§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. Except as permitted in Section 1.4.1 and Section 6.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Design-Builder or a change in any time period provided for in the Design-Builder.

...

§ 6.2.1 Methods used in determining adjustments to the Contract Sum may include those listed in Sections 6.3.3, 6.3.7 and 6.3.10.

§ 6.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 6.2.3 Change Orders Requiring City Council Approval

The Contract Sum shown in the final Exhibit "A" – Design Build Amendment may not be increased because of a Change Order unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants. The approval of the Sherman City Council is required if a Change Order involves a decrease or an increase of $50,000.01 or more. The original Contract Sum shown in the final Exhibit "A" – Design Build Amendment also shall not be increased under this Section 6.2.3 by more than twenty-five percent (25.0%) for any reason over the entire duration of the Project. The original Contract Sum shown in the final Exhibit "A" – Design Build Amendment also shall not be decreased by more than twenty-five percent (25%) without the consent of the Design-Builder, as provided in Texas Local Government Code Sec. 252.048. After the Change Order is submitted by the Design-Builder under this Section 6.2.3, the additional time required to obtain City Council approval shall not be factored into any past or future claim for delays or calculated as a part of the Change Order request.

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.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed ~~or percentage fee;~~ ; or

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§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit ~~as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ calculated using the sum of the actual costs allowed in Sections 6.3.7.1 through 6.7.3.5, and using the percentages shown in Section 6.3.12 below. In such case, and also under Section 6.3.3.3, the Design-Builder shall

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keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

.1 Additional verifiable and reasonable costs of professional services;

...

.6 Additional ~~costs of supervision and field office~~ verifiable payroll and subsistence costs incurred by the Design-Builder, Subcontractor and Subcontractors of field personnel directly attributable to the change.

...

§ 6.3.11 If the Owner and Design-Builder do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination. The Architect may consult with the Owner in connection with such determination either at the direction of the Owner or at the Architect's discretion.

§ 6.3.12 In Section 6.3.7, the allowance for the combined total of onsite and offsite overhead, insurance and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Design-Builder, for Work performed by the Design-Builder's own forces, ten percent (10%) of the cost;

.2 For the Design-Builder, for Work performed by the Design-Builder's Subcontractor, five percent (5%) of the amount due the Subcontractor;

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost;

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 6.3.7;

.6 Under no circumstance shall costs of the Design-Builder's supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 6.3.7. Conversely, the Design-Builder shall be compensated for their labor within the overhead and profit percentage specified in this Section 6.3.12.

.7 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also.

.8 When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.

.9 Overtime, when specifically authorized by the Owner and not as a requirement for the Design-Builder to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

§ 6.4 Supporting Information

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Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner. The Design-Builder shall also comply with all provisions of Articles 8 and 14 with respect to claims. The required information shall be provided by the Design-Builder in less than twenty-one (21) days from the Design-Builder's request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner.

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§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within ~~15~~ fifteen (15) days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.1.3 The Owner may obtain independent review(s) of the Design-Builder's Design Documents, or of any document or other materials submitted by the Design-Builder, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Design-Builder shall cooperate with such Owner's other consultants fully, and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Design-Builder.

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§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. Omissions and conflicts thus discovered by the Design-Builder will be promptly communicated to the Owner in writing, after the Design-Builder has carefully scrutinized such information for consistency with other information about the Work. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

...

§ 7.2.7 ~~Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.~~As required by the provisions of Chapter 56 of the Texas Business and Commerce Code, the Owner has represented that it has sufficient funds available to undertake the Project.

...

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit ~~B.~~"B" – Insurance and Bonds.

§ 7.2.11 The Owner shall furnish information and services under the Owner's control when (1) such services are reasonably required by the scope of the Work; (2) are scheduled by the Design-Builder in the approved Design-Builder's Project Schedule; (3) and requested by the Design-Builder in writing reasonably in advance of the date required by the Design-Builder to allow the Owner to procure of the requested information and/or consultant(s),

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and such consultant(s) to provide the requested information and/or services in the normal course of the consultant(s)' business.

§ 7.2.12 The Owner shall furnish the following information to a person, including the Architect or Contractor, who makes a request for information under Texas Government Code Chapter 2253, related to a payment or performance bond: (1) a certified copy of a payment bond and any attachment to the bond; (2) the public work contract for which the bond was given; and (3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, for obtaining information concerning licensed insurance companies.

§ 7.2.13 Notwithstanding the foregoing, the Design-Builder expressly understands, acknowledges and agrees that such reports, analyses and assessments have been provided for the Design-Builder's bidding and informational purposes only. The City does not warrant or guarantee the information contained in those documents. The Design-Builder shall not be entitled to rely solely on the aforementioned documents in performing any portion of the Work, but shall conduct its own testing, inspections and investigations as part of the final Project design. The Design-Builder agrees that nothing contained in any Owner-provided reports, analyses or assessments, nor any provision of the Design-Build Agreement, shall have the effect of releasing, diminishing, discharging or otherwise absolving Design-Builder of the responsibility for performing any testing, inspections or evaluations necessary to ensure the structural integrity of the foundation and compliance with the Design-Build Documents.

PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE DESIGN-BUILDER AT ITS OWN RISK. THE OWNER AND THE OWNER'S CONSULTANTS DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.

§ 7.2.14 The Design-Builder shall be the party with primary responsibility for securing necessary site, building, and other permits, licenses and inspections required by regulatory agencies, unless otherwise provided herein or required by law. The Owner shall cooperate with the Design-Builder in securing permits. The Design-Builder will include the fees for such permits, licenses and inspections in the Contract Sum.

§ 7.2.15 If the Owner observes or otherwise becomes aware of any fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall, as soon as possible but not later than fifteen (15) days after the Owner becomes aware of such fault or defect, give written notice thereof to the Design-Builder.

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If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or ~~persistently~~ fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

...

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ~~ten-day~~ four (4) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 7.10 Extent of Owner Rights

§ 7.10.1 The rights stated in this Article 7 and elsewhere in the Design-Build Documents are cumulative and not in limitation of any rights of the Owner granted in the Design-Build Documents; at law; or in equity.

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§ 7.10.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, the providing of the Design Criteria; any review(s), independent or otherwise, or approval(s) by the Owner or Owner's Independent Representative of the Design-Build Documents, the Contract Documents, the Design-Builder's Construction Management Plan(s), the Design-Builder's Construction Schedule, shop drawings, submittals, meeting minutes or other Design-Builder's services, deliverables or activities; nor the exercising of any of the rights and authority granted the Owner in the Design-Build Documents shall in any way reduce, diminish, or otherwise affect the Design-Builder's responsibilities, duties and accountability to the Owner for, without limitation, the design, engineering, construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Design-Build Documents.

§ 7.10.3 The Owner reserves the right to have the Design-Builder and/or subcontractors remove person(s) and/or personnel from any and all work on the Project for cause but without cost to the Owner. Such requests from the Owner will be made in writing. "Cause" may include, but is not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the project, the facility or others, poor management, cause delay or delays, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Design-Builder shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

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§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract. Unless the date of commencement is established by a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any documents or notices required of the Owner prior to such commencement of the Work.

§ 8.1.3 ~~The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.~~Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason it shall be agreed that the Design-Builder will substantially complete all Work under the Contract within the time established in the Design-Build Documents and the most recently approved Design-Builder's Construction Schedule. The Design-Builder shall begin the Work on the date of commencement as defined in Exhibit "A" – Design-Build Amendment; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved Design-Builder's Construction Schedule.

§ 8.1.4 The Design-Builder shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in Exhibit "A" – Design Build Amendment, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.

§ 8.1.5 The Design-Builder understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Design-Builder as well as the respective Multiple Prime Contractors.

§ 8.1.6 The Design-Builder shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.

...

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by

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the Owner; or by labor disputes, fire, unusual delay in ~~deliveries,~~ transportation, unavoidable casualties or other causes beyond the Design-Builder's reasonable control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

...

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

§ 8.2.4 Any claims for extension of time shall be made in writing to the Owner not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Design-Builder shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Design-Builder should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.

§ 8.2.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at **https://www.ncdc.noaa.gov/cag/regional/mapping/-1/pcp/201804/60/value** or other data as mutually agreed by the Owner and Design-Builder for the Project area. In allowing delays for weather, the Owner will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis actual impacts of those work days lost with each separate extension figured to the nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Design-Builder's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

§ 8.3 Design-Builder's Obligations after Delay

§ 8.3.1 If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Design-Builder's Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Owner that the Work will not be completed within the Contract Time or in accordance with the Design-Builder's Construction Schedule, the Design-Builder agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as "Extraordinary Measures") at no additional cost to the Owner, as required to substantially eliminate, in the judgement of the Owner, the backlog of Design-Builder's Work on the Project:

.1 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;

.2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;

.3 Reschedule activities to achieve maximum practical concurrence of accomplishment; and

.4 Do whatever else is reasonably required by the Owner.

§ 8.3.2 These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Design-Build Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Design-Builder's compliance with the Design-Builder's Construction Schedule.

§ 8.3.3 In the event of a delay, the Owner may also require the Design-Builder to immediately submit a Proposed Recovery Schedule as specified in Section 8.3.1 above. If the Proposed Recovery Schedule is not satisfactory, the Owner may unilaterally establish a new Proposed Recovery Schedule acceptable to the Owner; issue it as a Construction Change Directive; and the Design-Builder shall comply therewith. The Owner may also require the Design-Builder to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the Owner.

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§ 8.3.4 Failure of the Design-Builder to substantially comply with the requirements of this Section 8.3 shall be considered grounds for a determination by the Owner that the Design-Builder is in breach of this Agreement by failing to prosecute the Work and that of the Project so as to ensure its completion within both the Contract Time and the updated Design-Builder's Construction Schedule.

§ 8.3.5 Likewise, in the event the progress of the Project falls behind the predictions of the Master Project Schedule through no fault of the Design-Builder, the Owner may request, and the Design-Builder agrees to take one or more of the Extraordinary Measures, with the Owner bearing the cost for such actions per Article 6 herein.

§ 8.3.6 The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.3, except as specifically noted otherwise in Section 8.3.5.

§ 8.4 Owner's Rights after Delay

§ 8.4.1 Likewise, in the event the Design-Builder fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Design-Builder's Construction Schedule, the Owner shall have the right to impose any or all of the following options:

.1 Require the Design-Builder to substantiate the capability to get back on schedule within ten (10) business days;

.2 Require the Design-Builder to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner until Design-Builder confirms, to the satisfaction of the Owner, the progress of the Work is in compliance and congruence with the most recently approved Design-Builder's Construction Schedule, such measures being at no extra cost to Owner;

.3 Withhold progress payment, or portions thereof, until such time as the Design-Builder is in compliance with the most recently approved Design-Builder's Project Schedule; and

.4 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at Design-Builder's expense.

§ 8.5 Liquidated Damages

§ 8.5.1 Should the Design-Builder fail to substantially complete the Work on, or before, the original date set forth in the Contract, or on or before the revised date as granted by extensions to Contract Time, the Owner may at its sole discretion permit the Design-Builder to proceed, and in such case, there shall be deducted from any monies due or which may become due the Design-Builder, a sum as specified herein, for each and every calendar day that the Work shall remain uncompleted. This sum shall be considered, not as penalty, but as the cost(s) for substantial losses suffered by the public and the Owner. Liquidated damages are intended to compensate the Owner for the Design-Builder's failure to meet the deadlines set forth herein, and shall not excuse the Design-Builder from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. The Design-Builder agrees that the sums in Section 8.5.2 are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. Design-Builder further acknowledges and agrees that Liquidated Damages may be owing even though no termination has occurred.

§ 8.5.2 The Design-Builder shall pay Owner five hundred dollars ($ 500.00) for each day that expires after the date set forth in the Contract for substantially completing the work to be "ready for use, beneficial occupancy and operation" by the Owner and five hundred dollars ($ 500.00) for each day that expires after the date set forth in the Contract for Final Completion of the Work.

§ 8.5.3 The parties acknowledge, covenant and agree that the daily basis and the amount set forth above for liquidated damages are reasonable and equitable due to increased Owner personnel efforts in administrating the Contract; increased consultants' expenses; inconvenience and expense caused to Project stakeholders; and loss of confidence

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and diminished trust in the Owner's management abilities by the local and national community, the Owner's peers, and by financial institutions necessary to the Owner's future endeavors; all incurred by delays in the completion time.

§ 8.5.4 Permitting the Design-Builder to continue and finish the Work, or any portion thereof, after the time fixed for its completion, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract. The Design-Builder acknowledges the Owner receives no benefits from early completion of the Project or the Work, therefore all rights, if any, to an early completion bonus or other increases in the Contract Sum for such early completion are hereby waived by the Design-Builder.

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Where the Contract Sum is based on a ~~stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating~~ Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder, shall meet with the Owner, at the Preconstruction Conference with a proposed Schedule of Values. The Design-Builder's Schedule of Values will be reviewed by the Owner in the context of the Design-Builder's proposed Construction Management Plan, including but not limited to the Design-Builder's Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Design-Builder's Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to the Design-Builder's and Subcontractor's contract amount(s). The Schedule of Values shall allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Owner may require. This ~~schedule,~~ Schedule of Values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

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§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment; supported by AIA Document G703, Continuation Sheet; and other documentation as reasonably required by the Owner; submitted electronically.

...

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with all applicable statutes:

.1 A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Design-Builder has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested Application for Payment, and the amount to be paid to the Design-Builder from such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers;

.2 Duly executed unconditional waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors establishing payment or satisfaction of payment of all amounts requested by the Design-Builder on behalf of such entities or persons in any previous Application for Payment;

.3 Duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when appropriate, from material suppliers and lower tier Sub-subcontractors conditional upon and establishing payment or satisfaction of payment of all amounts requested by the Design-Builder on behalf of such entities or persons in the current Application for Payment;

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.4 An updated Design-Builder's Construction Schedule clearly showing the actual progress of the Work for each activity against the Work previously scheduled to be completed during the period, and against targeted activities' previously approved completion dates; and

.5 Notwithstanding the above, Applications for Payment shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner, and shall include, at a minimum, an updated monthly Design-Builder's Construction Schedule clearly and graphically comparing the actual "work-in-place" completed to the Work previously projected to be complete for the period. Failure to provide this information in the proper form may be, in and of itself, grounds for rejection of the Application for Payment, at the discretion of the Owner.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the ~~Owner's title to such materials and equipment or otherwise protect the Owner's interest, and~~ stored materials and equipment are properly tagged as to material and job identification; are available for inspection by the Owner; and such requests for payment must be accompanied by documentary evidence as specified, without limitation, in Sections 5.9 and the insurance required by Exhibit "B" – Insurance and Bonds, which supports the request's validity; quantity and value of materials; proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner's interests. Such request, shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Such materials shall be:

.1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, and the Lender (if any);

.2 Specifically marked for use on the Project; and

.3 Segregated from other materials at the storage facility.

§ 9.3.3 The Design-Builder warrants that title to all ~~Work, other than Instruments of Service,~~ Work covered by an Application for Payment will pass to the Owner ~~no later than the time of payment.~~ either by incorporation into the construction or receipt of payment by the Design-Builder, whichever occurs first . The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

.1 THE DESIGN-BUILDER FURTHER EXPRESSLY UNDERTAKES TO DEFEND THE INDEMNITEES, AT THE DESIGN-BUILDER'S SOLE EXPENSE, AGAINST ANY ACTIONS, LAWSUITS, OR PROCEEDINGS BROUGHT AGAINST THE INDEMNITEES AS A RESULT OF LIENS OR VERIFIED CLAIMS FILED AGAINST THE WORK, THE SITE OF ANY OF THE WORK, THE PROJECT SITE AND ANY IMPROVEMENTS THEREON, PAYMENTS DUE THE DESIGN-BUILDER, THE PROJECT BOND OR ANY PORTION OF THE PROPERTY OF ANY OF THE INDEMNITEES (REFERRED TO COLLECTIVELY AS "LIENS OR VERIFIED CLAIMS" IN THIS SECTION 9.3.3). THE DESIGN-BUILDER HEREBY AGREES TO INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS AGAINST ANY SUCH LIENS OR VERIFIED CLAIMS AND AGREES TO PAY ANY JUDGMENT OR LIENS OR VERIFIED CLAIMS RESULTING FROM ANY SUCH ACTIONS, LAWSUITS, OR PROCEEDINGS.

.2 The Owner shall release any payments withheld due to a lien or verified claim if the Design-Builder obtains security acceptable to the Owner or a lien bond that is (1) issued by a surety acceptable to the

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Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than two hundred percent (200%) of such lien or verified claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Design-Builder shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Design-Builder and shall not be part of, or cause any adjustment to, the Contract Sum.

.3 Notwithstanding the foregoing, the Owner reserves the right to settle any disputed lien or verified claim by payments to the claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Design-Builder shall promptly reimburse the Owner, upon demand, for any payments so made if the amount paid exceeds the amount remaining owed under the subcontract.

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The Owner shall, within seven (7) days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.1 The issuance of a Application for Payment will constitute a representation by the Design-Builder to the Owner, based on the Design-Builder's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Design-Builder's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Design-Build Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Design-Build Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Design-Build Documents prior to completion and to specific qualifications expressed by the Design-Builder. The issuance of a Certificate for Payment will further constitute a representation that the Design-Builder is entitled to payment in the amount certified.

§ 9.4.2 Certification will be issued for ninety-five percent (95%) of the amount requested by the Design-Builder and approved by the Owner to be properly due until the Design-Builder is ninety-five percent (95%) completed with the Work. Thereafter, the accumulated retainage may be held without additional retainage, except that should the Design-Builder at any time fail to keep current with the approved progress schedule; fail to assure payment to Subcontractors, Sub-subcontractors and suppliers as required hereunder; or fails to promptly and diligently correct Work that does not comply with the Design-Build Documents, certification of ninety-five percent (95%) shall automatically again become effective and shall apply as long as the Design-Builder lags behind such progress or fails to assure such payment.

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.3 failure of the Design-Builder to ~~make~~ assure payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;

...

.7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

.8 Design-Builder's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;

.9 failure to fully execute the Contract with all associated documents as required;

.10 liens filed for any portion of the Work; or

.11 failure of the Design-Builder to comply with any provisions of the Design-Build Documents, including without limitation Section 8.3.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for ~~amounts previously withheld.~~amounts previously withheld less all associated damages, costs and expenses, suffered or accrued by the Owner. In the event the Owner nullifies a previously issued Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Design-Builder shall promptly reimburse to the Owner amounts the latter had paid

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pursuant to the nullified Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until and unless the reasons for nullification of the previously issued Certificate for Payment have been remedied and all associated damages, costs, and expenses of Owner have been paid by the Design-Builder.
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§ 9.5.4 The Design-Builder shall not stop work or terminate the Contract if the Owner's Lender (if any) should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of this Agreement herein.

...

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven (7) days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

...

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

...

§ 9.6.7 ~~Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments~~ The Design-Builder shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner. Sums withheld by the Owner from the Design-Builder for deficiencies solely attributable to the Design-Builder shall not be grounds for the Design-Builder to withhold sums due to any Subcontractor. All sums paid to the Design-Builder for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Design-Builder for payment to those persons and entities to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. ~~Nothing~~ However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision. In addition to this contractual trust requirement, Design-Builder understands and acknowledges that all payments under this Contract are considered construction trust fund payments for the purposes of application of Chapter 162 of the Texas Property Code.

§ 9.6.8 The Design-Builder agrees to keep the Work and the site of the Project and all project bonds free and clear of all liens and verified claims related to labor and materials furnished in connection with the Work.

§ 9.6.9 Notwithstanding anything to the contrary contained in the Design-Build Documents , if any lien or verified claim is filed or there is evidence to believe that any lien or verified claim may be filed at any time during the progress of the Work or the duration of this Contract, the Owner may refuse to make any payment otherwise due the

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Design-Builder or may withhold from any payment due the Design-Builder a sum sufficient in the opinion of the Owner to pay all obligations and expenses necessary to satisfy such lien or verified claim. The Owner may withhold such payment unless or until the Design-Builder, within ten (10) calendar days after demand therefore by the Owner, shall furnish satisfactory evidence that the indebtedness and any lien or verified claim in respect thereof has been satisfied, discharged, and released of record, or that the Design-Builder has legally caused such lien or verified claim to be released of record pending the resolution of any dispute between the Design-Builder and the person or persons filing the lien or verified claim. If the Design-Builder fails to furnish satisfactory evidence within ten (10) calendar days of the demand thereof, the Design-Builder and the Owner shall meet within two (2) additional business days to review and agree in writing on the Design-Builder's action plan for disposing of the lien or verified claim in question. Failing an agreement satisfactory to the Owner, the Owner may discharge such indebtedness in any manner and may deduct the amount thereof, together with any and all losses, costs, damages, and attorney's fees suffered or incurred by the Owner from any sum payable to the Design-Builder under the Design-Build Documents, including but not limited to final payment and retained amounts.

§ 9.6.10 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (ii) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.
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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended ~~use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.~~use, all major systems are operational, and all safety features are completed and Owner's receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Design-Build Documents, and without limitation the Design-Builder must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Texas before the Contractor shall be deemed to have achieved Substantial Completion.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. The Design-Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents. The Design-Builder will also provide the Owner a comprehensive list of all claims previously and properly made in writing and identified by the Design-Builder as unsettled at the time of Substantial Completion.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an ~~inspection~~ observation to determine whether the Work or designated portion thereof is substantially complete. If the Owner's ~~inspection~~ observation discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another ~~inspection~~ observation by the Owner to determine Substantial Completion.

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§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion. Such determination shall be documented in writing by the Design-Builder; provided to the Owner for approval.
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§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.6 The Design-Builder's acceptance of payment per Section 9.8.5 shall constitute a waiver for all purposes of all claims by the Design-Builder against the Owner, except those previously and properly made in writing and identified in the list provided by the Design-Builder as unsettled at the time of Substantial Completion per Sections 9.8.2.

...

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, ~~provided such occupancy or use is consented to, by endorsement or otherwise, by~~ as such occupancy or use has been consented to by the Design-Builder in advance herein, the Design-Builder shall obtain by endorsement or otherwise, similar consent from the insurer providing property insurance and ~~authorized by~~ secure authorization for such use from the public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

...

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final ~~inspection~~ observation and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such ~~inspection.~~ observation. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents ~~to remain in force after final payment is currently in effect,~~ and will not be cancelled or allowed to expire until at least forty-five (45) days written notice is given the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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§ 9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Design-Builder shall deliver a permanent certificate of occupancy from local authorities having jurisdiction.

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.1 ~~liens, Claims,~~ bond claims, Claims, liquidated damages, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Design-Build Documents;~~or~~

.3 terms of special warranties required ~~by the Design-Build Documents.~~by the Design-Build Documents;

.4 audits performed by the Owner, if permitted by the Design-Build Documents, after final payment; or

.5 gross negligence, willful misconduct, or fraudulent concealment in connection with the performance of the Contract.

§ 9.10.5 ~~Acceptance~~ Application for and acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder against the Owner except those previously made in writing and identified by the Design-Builder as ~~unsettled at the time of final Application for Payment.~~arising after the waiver given at Substantial Completion payment described in Sections 9.8.2 and 9.8.6.

§ 9.10.6 In addition to any other damages, failure of the Design-Builder to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Design-Builder being responsible for excess Owner's consultant(s)' fees beyond their original scope of services required to achieve final completion ("Excess Fees"). Excess Fees will be deducted from the amount due the Design-Builder.

...

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Design-Builder's and all Subcontractors' Safety Programs shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations.

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§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to all of the following:

...

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Design-Builder.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified ~~personnel.~~personnel, and the Design-Builder shall give the Owner reasonable advance written notice of such planned activities.

...

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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§ 10.2.9 The Design-Builder shall immediately report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the Owner.

...

§ 10.3.1 Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including but not limited to ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change ~~Order,~~ Order duly processed and approved, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and ~~start-up.~~

~~**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~start-up, both as specified in Article 6. The term "rendered harmless" shall be interpreted to mean, without limitation that levels of hazardous materials, including but not limited to asbestos and polychlorinated biphenyls, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Design-Builder, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Design-Builder agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 Not Used.

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§ 10.5 Site Visits

Anyone other than the Owner's designated representatives and other consultants visiting the job site who is not employed by a Design-Builder shall be required to register with the Design-Builder's site office before proceeding onto the job site.

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§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, specifically including but not limited to additional testing and inspections, the cost of uncovering ~~and replacement,~~ and replacement the cost of any additional supervision, material, labor, equipment, rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of both the Design-Builder and the Project, and restore Work by the Design-Builder and others necessarily damaged in the course of rectifying the non-complying conditions; as well as, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.1.1 If prior to the date of Substantial Completion the Design-Builder, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Design-Builder shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Design-Builder shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Design-Builder, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable or for which the Design-Builder is otherwise responsible.

...

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, or within such longer period as may be prescribed by law, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During~~ If the condition is reasonably discoverable, during the one-year period for correction of the Work, ~~if~~ and the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with ~~Section 7.9.~~Section 7.9, and charge the reasonable costs to the Design-Builder.

§ 11.2.2.2 The one-year period for correction of Work shall ~~be extended with respect to portions of Work first performed after Substantial Completion~~ also be extended by the period of time between Substantial Completion and the actual completion of ~~that portion~~ the corrective Work performed by the Design-Builder pursuant to this Section 11.2, but only with respect to the corrected portions of the Work.

§ 11.2.2.3 ~~The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.~~Not Used.

§ 11.2.3 ~~The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.~~Not Used.

§ 11.2.4 The Design-Builder shall bear the ~~cost~~ costs of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents. These costs specifically include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work, and restore Work by the Design-Builder and others necessarily damaged in the course of rectifying the non-complying conditions.

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§11.2.6 The Design-Builder's obligations under this Section 11.2 shall, without limitation, survive acceptance of the Work under the Contract and termination of the Contract.

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. In the event final payment has been made by the Owner subsequent to accepting such non-conforming Work, the Design-Builder shall pay the Owner, the reduction in the Contact Sum occasioned by such acceptance.

~~ARTICLE 12 COPYRIGHTS AND LICENSES~~

ARTICLE 12 OWNERSHIP & USE OF DRAWINGS, SPECIFICATIONS, & OTHER DESIGN DOCUMENTS

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are ~~Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. 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 Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.~~ Design Documents. Design Documents are the product of work made for hire. These are and shall remain the sole property of the Owner. The Design-Builder assigns to Owner all remaining proprietary rights that the Design-Builder may possess in the Design Documents including, without limitation, all copyright and other intellectual property rights. Disputes between the parties shall not impact this transfer of ownership, neither will a termination of this Agreement. In the event of a dispute between the parties regarding payment for Basic or Additional Services, the Design-Builder is not obligated to deliver additional Design Documents or services for which it claims that it has not been paid, but the Owner's right to use the Design Documents and other services in its possession shall not be restricted.

§ 12.2 The ~~Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.~~Project is the property of the Owner, and, without limitation, the Design-Builder may not use the Design Documents for any purpose not related to the Project without the Owner's prior written consent.

§ 12.3 Upon execution of the Agreement, the ~~Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.~~ Design-Builder, the Architect, Consultants, Subcontractor and any other person or entity providing services or work for any of them are authorized to use and reproduce the Design Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The Design-Builder, Architect, Consultants, Subcontractor and any other person or entity providing services or work for any of them may not use the Design Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 12.3.1 The Design-Builder shall ~~obtain non-exclusive licenses from~~ include in its agreements with the Architect, Consultants, and ~~Contractors,~~ Subcontractors, commitments that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. ~~The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect,~~

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~~Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.~~

§ 12.3.2 In the event the Owner alters the ~~Instruments of Service~~ Design Documents without the author's written authorization or uses the ~~Instruments of Service~~ Design Documents without retaining the authors of the ~~Instruments of Service,~~ Design Documents, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The ~~Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The~~ terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.4 When requested by the Owner, the Design-Builder shall furnish to the Owner the most current Design Documents, to include, without limitation all the most current drawings, design and engineering calculations, specifications, and any other information which the Design-Builder, Architect or the Design-Builder's Consultant(s) have created in connection with or for the Project. At a minimum this information shall be provided in electronic format compatible with the most recent versions of the industry standard software for such information. Specifically, drawings shall be compatible with AutoCADD; design and engineering calculations compatible with MS Excel; and specifications with MS Word. All layers and information shall be fully accessible (not "PDF", "protected", or "plot" files).

§ 12.5 Submittal or distribution of the Design Documents or any portion thereof to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 12.6 The Design-Builder, at any time upon the request of the Owner, shall immediately return and surrender to the Owner, without limitation, all electronic and hard copies of any Project-related materials, records, notices, memoranda, recordings, drawings, specifications, mock-ups and any other documents furnished by the Architect to the Design-Builder.

§ 12.7 The representations and warranties contained in the Design-Build Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

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§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven (7) days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any verifiable expenses reasonably and properly incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for verifiable expenses reasonably and properly incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably ~~adjusted.~~adjusted as mutually agreed upon in writing by the Owner and Design-Builder.

§ 13.1.3 If the Owner suspends the Project for more than ~~90~~ ninety (90) cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven (7) days' written notice.

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§ 13.1.4 Either party may terminate this Agreement upon not less than seven (7) 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.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Design-Builder for the Owner's convenience and without cause.

...

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:
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.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or

.3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build ~~Documents; or~~

~~**.4** The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.~~Documents.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than ~~100 percent~~ one hundred percent (100%) of the total number of days scheduled for completion, or ~~120 days in any 365 day~~ one hundred and twenty (120) days in any three hundred and sixty-five (365) day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven (7) days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of ~~60~~ sixty (60) consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven (7) additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

...

.2 ~~repeatedly~~ refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

...

.4 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

...

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven (7) days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:
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§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall ~~include~~ be as specified in Article 7 profit. No adjustment shall be made to the extent

...

§ 13.2.4.3 ~~In case of~~ Upon such termination for the Owner's convenience, the Design-Builder shall ~~be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Design-Build Documents and Owner's further instructions. The Design-Builder waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs. The Owner shall be credited for (1) payments previously made to the Design-Builder for the terminated portion of the Work; (2) claims that the Owner has against the Design-Builder under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Design-Builder that are part of the Contract.

...

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable ~~law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.~~law.

...

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within ~~21~~ twenty-one (21) days after occurrence of the event giving rise to such Claim or within ~~21~~ twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by ~~either~~ the ~~Owner or~~ Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated ~~by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.~~within one hundred and eighty (180) days from the date of Final Payment by written notice to the Owner as a condition precedent to the Design-Builder's right to sue on the Contract.

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§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided ~~herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.~~in Section 8.3.4 and 8.3.5 shall be given.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented ~~by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.~~in accordance with Section 8.3.5.

...

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The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver ~~includes~~includes, but is not limited to:

...

.2 damages incurred by the Design-Builder for principal office expenses including but not limited to the compensation of personnel stationed there, for losses of financing, business and reputation, impairment to or loss of bonding capacity, loss of business opportunities unabsorbed home office overhead, and for loss of profit except ~~anticipated~~ profit arising directly from ~~the~~ properly completed Work.

...

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, ~~excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30~~ unless thirty (30) days have passed after the Claim has been initiated with no decision having been rendered. ~~Unless otherwise mutually agreed in writing, the~~ The Owner shall render the initial decision on Claims.

...

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten (10) days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten (10) days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten (10) days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten (10) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

...

§ 14.2.6 Either party may file for mediation of an initial decision or request another method of alternative dispute resolution (ADR) other than mediation, as the parties may agree in writing at any time, subject to the terms of ~~Section 14.2.6.1.~~Section 14.2.6.1, except that under no circumstances shall the agreed upon ADR include binding arbitration or binding mediation.

§ 14.2.6.1 Either party may, within ~~30~~ thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation ~~within 60~~ or join in another method of ADR within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation agree to ADR within the time required, then both parties waive their rights to mediate or pursue ~~binding dispute resolution~~ ADR proceedings with respect to the initial ~~decision.~~ decision, and will default to litigation.

...

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the ~~Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~ Contract may be subject to nonbinding mediation or other ADR as mutually agreed by the parties.

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§ 14.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution 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. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~Not Used.

§ 14.3.3 The parties shall share the mediator's ~~fee and any filing fees equally. The mediation~~ or ADR's costs and fees and any filing fees equally if such process is utilized. The mediation or ADR 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.~~

~~**§ 14.4 Arbitration**~~

~~**§ 14.4.1** If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~**§ 14.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~**§ 14.4.2** 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.~~

~~**§ 14.4.3** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 14.4.4 Consolidation or Joinder**~~

~~**§ 14.4.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 14.4.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. 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.~~

~~**§ 14.4.4.3** The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.~~

~~ARTICLE 15 MISCELLANEOUS PROVISIONS~~

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ARTICLE 15 MISCELLANEOUS PROVISIONS

~~The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.~~This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. The exclusive venue for contract disputes and all other matters related to this Agreement shall be in a state district court having jurisdiction in Grayson County, Texas.

...

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the ~~Contract as a whole without~~ Contract, or any rights under the contract, in whole or in part without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or ~~Contractors~~ Subcontractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least ~~14~~ fourteen (14) days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least ~~14~~ fourteen (14) days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

...

~~**§ 15.5 Tests and Inspections**~~

§ 15.5 Tests and Inspections, and Quality Management

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder. As required by the provisions of Texas Government Code, Section 2269.058(a), the Owner shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the Owner. To the extent that any of the provisions of this Section 15.5 or other provisions of this Agreement conflict with any of the provisions of Section 2269.058(a) such conflict is unintentional, and the provisions of the Texas Government Code shall control.

...

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses and all costs specified in Section 11.2 shall be at the Design-Builder's expense. The Design-Builder also agrees the cost of testing, inspection, and approval services required for the convenience of the Design-Builder in scheduling and performance of the Work, and the cost of such similar services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Design-Builder.

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§ 15.5.7 It is the intent of the Design-Build Documents to require the Design-Builder to control the quality of the Work using the processes specified in the Design-Builder's Quality Management, Commissioning and Turnover Plan contained within the most recent Construction Management Plan approved by the Owner. Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work., and shall conform to the most recently approved Design-Builder's Construction Schedule.

§ 15.5.8 The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the Design-Builder's, as is the obligation to provide the Work and a complete and functional project per the Design-Build Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the Owner's approval of such plan(s) does not relieve the Design-Builder in any way of this responsibility.

§ 15.5.9 The Design-Builder shall be in charge of testing and inspections of the Work, including but not limited to, the services of a certified testing laboratory which shall be contracted to and paid for by the Owner and which will perform the tests as called for in the Design-Build Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:

.1 The frequency and type of Quality Control testing shall be established by the Design-Builder, and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Design-Build Documents. The type and amount of testing required by the Design-Build Documents shall be seen as the minimum required, and shall be increased, if in the opinion of the Design-Builder, more testing is needed to meet the above requirements of the Design-Builder.

.2 The Design-Builder shall concurrently provide the Owner copies of all test results it receives within three (3) business days of receipt of same.

.3 The Owner shall provide such Quality Assurance testing as it deems adequate for its own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Design-Builder under this Agreement.

§ 15.5.10 The Design-Builder shall facilitate and conduct weekly (or more frequent if necessary) meetings on site for the coordination of all mechanical, electrical and special systems installation activities and possible interference(s) above ceilings, in mechanical rooms, etc. The mechanical trades shall typically have preference in the event of conflicts, and therefore the mechanical contractor's coordinator will usually lead each meeting, unless the Design-Builder decides another trade or the Design-Builder should take the lead. The Owner shall be informed of the meetings at least seven (7) days in advance, and the appropriate Owner's consultants should be invited to attend by the Design-Builder, as supplemented and coordinated by the Owner.

§ 15.5.11 The Design-Builder's Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes, Design-Builder will review, in detail, the steps for completing testing of all building systems with the Owner. This plan shall be coordinated with and shall be made part of the Design-Builder's Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate Owner's consultant(s), representatives of the Owner, and at its option.

§ 15.5.12 When heating, air conditioning, ventilating, exhaust, or other items of mechanical, electrical or other similar equipment are installed, or other systems or equipment requiring testing as may be specified in the Design-Builder's Quality Management, Commissioning and Turnover Plan, it shall be the responsibility of the Design-Builder, Subcontractor or Sub-subcontractor installing such equipment to operate it for a period of time satisfactory to the Owner prior to acceptance and before the start of Warranty. The duration of such operation shall be as the Owner, Owner's consultant(s), Owner' employees and other Owner's representatives (the Turnover Team) shall reasonably require for proper testing of the respective system and thorough instruction of the Owner's operating personnel.

§ 15.5.13 All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner's operating personnel on each system's operations and maintenance

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shall be provided by the Design-Builder, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment. Such tests and instruction shall be in meetings held solely for this purpose (the Turnover Meetings), which shall be coordinated and managed by the Design-Builder, who shall show their dates in the Design-Builder's Construction Schedule at least sixty (60) days prior to occurrence. The Design-Builder shall schedule the Turnover Meetings at times reasonably convenient for the Owner's consultant(s), Owner's employees and other Owner's representatives that the Owner agrees are necessary to attend for each system. The Owner may attend such Turnover Meetings at its discretion.

§ 15.5.14 The Design-Builder shall provide a digital video record to the Owner, with copies to the Owner of all meetings for the purpose of Owner operational staff instruction or training; as well as commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.

§ 15.5.15 The Design-Builder shall prepare a digital video record of the project for the Owner at such stages as shall be indicated by the Owner for the purpose of documenting the location of piping, conduit, equipment, or other construction to be concealed at a later date; recording key inspections and tests; providing evidence of unforeseeable conditions encountered by the Design-Builder on site; and other construction issues as the Owner may reasonably require from time to time.

§ 15.5.16 The Design-Builder shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Design-Builder shall notify the Owner in writing immediately upon completion of this marking, and the Owner will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the Owner. The Owner will then give permission for removal in writing to the Design-Builder. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

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§ 15.6.2 See AIA Document A141™–2014, Exhibit A, Design-Build Amendment's Exhibit "A.5" – Confidentiality of the Project for more direction on confidentiality.

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§ 15.9 Release of Retainage at Substantial Completion

Notwithstanding any other provision in the Design-Build Documents to the contrary, upon Substantial Completion of the Work the Owner shall be entitled to retain from the Contract Sum due to the Design-Builder an amount equal to the greater of: (a) the product obtained by multiplying eight (8) times the total cost of completion of the Punch List items as estimated by the Owner; or (b) twenty-five thousand dollars ($25,000).

§ 15.10 Measurement

Before ordering any material or doing any Work, the Design-Builder shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Owner for consideration before proceeding with the Work. The Design-Builder shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner of these prior to commencing any Work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

§ 15.11 Expediting Materials

The Design-Builder shall immediately, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work, and shall submit to the Owner evidence that such orders have been placed in accordance with the Design-Builder's Construction Schedule.

§ 15.12 Addressing the Owner's Additional Needs and Concerns

§ 15.12.1 Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Design-Builder must completely and successfully address to the satisfaction of the Owner in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:

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.1 The Design-Builder shall provide the superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled for 4pm or shortly thereafter on a standard business day.

.2 The Design-Builder may be required to provide the superintendent for one meeting per month with the Owner in preparing a newsletter for distribution to the Project stakeholders. The actual preparation and distribution of the newsletter shall be performed by the Owner.

.3 In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Design-Builder shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

§ 15.13 Additional Provisions

§ 15.13.1 In the event that any provision herein is held to be unlawful or against public policy, or a violation of the Code of Ordinances of the City of Sherman, Texas, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.

§ 15.13.2 Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Design-Build Documents.

§ 15.13.3 All exhibits referred to in the Design-Build Documents are, by reference, incorporated herein for all purposes.

§ 15.13.4 The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Design-Build Documents.

§ 15.13.5 Any specific requirement in this Agreement that require responsibilities or obligations of the Design-Builder also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Design-Builder's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Design-Build Documents or the applicable subcontract.

§ 15.13.6 The provisions of the Design-Build Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Design-Build Documents or any of the Design-Builder's duties or obligations under or arising out of the Design-Build Documents. Any change, waiver, approval, or consent granted to the Design-Builder shall be limited to the specific material restated in the written document signed by Owner, and shall not relieve Design-Builder of any other of the duties and obligations under the Design-Build Documents. No "constructive" changes under any Agreement with the Owner shall be allowed.

§ 15.13.7 The Design-Builder shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Design-Builder shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 15.13.8.1 The Design-Builder shall provide Owner with copies of all notices received by Design-Builder from Subcontractors, Sub-subcontractors, and/or suppliers to Design-Builder.

§ 15.13.8.2 Notices. All legal notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

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If to Owner:

City of Sherman
P.O. Box 1106
Sherman, TX 75091
Attn: Theresa Hutchinson
Phone: 903-892-7344
Email: TheresaH@cityofsherman.com

And with a copy to City Attorney's point of contact:

Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Blvd., Suite 300
McKinney, TX 75069
Attn: Christopher C. Zillmer
Phone: 214-544-4000
Email: czillmer@abernathy-law.com

If to Design-Builder:

American Ramp Company
601 S. McKinley Avenue
Joplin, MO 64801
Attn: Evan Moss
Phone:
Email

§15.13.9 Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Design-Builder subject to the terms and conditions of the Design-Build Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Design-Builder, (other than that contemplated by the Design-Build Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner's governing body.

§15.13.10 Design-Builder shall comply with the requirements in Texas Government Code Sec. 2252.032.

§ 15.13.11 In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Design-Builder shall notify the Owner of such requirement(s) in writing not less than thirty (30) days in advance, and attach a copy of the specific advertising and noticing required.

§15.13.12 The Design-Builder shall, in addition to compliance with the requirements of Section 5.5.5 and Section 5.5.6 and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The Design-Builder shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the Design-Builder that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.

§15.13.12.1 The Design-Builder has verified or attempted to verify through participation in the basic pilot program of the State of Texas ("Basic Pilot Program") that the Design-Builder does not employ any illegal aliens or the Design-Builder verifies that the Design-Builder has not been accepted into the Basic Pilot Program prior to entering into this Agreement. The Design-Builder further verifies that if the Design-Builder has not been accepted into the Basic Pilot Program, the Design-Builder will apply to participate in the Basic Pilot Program every three months until the Design-Builder is accepted or this Agreement is completed, whichever is earlier. If the Basic Pilot Program is discontinued, this Section 15.13.12.1 shall not be required or be effective.

§15.13.12.2 The Design-Builder shall not use Basic Pilot Program procedures to undertake pre-employment screening of job applicants while performing under this Agreement.

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§15.13.12.3 The Design-Builder shall comply with any reasonable request of the Texas Workforce Commission made in the course of an investigation pursuant to state law.

§15.13.12.4 In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Design-Build Document the Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Design-Builder's breach of the obligations set forth above in this Section 15.13.12 Design-Builder shall be liable for actual damages to the Owner.

§ 15.13.13 It is the express intention of the parties that this Agreement is not to be construed as a waiver of any immunities or defenses of the Owner under Texas law.

§ 15.13.14 This Agreement is and shall be subject to those provisions required of political subdivisions by the laws of the State of Texas. The Design-Builder understands that the Owner is a Texas home rule municipality and that the project is subject to applicable provisions of Texas law including bid requirements, bonding, and final settlement provisions.

§ 15.13.15 Design-Builder understands that certain information, including this Agreement, are public records available for public inspection and copying under the Texas Open Records Act., Texas Government Code Ch. 552, as amended, and other applicable laws.

§ 15.13.16 Design-Builder certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement. Design-Builder warrants that to the best of Design-Builder's knowledge, there exists no actual or potential conflict of interest, and no financial or substantial interest as may be prohibited by Texas law, the Charter, or Code of Ordinances of the City of Sherman between Design-Builder and Owner.

§ 15.13.17 Design-Builder shall comply with the disclosure and reporting requirements in Local Government Code Chapters 171 and 176, and Texas Government Code Sec. 2252.908. Under Sec. 2252.908, if City Council approval is required to award this Agreement or if this Agreement has a value of at least $1,000,000, the City may not enter into the Agreement unless the Design-Builder submits a disclosure of interested parties to the City at the time the executed Agreement is presented to the City. The disclosure must be made on the form prescribed by the Texas Ethics Commission and the City is required to submit a copy of the disclosure statement to the Texas Ethics Commission not later than the thirtieth (30th) day after the disclosure is received by the City.

§ 15.13.18 The Owner is a Texas home-rule municipality and as such is generally exempt from taxation under Texas law, which may include the purchase of items, materials, or supplies purchased on behalf of the Owner for this public works project. Design-Builder shall confirm that the Owner is exempt before paying taxes for items, materials, or supplies that may not be lawfully charged to the Owner.

§ 15.13.19 Some or all of the Owner's duties, approvals and actions required under this Agreement may be provided by third parties by mutual agreement of the Owner and such third parties. When notified in writing of the specific duties and responsibilities of such third party, the Design-Builder will recognize the actions and approvals of the third party as sufficient to fulfill the Owner's responsibilities under this Agreement.

§ 15.13.20 The Design-Builder shall provide sufficient supporting documentation in form and with a level of detail wholly acceptable to the Owner and Design-Builder to substantiate any Application for Payment, request for Change to the Contract Sum or Contract Time, and all contract Allowances provided within the Design-Builder's Contract Sum for this scope of work. Failure to timely provide all supporting documentation, in and of itself, may result in rejection of the Application for Payment or requested change to the Contract Sum or Contract Time, or payment for work charged to the Allowance(s).

§ 15.13.21 Proof of purchase and warehouse insurance naming the Owner and Design-Builder as additional insureds, together with inspection rights for the Owner and Design-Builder is to be provided for any billed materials by the Design-Builder for the work not physically stored at the Project site.

§ 15.13.22 Time limits set out in or under this Agreement are solely for the protection and benefit of the Owner and create no third-party beneficiary rights in any other party.

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§ 15.13.23 The parties agree that they will execute any further instrument or instruments, and that they will perform any act or acts, which are or may become necessary to effectuate any of the terms or provisions of this Agreement.

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

§ 15.13.25 This Agreement has been created jointly and ambiguity cannot be construed against either party.

§ 15.13.26 Financial obligations of the Owner payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

§ 15.13.27 No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or soverign immunities, rights, benefits, or protections of the Owner.

§ 15.13.28 Design-Builder warrants that the products, processes, techniques and methodologies provided by Design-Builder shall not infringe upon the copyright, patent or other proprietary rights of others.

§ 15.13.29 In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or unenforceable provision had not been included herein.

§ 15.13.30 Design-Builder understands and agrees that time is of the essence.

§ 15.13.31 This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

§ 15.13.32 Design-Builder makes the following representations and warranties to Owner, each of which is true and correct as of the Effective Date of this Agreement:

.1 Design-Builder is a corporation duly organized, existing and in good standing under the laws of the State of Texas; Design-Builder possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein; and Design-Builder has all legal power and authority to own and use its properties and to transact the business in which it is engaged and holds or expects to obtain in a timely manner all material franchises, licenses and permits required hereunder;

.2 Design-Builder's execution, delivery and performance of this Agreement have been duly authorized by, and are in accordance with, its limited partnership agreement; this Agreement has been duly executed and delivered for it by the signatories so authorized; and this Agreement constitutes Design-Builder's legal, valid and binding obligation;

.3 Design-Builder is not currently in breach of, in default under, or in violation of, and the execution and delivery of this Agreement and the performance of its obligations hereunder will not constitute or result in any breach of, default under or violation of, any Governmental Rule, or the provisions of Design-Builder's limited partnership agreement, or any franchise or license, or any provision of any indenture or any evidence of indebtedness or security therefor, lease, contract, license or other agreement by which it is bound, except for such breaches, defaults or violations as will not, either individually or in the aggregate, result in a material adverse effect on the ability of Design-Builder to perform its obligations hereunder;

.4 No suit, claim, action, arbitration, or legal, administrative or other proceeding is pending or, to the best knowledge of Design-Builder, threatened against Design-Builder that could affect the validity or enforceability of this Agreement, the ability of Design-Builder to fulfill its commitments hereunder in any material respect, or that would result in any material adverse change in the

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business or financial condition of Design-Builder;

.5 Design-Builder certifies that it (i) is a duly qualified, capable and otherwise bondable business entity, (ii) is not in receivership and does not contemplate same, (iii) has not filed for bankruptcy, and is not currently delinquent with respect to payment of property taxes to the City of Sherman or within Grayson County, and (iv) is duly licensed and/or registered in the State of Texas, to the extent required by the laws of the State of Texas, to perform the design-build services described or referenced in this Agreement.

§ 15.13.33 Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

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.1 This AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
.2 AIA Document A141™–2014, Exhibit A, Design-Build ~~Amendment,~~ Amendment and its Attachments as specified in Exhibit "Z" – Schedule of Exhibits, if executed

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~~**.4** AIA Document A141™–2014, Exhibit C, Sustainable Projects, if completed~~
~~**.5** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed,~~ Exhibit C, Project Management Process, or the following:

N/A

.6 Other:

Exhibit "D" – Design Criteria
Exhibit "F" – Design-Builder's Project Schedule
Exhibit "G" – Key Firms and Personnel
Exhibit "H" – Design-Builder's Fee & Cost Proposal
Exhibit "Z" – Schedule of Exhibits

§ 16.2 Entire Agreement

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

represents the entire and integrated Agreement between Owner and Design-Builder and supersedes all prior negotiations, representations, or agreements, either oral or written.

~~**OWNER** *(Signature)*~~	~~**DESIGN-BUILDER** *(Signature)*~~
~~*(Printed name and title)*~~	~~*(Printed name and title)*~~

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IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

OWNER:

CITY OF SHERMAN, TEXAS
Approved by the Sherman City Council

By: _____
City Manager

Date: _____

Attest: _____
City Secretary

CITY OF SHERMAN
P.O. Box 1106
Sherman, TX 75091

APPROVED AS TO FORM:

_____
Christopher C. Zillmer, City Attorney

DESIGN-BUILDER:

AMERICAN RAMP COMPANY

By: _____

601 S. McKinley Avenue
Joplin, MO 64801

Date: _____

_____
Telephone Number

_____
E-mail Address

_____
Federal Tax ID Number

Attest:

_____

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher C. Zillmer/mls, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:11:19 CT on 02/10/2023 under Order No. 2114312451 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

Christopher C Zillmer/mls

(Signed)

(Title)

02/10/2023

(Dated)

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AIA® Document A141® – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the ___ day of _____ in the year Two Thousand Twenty-Three (2023) (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

ARBH File No. 6262.0022 City of Sherman/Sherman Pump Track

Binkley Park
101 Binkley Park Dr.
Sherman, TX

Construction of Binkley Park Pump Track and as further described in Exhibit "D" – Design Criteria

THE OWNER:
(Name, legal status and address)

City of Sherman
P.O. Box 1106
Sherman, TX 75091

THE DESIGN-BUILDER:
(Name, legal status and address)

American Ramp Company
601 S. McKinley Avenue
Joplin, MO 64801

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

A.1 CONTRACT SUM

A.2 CONTRACT TIME

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

[X] Stipulated Sum, in accordance with Section A.1.2 below

[ ] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[ ] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum
§ A.1.2.1 The Stipulated Sum shall be Three Hundred Fifty-Six Thousand Dollars ($ 356,000.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

Attachment A.7 – Alternates with Costs and Expiration Dates

§ A.2.2.1 These alternates may be accepted by the Owner following execution of this Agreement. The Design-Builder shall furnish the Owner with no less than fourteen (14) days prior written notice of the date upon which any of the Alternates set forth in Attachment "A.7" – Alternates with Costs and Expiration Dates, must be accepted by the Owner in order for the Design-Builder to perform the Work included in such Alternate(s) for the price(s) set forth therein; and without any adjustment to a Contractual Milestone date, the Design-Builder's Construction Schedule or the Contract Time. Upon acceptance, the Owner shall issue a Modification to this Agreement.

§ A.1.2.3 Unit prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit ($0.00)
Attachment "A.8" – Unit Costs		

§ A.1.2.3.1 Unit prices are set forth in the Attachment "A.8" – Unit Costs, and such unit prices are considered complete and include all materials, equipment, labor, delivery, installation, overhead, and profit; and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

§ A.1.3
§ A.1.3.1

§ A.1.3.2

Not used

§ A.1.4
§ A.1.4.1

§ A.1.4.2

Not used

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§ A.1.4.3
§ A.1.4.3.1

Not used

(Paragraphs deleted)
§ A.1.4.3.2

Not used

§ A.1.4.3.3

Not used

§ A.1.4.3.4

Item	Units and Limitations	Price per Unit ($0.00)
N/A		

§ A.1.4.3.5

Not used

§ A.1.5 Payments
§ A.1.5.1 Progress Payments
§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, including all supporting documentation as required under this Agreement, and upon review and approval by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

N/A

§ A.1.5.1.3 Provided that an approvable Application for Payment is received not later than the thirtieth day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the thirtieth day of the following month. If an approvable Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the approvable Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 Not used.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5.0 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5.0 %);

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

(Paragraphs deleted)

§ A.1.5.2.5 Owner shall have the right to withhold from payments due Design-Builder such sums as are necessary to protect Owner, in Owner's sole discretion, against any loss or damage which may result from negligence by Design-Builder or failure of Design-Builder to perform Design-Builder's obligations under this Agreement. Notwithstanding the above, nothing in this Section shall diminish the Owner's right to find the Design-Builder in default of this Agreement and subsequently making a claim on their performance bond or insurance policy

§ A.1.5.3
Not used.

§ A.1.5.4
Not used.

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§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after all of the below items are met:

.1 the Design-Builder has fully performed the Contract except for the Design-Builder's responsibility to correct Work as provided in Section 11.2.2 of the Agreement, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Design-Builder has submitted a final accounting for the Cost of the Work and a final Application for Payment;

.3 a complete release of all claims arising out of, related to or connected with Design-Builder's performance of the respective Phase under this Agreement, and any claims of Subcontractors, subject to any claims reserved in accordance with the terms of the Agreement and an affidavit that so far as Design-Builder has knowledge or information, the release includes and covers all materials and services over which Design-Builder has control for which a claim could be filed, subject to any claims reserved in accordance with the terms of the Agreement.

§ A.1.5.5.2 Not used.

§ A.1.5.5.3 In addition to other required items required above, the final Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Texas all in a form acceptable to the Owner:

.1 A current sworn statement from the Design-Builder setting forth all Subcontractors and any material suppliers with whom the Contract has entered into subcontracts; the amount of each such subcontract; the amount requested for any Subcontractor or material supplier in the Application for Payment; and the amount to be paid to the Design-Builder from such final payment;

.2 A current, duly executed waiver of mechanics' and material suppliers' liens from the Design-Builder conditional upon establishing receipt of payment or satisfaction of the payment requested by the Design-Builder in the current Application for Payment;

.3 A current Subcontractor's lien waiver for the current period, conditional only on payment from the Design-Builder, and duly executed, acknowledged sworn statement showing all Sub-subcontractors and material suppliers with whom the Subcontractor has entered into sub-subcontracts, the amount of each such sub-subcontract, the amount requested for any Sub-subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Sub-subcontractor from such final payment to the Subcontractor;

.4 A current, duly executed unconditional final waiver of mechanics' and material suppliers' liens from the Design-Builder and all Subcontractors and, when deemed appropriate by the Owner and Architect, from material suppliers and Sub-subcontractors establishing payment or satisfaction of payments of all amounts requested by the Design-Builder on behalf of such entities or persons in any previous Applications for Payment;

.5 A final certificate of occupancy issued by the appropriate governmental body in which the project is located;

.6 All maintenance and operating manuals;

.7 Digitally marked, fully accessible electronic files (not "plot files" or "PDFs") of both field record drawings and specifications reflecting "as-built" conditions;

.8 Digitally marked, accurately dimensioned, and fully accessible electronic files (not "plot files" or "PDFs") of drawings reflecting the location of any concealed utilities, mechanical or electrical systems, and components;

.9 any special guarantees or warranties required by the Contract Documents;

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.10 assignments of all guarantees and warranties from subcontractors, vendors, suppliers, or manufacturers;

.11 a list of the primary contact names, email addresses, physical addresses, and telephone numbers of all Subcontractors and any other persons providing guarantees and warranties;

.12 all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner, or the Architect; and

.13 If required by the Owner's title insurer, if any, the Design-Builder shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than N/A (N/A) days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

See Attachment A.2 – Design-Builder's Stipulated Sum Detail

Portion of Work	Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

See Attachments A.1 – Drawings and Specifications,
A.2 – Design-Builder's Stipulated Sum Detail, and
A.3 – Design Builder's Construction Schedule

§ A.3.1.2 The Specifications:
(Either list the specifications here or refer to an exhibit attached to this Amendment.)

See Attachment A.1 – Drawings and Specifications

Section	Title	Date	Pages

§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

See Attachment A.1 – Drawings and Specifications

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Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
N/A		

Other identifying information:

N/A

§ A.3.1.5 Allowances and Contingencies:
(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

See Attachment A.9 – Allowances

.2 Contingencies

See Attachment A.2 – Design-Builder's Stipulated Sum Detail

§ A.3.1.6 Design-Builder's assumptions and clarifications:

See Attachment A.2 – Design-Builder's Stipulated Sum Detail

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

N/A

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

See Attachment A.1 – Drawings and Specifications

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

.1 Superintendent

See the A141 Owner – Design-Builder Agreement's Exhibit "G" – Key Firms and Personnel

.2 Project Manager

See the A141 Owner – Design-Builder Agreement's Exhibit "G" – Key Firms and Personnel

.3 Others

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See the A141 Owner – Design-Builder Agreement's Exhibit "G" – Key Firms and Personnel

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

See the A141 Owner – Design-Builder Agreement's Exhibit "G" – Key Firms and Personnel

ARTICLE A.5 COST OF THE WORK

§ A.5.1

§ A.5.1.1

§ A.5.1.1.1 Not used.

§ A.5.1.1.2

(Paragraphs deleted)
Not used
(Table deleted)

§ A.5.1.1.3 Not used

§ A.5.1.1.4 Not used.

§ A.5.1.1.5 ' Not used.

(Paragraphs deleted)

§ A.5.1.2 Not used.

§ A.5.1.3

§ A.5.1.3.1 Not used.

§ A.5.1.3.2 Not used.

§ A.5.1.4

§ A.5.1.4.1 Not used.

§ A.5.1.4.2 Not used.

§ A.5.1.4.3 Not used.

§ A.5.1.4.4 Not used.

(Paragraphs deleted)

§ A.5.1.4.5 Not used.

§ A.5.1.5

§ A.5.1.5.1 Not used.

§ A.5.1.5.2 Not used.

§ A.5.1.5.3 Not used.

§ A.5.1.5.4 Not used.

§ A.5.1.5.5 Not used.

§ A.5.1.5.6 Not used.

§ A.5.1.5.7 ' Not used.

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§ A.5.1.5.8 Not used.

§ A.5.1.5.9 Not used.

§ A.5.1.5.10 Not used.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, to the extent not (1) caused by the Design-Builder, a subcontractor, or anyone for whom either is responsible, or (2) capable of being prevented through timely notice of an unsafe condition to the Owner.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work resulted from causes other than the fault, negligence, or neglect of Design-Builder or its subcontractors, vendors or suppliers, in whole or in part, or failure of Design-Builder or its subcontractors, vendors or suppliers to comply with all of the requirements of the Design-Build Documents or the failure of the Design-Builder's personnel to adequately supervise the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, subcontractors or suppliers.

§ A.5.1.6.4 The losses included in Section A.5.1.6.3 may include settlements made with the prior written consent and approval of Owner. No such losses and expenses shall be included in the Cost of the Work for the purpose of determining Design-Builder's Fee unless such loss requires substantial reconstruction and Design-Builder is placed in charge thereof. In such event, Design-Builder shall be paid for profit and overhead in an amount calculated by the percentage identified in the Contract Documents for Changes to the Work of the cost of any such reconstruction, provided such substantial reconstruction is not: (i) required due to the fault or negligence of the Design-Builder or failure of Design-Builder to comply with all of the requirements of the Contract Documents, or (ii) incidental reconstruction, which for purposes of this Section A.5.1.6.4 is hereby deemed to mean any reconstruction involving a cost of less than One Thousand Dollars ($ 1,000).

§ A.5.1.6.5 Any costs which comprise the Cost of Work, which are also set forth in the portion of Exhibit "H" – Design-Builder's Fee & Cost Proposal ("General Conditions"), shall not exceed the total amount shown in aggregate therein for such expenditures. However, any single line item in General Conditions, with the sole exceptions of those included in "Weather Protection" and "Travel and Subsistence", may be exceeded if offset by the aggregate of corresponding or greater underages at other line items, and the total cost for General Conditions is not exceeded.

§ A.5.1.6.5.1 Design-Builder's Change Order Requests will include additional General Conditions costs as justifiable, and to the extent the actual expenditures of General Conditions cost items are increased by reason of increase(s) in: the duration of the Work; the quantity of Design-Builder's facilities and equipment required; or number or duration of supervisory personnel on site directly required to enact the requested change. General Conditions costs shall not be increased for additional personnel and labor costs not actually incurred by the Design-Builder and documented to the satisfaction of the Owner.

§ A.5.1.6.5.2 Notwithstanding the above, the Design-Builder has included in General Conditions sufficient supervision and project controls personnel to prepare and process a standard amount of project documentation, including without limitation, requests for information, meeting minutes, Requests for Information, Supplemental Instructions, Proposal Requests, Change Order Requests, Change Orders, and other Design-Builder's administration and deliverables normally required on similar projects. The Design-Builder will not be additionally compensated above the amount shown in General Conditions for preparing or processing these documents.

§ A.5.1.6.6 The cost of properly and reasonably maintaining access to the Work in spite of, facilitating progress of the Work during, and protecting the Work itself from the impact of inclement weather is "Weather Protection". Weather Protection shall not exceed the total of the line items shown for this purpose in the General Conditions, given the Work

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is performed during average weather conditions for the Project site, as such average is defined in the Contract documents.

§ A.5.1.6.6.1 Line items in General Conditions that shall be considered, in their aggregate, for the purpose of calculating the Weather Protection maximum costs allowable under this Agreement include weather protection, snow removal, temporary heat, and temporary protection.

§ A.5.1.6.7 The actual costs for General Conditions, Weather Protection, and Travel and Subsistence will be billed on an "as incurred" and actual cost basis, and any unused portion of such amounts will revert to the Owner as savings below the Stipulated Sum.

§ A.5.1.6.7.1 The Design-Builder shall, without limitation keep such separate and distinct records as are required for the Design-Builder to easily validate the accuracy of the Design-Builder's billing for the costs of General Conditions, Weather Protection, and Travel and Subsistence.

§ A.5.1.6.7.2 In the event the Design-Builder believes General Conditions, Weather Protection, or Travel and Subsistence line item(s) included in the Stipulated Sum should be increased due to changes in the Work or circumstances beyond the Design-Builder's responsibilities to control under this Agreement; or the Owner or Design-Builder believes such line items should be lowered based on better circumstances for performing the Work than originally anticipated by the Owner and Design-Builder, the Stipulated Sum shall then be adjusted as provided in the Contract Documents for changes in the Work.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, , and elsewhere in this Agreement, the term "Related Party" shall mean any party or entity related to or affiliated with the Design-Builder or in which the Design-Builder has direct or indirect ownership or control, including without limitation: (1) a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or officer, director, partner or employee of, the Design-Builder or any entity owned by the Design-Builder has any direct or indirect interest in; (3) any party or entity with an excess of ten percent (10%) interest in the Design-Builder in the aggregate; or (4) any person or entity which has the right to control the business or affairs of the Design-Builder. The term "Related Party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If after the Design-Builder having followed the stipulations in this Agreement, any of the costs to be reimbursed are contemplated to arise from a transaction between the Design-Builder and a Related Party outside of the bidding process so described, the Design-Builder shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the Related Party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the Related Party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a Related Party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include (unless otherwise specifically stated in Exhibit "H" – Design-Builder's Fee and Cost Proposal) the items listed below:

- **.1** Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- **.2** Expenses of the Design-Builder's principal office and offices other than the site office;
- **.3** Overhead and general expenses, except as may be expressly included in Section A.5.1;
- **.4** The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- **.5** Rental costs of machinery and equipment, except as specifically provided herein;
- **.6** Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- **.7** Costs incurred in the performance of Preconstruction Phase Services (unless specifically stated in both Section A.1.4.2 of this Amendment, and Exhibit "H" – Design-Builder's Fee and Cost Proposal);

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.8 Any cost not specifically and expressly described in Section A.5.1;

.9 Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause the Stipulated Sum to be exceeded;

.10 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than Preconstruction Services) relating to accounting in Design-Builder 's office and even if at the site, except as specifically identified herein;

.11 Amounts required to be paid by Design-Builder for Federal and/or State income, franchise taxes or other business taxes, but not including any applicable sales taxes;

.12 Legal, accounting, or other similar professional services provided by or to Design-Builder, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with Owner, or any other person or entity relating to the Project or otherwise;

.13 Sales, entertainment, and meal expenses;

.14 Employee vehicle expenses, including fuel above the "Travel & Subsistence" not-to-exceed amount;

.15 General Conditions, Weather Protection and Travel and Subsistence in excess of the line items shown in Exhibit "H" – Design-Builder's Fee and Cost Proposal, and

.16 Costs related to Design-Builder's indemnification obligations.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured. The Design-Builder shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work from any source including but not limited to its Subcontractors, vendors, or other suppliers of goods, insurance or other services without providing the Owner with at least thirty (30) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds if and when necessary to obtain such discount, rebate or refund on behalf of the Owner in accordance with the requirements of this Section A.5.3.1.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 Intentionally Deleted.

§ A.5.4.2 Intentionally Deleted.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and Design-Builder. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit, inspect, and copy, without limitation the Design-Builder's records and accounts, including complete documentation supporting actual, direct and "bare" labor costs, job – cost coded labor reports accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of five (5) years after final payment, or for such longer period as may be required by law. All records shall be maintained in accordance with generally accepted accounting procedures consistently applied. Subcontractors retained by the Design-Builder on a cost-plus basis shall have the same obligation to retain records and permit audits, inspections and copying as required of the Design-Builder under this Agreement.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to, without limitation, exercise the Design-Builder's skill and judgment in furthering the interests of the

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Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a reasonably timely manner, information required by the Design-Builder when such information is requested in writing and to make payments to the Design-Builder in accordance with the requirements of the Design-Build Documents and in accordance with Texas Government Code Ch. 2251.

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

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IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

OWNER:

CITY OF SHERMAN, TEXAS
Approved by the Sherman City Council

By: _____
City Manager

Date: _____

Attest: _____
City Secretary

CITY OF SHERMAN
P. O. Box 1106
Sherman, TX 75091

APPROVED AS TO FORM:

_____
Christopher C. Zillmer, City Attorney

DESIGN-BUILDER:

AMERICAN RAMP COMPANY

By: _____

Date: _____

601 S. McKinley Avenue
Joplin, MO 64801

_____
Telephone Number

_____
E-mail Address

_____
Federal Tax ID Number

Attest:

_____

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Additions and Deletions Report for

AIA® Document A141® – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:44:25 CT on 02/10/2023.

PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the ___day of _____in the year Two Thousand Twenty-Three (2023) (the "Agreement")

...

(Name and location or address)

ARBH File No. 6262.0022 City of Sherman/Sherman Pump Track

Binkley Park
101 Binkley Park Dr.
Sherman, TX

Construction of Binkley Park Pump Track and as further described in Exhibit "D" – Design Criteria

...

City of Sherman
P.O. Box 1106
Sherman, TX 75091

...

American Ramp Company
601 S. McKinley Avenue
Joplin, MO 64801

PAGE 2

[X] Stipulated Sum, in accordance with Section A.1.2 below

...

§ A.1.2.1 The Stipulated Sum shall be Three Hundred Fifty-Six Thousand Dollars ($ 356,000.00), subject to authorized adjustments as provided in the Design-Build Documents.

...

Attachment A.7 – Alternates with Costs and Expiration Dates

§ A.2.2.1 These alternates may be accepted by the Owner following execution of this Agreement. The Design-Builder shall furnish the Owner with no less than fourteen (14) days prior written notice of the date upon which any of the

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Alternates set forth in Attachment "A.7" – Alternates with Costs and Expiration Dates, must be accepted by the Owner in order for the Design-Builder to perform the Work included in such Alternate(s) for the price(s) set forth therein; and without any adjustment to a Contractual Milestone date, the Design-Builder's Construction Schedule or the Contract Time. Upon acceptance, the Owner shall issue a Modification to this Agreement.

...

Attachment "A.8" – Unit Costs

~~**§ A.1.3 Cost of the Work Plus Design-Builder's Fee**~~

§ A.1.2.3.1 Unit prices are set forth in the Attachment "A.8" – Unit Costs, and such unit prices are considered complete and include all materials, equipment, labor, delivery, installation, overhead, and profit; and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

§ A.1.3

§ A.1.3.1 ~~The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

§ A.1.3.2 ~~The Design-Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)~~

Not used

~~**§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price**~~

§ A.1.4

§ A.1.4.1 ~~The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

§ A.1.4.2 ~~The Design-Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)~~

Not used

~~**§ A.1.4.3 Guaranteed Maximum Price**~~

§ A.1.4.3

§ A.1.4.3.1 ~~The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed ($), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.~~

~~(Insert specific provisions if the Design-Builder is to participate in any savings.)~~

Not used

~~**§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price**~~

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.~~

~~*(Provide information below or reference an attachment.)*~~

§ A.1.4.3.2

Not used

§ A.1.4.3.3 ~~The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~

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~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)~~

Not used

§ A.1.4.3.4 ~~Unit Prices, if any:~~
~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~
PAGE 3

N/A

§ A.1.4.3.5 ~~Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

Not used

...

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, including all supporting documentation as required under this Agreement, and upon review and approval by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~month.

N/A

§ A.1.5.1.3 Provided that an approvable Application for Payment is received not later than the thirtieth day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the thirtieth day of the following month. If an approvable Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the approvable Application for Payment.

...

§ A.1.5.1.4 ~~With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~Not used.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated ~~Sum or Cost of the Work with a Guaranteed Maximum Price, the~~ Sum, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, ~~shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee~~ shall be shown separately. ~~The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.~~
PAGE 4

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5.0 %)

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on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5.0 %);

...

~~**§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee**~~

~~**§ A.1.5.3.1** Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.~~

~~**§ A.1.5.3.2** Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~**.1** Take the Cost of the Work as described in Article A.5 of this Amendment;~~
- ~~**.2** Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract retainage of percent (%) from that portion of the Work that the Design-Builder self-performs;~~
- ~~**.4** Subtract the aggregate of previous payments made by the Owner;~~
- ~~**.5** Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~**.6** Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

~~**§ A.1.5.3.3** The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.~~

~~**§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price**~~

~~**§ A.1.5.4.1** Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~**§ A.1.5.4.2** Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~**.1** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.~~
- ~~**.2** Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~

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~~.3 Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~

~~.4 Subtract retainage of percent (%) from that portion of the Work that the Design-Builder self-performs;~~

~~.5 Subtract the aggregate of previous payments made by the Owner;~~

~~.6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~

~~.7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.~~

~~**§ A.1.5.4.3** The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.~~

§ A.1.5.2.5 Owner shall have the right to withhold from payments due Design-Builder such sums as are necessary to protect Owner, in Owner's sole discretion, against any loss or damage which may result from negligence by Design-Builder or failure of Design-Builder to perform Design-Builder's obligations under this Agreement. Notwithstanding the above, nothing in this Section shall diminish the Owner's right to find the Design-Builder in default of this Agreement and subsequently making a claim on their performance bond or insurance policy

§ A.1.5.3
Not used.

§ A.1.5.4
Not used.

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after all of the below items are met:

.1 the Design-Builder has fully performed the Contract ~~and the requirements of Section 9.10 of the Agreement have been satisfied,~~ except for the Design-Builder's responsibility to correct ~~non-conforming Work discovered after final payment or~~ Work as provided in Section 11.2.2 of the Agreement, and to satisfy other requirements, if any, which extend beyond ~~final payment.~~final payment;

.2 the Design-Builder has submitted a final accounting for the Cost of the Work and a final Application for Payment;

.3 a complete release of all claims arising out of, related to or connected with Design-Builder's performance of the respective Phase under this Agreement, and any claims of Subcontractors, subject to any claims reserved in accordance with the terms of the Agreement and an affidavit that so far as Design-Builder has knowledge or information, the release includes and covers all materials and services over which Design-Builder has control for which a claim could be filed, subject to any claims reserved in accordance with the terms of the Agreement.

§ A.1.5.5.2 ~~If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.~~Not used.

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§ A.1.5.5.3 In addition to other required items required above, the final Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Texas all in a form acceptable to the Owner:

.1 A current sworn statement from the Design-Builder setting forth all Subcontractors and any material suppliers with whom the Contract has entered into subcontracts; the amount of each such subcontract; the amount requested for any Subcontractor or material supplier in the Application for Payment; and the amount to be paid to the Design-Builder from such final payment;

.2 A current, duly executed waiver of mechanics' and material suppliers' liens from the Design-Builder conditional upon establishing receipt of payment or satisfaction of the payment requested by the Design-Builder in the current Application for Payment;

.3 A current Subcontractor's lien waiver for the current period, conditional only on payment from the Design-Builder, and duly executed, acknowledged sworn statement showing all Sub-subcontractors and material suppliers with whom the Subcontractor has entered into sub-subcontracts, the amount of each such sub-subcontract, the amount requested for any Sub-subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Sub-subcontractor from such final payment to the Subcontractor;

.4 A current, duly executed unconditional final waiver of mechanics' and material suppliers' liens from the Design-Builder and all Subcontractors and, when deemed appropriate by the Owner and Architect, from material suppliers and Sub-subcontractors establishing payment or satisfaction of payments of all amounts requested by the Design-Builder on behalf of such entities or persons in any previous Applications for Payment;

.5 A final certificate of occupancy issued by the appropriate governmental body in which the project is located;

.6 All maintenance and operating manuals;

.7 Digitally marked, fully accessible electronic files (not "plot files" or "PDFs") of both field record drawings and specifications reflecting "as-built" conditions;

.8 Digitally marked, accurately dimensioned, and fully accessible electronic files (not "plot files" or "PDFs") of drawings reflecting the location of any concealed utilities, mechanical or electrical systems, and components;

.9 any special guarantees or warranties required by the Contract Documents;

.10 assignments of all guarantees and warranties from subcontractors, vendors, suppliers, or manufacturers;

.11 a list of the primary contact names, email addresses, physical addresses, and telephone numbers of all Subcontractors and any other persons providing guarantees and warranties;

.12 all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner, or the Architect; and

.13 If required by the Owner's title insurer, if any, the Design-Builder shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

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§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than N/A (N/A) days from the date of this Amendment, or as follows:

...

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See Attachment A.2 – Design-Builder's Stipulated Sum Detail

...

See Attachments A.1 – Drawings and Specifications,
A.2 – Design-Builder's Stipulated Sum Detail, and
A.3 – Design Builder's Construction Schedule

...

See Attachment A.1 – Drawings and Specifications

...

See Attachment A.1 – Drawings and Specifications

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N/A

...

N/A

...

See Attachment A.9 – Allowances

...

See Attachment A.2 – Design-Builder's Stipulated Sum Detail

...

See Attachment A.2 – Design-Builder's Stipulated Sum Detail

...

N/A

...

See Attachment A.1 – Drawings and Specifications

...

See the A141 Owner – Design-Builder Agreement's Exhibit "G" – Key Firms and Personnel

...

See the A141 Owner – Design-Builder Agreement's Exhibit "G" – Key Firms and Personnel

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See the A141 Owner – Design-Builder Agreement's Exhibit "G" – Key Firms and Personnel

...

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See the A141 Owner – Design-Builder Agreement's Exhibit "G" – Key Firms and Personnel

...

§ A.5.1 Cost To Be Reimbursed as Part of the Contract
§ A.5.1.1 Labor Costs
§ A.5.1
§ A.5.1.1
§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.Not used.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.
(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)
Not used

Person Included	Status (full-time/part-time)	Rate ($0.00)	Rate (unit of time)

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.Not used

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.Not used.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.' Not used.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction
§ A.5.1.2 Not used.

§ A.5.1.3
§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.Not used.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.Not used.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ A.5.1.4
§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.Not used.

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§ A.5.1.4.2 ~~Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~Not used.

§ A.5.1.4.3 ~~Costs of removal of debris from the site of the Work and its proper and legal disposal.~~Not used.

§ A.5.1.4.4 ~~Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.~~Not used.

§ A.5.1.4.5 ~~Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.~~

§ A.5.1.5 Miscellaneous Costs
§ A.5.1.4.5 Not used.

§ A.5.1.5
§ A.5.1.5.1 ~~Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.~~Not used.

§ A.5.1.5.2 ~~Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.~~Not used.

§ A.5.1.5.3 ~~Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.~~Not used.

§ A.5.1.5.4 ~~Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.~~Not used.

§ A.5.1.5.5 ~~Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.~~Not used.

§ A.5.1.5.6 ~~With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.~~Not used.

§ A.5.1.5.7 ~~Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.~~' Not used.

§ A.5.1.5.8 ~~With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.~~Not used.

§ A.5.1.5.9 ~~With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.~~Not used.

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§ A.5.1.5.10 ~~That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~Not used.

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§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and ~~property.~~property, to the extent not (1) caused by the Design-Builder, a subcontractor, or anyone for whom either is responsible, or (2) capable of being prevented through timely notice of an unsafe condition to the Owner.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work ~~was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder~~ resulted from causes other than the fault, negligence, or neglect of Design-Builder or its subcontractors, vendors or suppliers, in whole or in part, or failure of Design-Builder or its subcontractors, vendors or suppliers to comply with all of the requirements of the Design-Build Documents or the failure of the Design-Builder's personnel to adequately supervise the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not ~~recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.~~recoverable by the Design-Builder from insurance, subcontractors or suppliers.

§ A.5.1.6.4 The losses included in Section A.5.1.6.3 may include settlements made with the prior written consent and approval of Owner. No such losses and expenses shall be included in the Cost of the Work for the purpose of determining Design-Builder's Fee unless such loss requires substantial reconstruction and Design-Builder is placed in charge thereof. In such event, Design-Builder shall be paid for profit and overhead in an amount calculated by the percentage identified in the Contract Documents for Changes to the Work of the cost of any such reconstruction, provided such substantial reconstruction is not: (i) required due to the fault or negligence of the Design-Builder or failure of Design-Builder to comply with all of the requirements of the Contract Documents, or (ii) incidental reconstruction, which for purposes of this Section A.5.1.6.4 is hereby deemed to mean any reconstruction involving a cost of less than One Thousand Dollars ($ 1,000).

§ A.5.1.6.5 Any costs which comprise the Cost of Work, which are also set forth in the portion of Exhibit "H" – Design-Builder's Fee & Cost Proposal ("General Conditions"), shall not exceed the total amount shown in aggregate therein for such expenditures. However, any single line item in General Conditions, with the sole exceptions of those included in "Weather Protection" and "Travel and Subsistence", may be exceeded if offset by the aggregate of corresponding or greater underages at other line items, and the total cost for General Conditions is not exceeded.

§ A.5.1.6.5.1 Design-Builder's Change Order Requests will include additional General Conditions costs as justifiable, and to the extent the actual expenditures of General Conditions cost items are increased by reason of increase(s) in: the duration of the Work; the quantity of Design-Builder's facilities and equipment required; or number or duration of supervisory personnel on site directly required to enact the requested change. General Conditions costs shall not be increased for additional personnel and labor costs not actually incurred by the Design-Builder and documented to the satisfaction of the Owner.

§ A.5.1.6.5.2 Notwithstanding the above, the Design-Builder has included in General Conditions sufficient supervision and project controls personnel to prepare and process a standard amount of project documentation, including without limitation, requests for information, meeting minutes, Requests for Information, Supplemental Instructions, Proposal Requests, Change Order Requests, Change Orders, and other Design-Builder's administration and deliverables normally required on similar projects. The Design-Builder will not be additionally compensated above the amount shown in General Conditions for preparing or processing these documents.

§ A.5.1.6.6 The cost of properly and reasonably maintaining access to the Work in spite of, facilitating progress of the Work during, and protecting the Work itself from the impact of inclement weather is "Weather Protection". Weather Protection shall not exceed the total of the line items shown for this purpose in the General Conditions, given the Work is performed during average weather conditions for the Project site, as such average is defined in the Contract documents.

§ A.5.1.6.6.1 Line items in General Conditions that shall be considered, in their aggregate, for the purpose of calculating the Weather Protection maximum costs allowable under this Agreement include weather protection, snow removal, temporary heat, and temporary protection.

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§ A.5.1.6.7 The actual costs for General Conditions, Weather Protection, and Travel and Subsistence will be billed on an "as incurred" and actual cost basis, and any unused portion of such amounts will revert to the Owner as savings below the Stipulated Sum.

§ A.5.1.6.7.1 The Design-Builder shall, without limitation keep such separate and distinct records as are required for the Design-Builder to easily validate the accuracy of the Design-Builder's billing for the costs of General Conditions, Weather Protection, and Travel and Subsistence.

§ A.5.1.6.7.2 In the event the Design-Builder believes General Conditions, Weather Protection, or Travel and Subsistence line item(s) included in the Stipulated Sum should be increased due to changes in the Work or circumstances beyond the Design-Builder's responsibilities to control under this Agreement; or the Owner or Design-Builder believes such line items should be lowered based on better circumstances for performing the Work than originally anticipated by the Owner and Design-Builder, the Stipulated Sum shall then be adjusted as provided in the Contract Documents for changes in the Work.

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§ A.5.1.7.1 For purposes of Section A.5.1.7, ~~the term "related party" shall mean~~ , and elsewhere in this Agreement, the term "Related Party" shall mean any party or entity related to or affiliated with the Design-Builder or in which the Design-Builder has direct or indirect ownership or control, including without limitation: (1) a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or ~~management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or~~ officer, director, partner or employee of, the Design-Builder or any entity owned by the Design-Builder has any direct or indirect interest in; (3) any party or entity with an excess of ten percent (10%) interest in the Design-Builder in the aggregate; or (4) any person or entity which has the right to control the business or affairs of the Design-Builder. The term ~~"related party"~~ "Related Party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If after the Design-Builder having followed the stipulations in this Agreement, any of the costs to be reimbursed are contemplated to arise from a transaction between the Design-Builder and a ~~related party,~~ Related Party outside of the bidding process so described, the Design-Builder shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the ~~related party~~ Related Party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the ~~related party,~~ Related Party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a ~~related party~~ Related Party according to the terms of Section A.5.4.

...

The Cost of the Work shall not include (unless otherwise specifically stated in Exhibit "H" – Design-Builder's Fee and Cost Proposal) the items listed below:

...

.5 Rental costs of machinery and equipment, except as specifically provided herein;

.6 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

~~**.6** Any~~ **.7** Costs incurred in the performance of Preconstruction Phase Services (unless specifically stated in both Section A.1.4.2 of this Amendment, and Exhibit "H" – Design-Builder's Fee and Cost Proposal);

.8 Any cost not specifically and expressly described in Section A.5.1;~~and~~

~~**.7**~~ **.9** Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause ~~the Guaranteed Maximum Price to be exceeded.~~the Stipulated Sum to be exceeded;

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.10 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than Preconstruction Services) relating to accounting in Design-Builder 's office and even if at the site, except as specifically identified herein;

.11 Amounts required to be paid by Design-Builder for Federal and/or State income, franchise taxes or other business taxes, but not including any applicable sales taxes;

.12 Legal, accounting, or other similar professional services provided by or to Design-Builder, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with Owner, or any other person or entity relating to the Project or otherwise;

.13 Sales, entertainment, and meal expenses;

.14 Employee vehicle expenses, including fuel above the "Travel & Subsistence" not-to-exceed amount;

.15 General Conditions, Weather Protection and Travel and Subsistence in excess of the line items shown in Exhibit "H" – Design-Builder's Fee and Cost Proposal, and

.16 Costs related to Design-Builder's indemnification obligations.

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§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make ~~payments; otherwise, cash discounts shall accrue to the Design-Builder.~~ payments. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be ~~obtained.~~secured. The Design-Builder shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work from any source including but not limited to its Subcontractors, vendors, or other suppliers of goods, insurance or other services without providing the Owner with at least thirty (30) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds if and when necessary to obtain such discount, rebate or refund on behalf of the Owner in accordance with the requirements of this Section A.5.3.1.

...

§ A.5.4.1 ~~When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~Intentionally Deleted.

§ A.5.4.2 ~~Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.~~Intentionally Deleted.

...

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the ~~Owner.~~ Owner and Design-Builder. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to ~~audit~~ audit, inspect, and copy, without limitation the Design-Builder's records and accounts, including complete documentation supporting actual, direct and "bare" labor costs, job – cost coded labor reports accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of ~~three~~ five (5) years after final payment, or for such longer period as may be required by law. All records shall be maintained in accordance with generally accepted accounting procedures consistently applied. Subcontractors retained by the Design-Builder on a cost-plus basis shall have the same obligation to retain records and permit audits, inspections and copying as required of the Design-Builder under this Agreement.

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...

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner ~~to~~ to, without limitation, exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a reasonably timely manner, information required by the Design-Builder when such information is requested in writing and to make payments to the Design-Builder in accordance with the requirements of the Design-Build Documents and in accordance with Texas Government Code Ch. 2251.

PAGE 12

~~**OWNER** *(Signature)*~~	~~**DESIGN-BUILDER** *(Signature)*~~
~~*(Printed name and title)*~~	~~*(Printed name and title)*~~

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IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

OWNER:

CITY OF SHERMAN, TEXAS
Approved by the Sherman City Council

By: _____
City Manager

Date: _____

Attest: _____
City Secretary

CITY OF SHERMAN
P. O. Box 1106
Sherman, TX 75091

APPROVED AS TO FORM:

_____
Christopher C. Zillmer, City Attorney

DESIGN-BUILDER:

AMERICAN RAMP COMPANY

By: _____

Date: _____

601 S. McKinley Avenue
Joplin, MO 64801

_____
Telephone Number

_____
E-mail Address

_____
Federal Tax ID Number

Attest:

_____

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher C Zillmer/mls, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:44:25 CT on 02/10/2023 under Order No. 2114312451 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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AIA® Document A141® – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:
(Name and location or address)

ARBH File No. 6262.0022 City of Sherman/Sherman Pump Track

Binkley Park
101 Binkley Park Dr.
Sherman, TX

Construction of Binkley Park Pump Track.

THE OWNER:
(Name, legal status and address)

City of Sherman
P.O. Box 1106
Sherman, TX 75091

THE DESIGN-BUILDER:
(Name, legal status and address)

American Ramp Company
601 S. McKinley Avenue
Joplin, MO 64801

THE AGREEMENT
This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the ___ day of February in the year Two Thousand Twenty-Three (2023) .
(In words, indicate day, month and year.)

TABLE OF ARTICLES

B.1 GENERAL

B.2 DESIGN BUILDER'S INSURANCE AND BONDS

B.3 OWNER'S INSURANCE

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL
The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

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.

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ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in Texas having a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

With respect to the Design Builder's completed operations coverage, the duration shall continue through the end of any required maintenance of completed operations.

Umbrella or Excess Liability insurance with a minimum limit of Two Million Dollars ($2,000,000.00).

§ B.2.1.1 Commercial General Liability with policy limits of not less than One Million Dollars ($ 1,000,000.00) for each occurrence and Two Million Dollars ($ 2,000.000.00) in the aggregate providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

.2 personal injury;

.3 damages because of injury to or destruction of tangible property;

.4 bodily injury or property damage arising out of completed operations; and

.5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than Five Hundred Thousand Dollars ($ 500,000.00) per claim and One Million Dollars ($ $1,000,000.00) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

Employers' Liability with policy limits not less than Five Hundred Thousand Dollars ($500,000.00) each accident, Five Hundred Thousand Dollars ($500,000.00) each employee, and Five Hundred Thousand Dollars ($500,000.00) policy limit.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

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§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner on an ACORD form evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness. At Owner's request, the Contractor shall provide Owner a copy of the policies of insurance required hereunder. Owner's failure to require the submission of the certificates of insurance, or any of them, shall not excuse the Contractor of its obligation to procure and maintain the insurance required herein.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds in Texas as follows:
(Specify type and penal sum of bonds.)

Type	**Penal Sum ($0.00)**
Payment Bond	In the total amount of the Contract Sum, as modified during the term of construction.
Performance Bond	In the total amount of the Contract Sum, as modified during the term of construction.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in Texas, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

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§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors,

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sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Without limiting any of the other obligations or liabilities of the Design Builder, the Design Builder shall require each subcontractor of every tier performing work under the Contract, at the subcontractor's own expense, to maintain during the term of the engagement of such subcontractor the types and limits of insurance set forth above that are appropriate with the work being performed. All subcontractors' liability insurance shall name the Design Builder as an additional insured.

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Additions and Deletions Report for
AIA® Document A141® – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:33:44 CT on 02/10/2023.

PAGE 1

ARBH File No. 6262.0022 City of Sherman/Sherman Pump Track

Binkley Park
101 Binkley Park Dr.
Sherman, TX

Construction of Binkley Park Pump Track.

...

City of Sherman
P.O. Box 1106
Sherman, TX 75091

...

(Name, legal status and address)

American Ramp Company
601 S. McKinley Avenue
Joplin, MO 64801

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the ____day of February in the year Two Thousand Twenty-Three (2023) .

PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in ~~the jurisdiction where the Project is located.~~ Texas having a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:
(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

With respect to the Design Builder's completed operations coverage, the duration shall continue through the end of any required maintenance of completed operations.

Umbrella or Excess Liability insurance with a minimum limit of Two Million Dollars ($2,000,000.00).

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§ B.2.1.1 Commercial General Liability with policy limits of not less than One Million Dollars ($ 1,000,000.00) for each occurrence and Two Million Dollars ($ 2,000.000.00) in the aggregate providing coverage for claims including

...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than Five Hundred Thousand Dollars ($ 500,000.00) per claim and One Million Dollars ($ $1,000,000.00) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...

Employers' Liability with policy limits not less than Five Hundred Thousand Dollars ($500,000.00) each accident, Five Hundred Thousand Dollars ($500,000.00) each employee, and Five Hundred Thousand Dollars ($500,000.00) policy limit.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.
PAGE 3

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner on an ACORD form evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness. At Owner's request, the Contractor shall provide Owner a copy of the policies of insurance required hereunder. Owner's failure to require the submission of the certificates of insurance, or any of them, shall not excuse the Contractor of its obligation to procure and maintain the insurance required herein.

...

The Design-Builder shall provide surety bonds in Texas as follows:

...

Payment Bond	In the total amount of the Contract Sum, as modified during the term of construction.
Performance Bond	In the total amount of the Contract Sum, as modified during the term of construction.

...

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§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in ~~the jurisdiction where the Project is located,~~ Texas, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.
PAGE 5

Without limiting any of the other obligations or liabilities of the Design Builder, the Design Builder shall require each subcontractor of every tier performing work under the Contract, at the subcontractor's own expense, to maintain during the term of the engagement of such subcontractor the types and limits of insurance set forth above that are appropriate with the work being performed. All subcontractors' liability insurance shall name the Design Builder as an additional insured.

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NJPA

National Joint Powers Alliance®

Official

CERTIFICATE OF MEMBERSHIP

City of Sherman

Member # 2,440

This certificate entitles the entity named above the opportunity to puchase off of nationally, competitively bid contracts. The entity will save time by using pre-bid contracts, save money by leveraged volume pricing and obtain quality products from nationally acclaimed vendors.

Duff Erholtz, Membership Manager

Competitively Bid National Cooperative Contract Solutions

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 7.**

Meeting Date: 03/06/2023

Prepared By: Billy Hartsfield, Acting Fire Chief

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7044***

Repealing and Replacing Resolution No. 6926; Establishing Salary Structures and Incentive/Certification Pay Schedules for Firefighters and Police Officers; Establishing Special Longevity Pay Schedules for Newly Hired Firefighters and Police Officers; Providing for an Effective Date

Issue:

The Fire Department Organization Chart was updated to be more typical. This will update the pay scale to match the changes to Deputy Chief and Battalion Chief.

Background:

The Fire Department Organization Chart was amended to change Division Chief rank to Deputy Chief. That position was also amended from 3 positions to 2. The single Assistant Chief position was eliminated. Battalion Chief was expanded from 3 positions to 5.

This resolution is tied to Ordinance 6545 that was approved at the February 20, 2023 meeting. The Ordinance was approved and set to be adopted upon approval of this resolution.

Origination:

The Amended Ordinance 6545 moved administrative duties to lower ranks and expanded the duties of the Deputy Chief, who was formerly known as Division Chief.

Financial Consideration:

The resolution change has small salary savings for Fire Department Administration.

Staff Recommendation:

Staff recommends approved of this resolution.

Alternatives:

None

Attachments

Resolution No. 7044
Redline - Resolution

RESOLUTION NO. 7044

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING AND REPLACING RESOLUTION NO. 6926; ESTABLISHING SALARY STRUCTURES AND INCENTIVE/ CERTIFICATION PAY SCHEDULES FOR FIREFIGHTERS AND POLICE OFFICERS; ESTABLISHING SPECIAL LONGEVITY PAY SCHEDULES FOR NEWLY HIRED FIREFIGHTERS AND POLICE OFFICERS; PROVIDING FOR AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That Resolution No. 6926, passed and approved on the 18th day of July, 2022, is hereby repealed.

SECTION 2. That, from and after the effective date of the 16th of March 2023, the following salary structures and incentive/certification pay schedules will be adopted for the Sherman Fire Department and the Sherman Police Department:

FIRE DEPARTMENT CLASSIFICATION	MONTHLY BASE SALARY	MONTHLY STEP PAY	TOTAL
FIREFIGHTER			
Entry	$5,000.00	N/A	$5000.00
1 Year	$5,000.00	$$218.17	$ $5,218.17
2 Year	$5,000.00	$525.00	$5,525.00
3 Year	$5,000.00	$700.00	$5,700.00
4 Year	$5,000.00	$850.00	$5,850.00
5 Year	$5,000.00	$1,100.00	$6,100.00
ENGINEER			
Entry	$6,450.00	N/A	$6,450.00
1 Year	$6,450.00	$150.00	$6,600.00
2 Year	$6,450.00	$275.00	$6,725.00
CAPTAIN			
Entry	$7,200.00	N/A	$7,200.00
1 Year	$7,200.00	$100.00	$7,300.00

BATTALION CHIEF			
Entry	$7,900.00	N/A	$7,900.00
1 Year	$7, 900.00	$200.00	$8,100.00
~~DIVISION CHIEF~~			
~~Entry~~	~~$9,000.00~~	~~N/A~~	~~$9,000.00~~
~~1 Year~~	~~$9,000.00~~	~~$100.00~~	~~$9,100.00~~
~~2 Year~~	~~$9,000.00~~	~~$200.00~~	~~$9,200.00~~
~~ASSISTANT CHIEF~~			
DEPUTY CHIEF			
Entry	$9,700.00	N/A	$9,700.00
1 Year	$9,700.00	$150.00	$9,850.00
2 Year	$9,700.00	$250.00	$9,950.00
POLICE DEPARTMENT CLASSIFICATION	**MONTHLY BASE SALARY**	**MONTHLY STEP PAY**	**TOTAL**
PATROLMAN			
Entry – Non-Certified	$5,041.67	N/A	$5,041.67
1 Year	$5,041.67	$225.00	$5,266.67
2 Year	$5,041.67	$408.33	$5,450.00
3 Year	$5,041.67	$625.00	$5,666.67
4 Year	$5,041.67	$833.33	$5,875.00
5 Year	$5,041.67	$1,125.00	$6,166.67
6 Year	$5,041.67	$1,375.00	$6,416.67
7 Year	$5,041.67	$1,541.66	$6,583.33
CORPORAL			
Entry	$6,708.34	N/A	$6,708.34
1 Year	$6,708.34	$8.33	$6,791.67
2 Year	$6,708.34	$208.33	$6,916.67
3 Year	$6,708.34	$374.99	$7,083.33
SERGEANT			
Entry	$7,208.34	N/A	$7,208.34
1 Year	$7,208.34	$224.99	$7,433.33
2 Year	$7,208.34	$499.99	$7,708.33
3 Year	$7,208.34	$791.66	$8,000.00
LIEUTENANT			
Entry	$8,125.00	N/A	$8,125.00
1 Year	$8,125.00	$183.33	$8,308.33
2 Year	$8,125.00	$372.50	$8,497.50
3 Year	$8,125.00	$558.33	$8,683.33
ASSISTANT CHIEF			
Entry	$9,416.67	N/A	$9,416.67
1 Year	$9,416.67	$333.33	$9,750.00
2 Year	$9,416.67	$666.66	$10,083.33
3 Year	$9,416.67	$958.33	$10,375.00

SECTION 3. That, from and after the effective date of the 1st day of October, 2020, the following incentive/certification pay schedules shall be adopted for the Sherman Fire Department:

(a) Each employee certified by the Texas Department of State Health Services as a Paramedic and who meets the Sherman Medical Director's prescribed Medical Standards for Medical Authorization shall receive $125.00 per month Incentive/Certification Pay.

(b) Each employee who is certified by the Texas Commission on Fire Protection Personnel Standards and Education as an Intermediate Firefighter shall receive $104.00 per month Incentive/Certification Pay.

(c) Each employee who is certified by the Texas Commission on Fire Protection Personnel Standards and Education as an Advanced Firefighter shall receive $218.40 per month Incentive/Certification Pay.

(d) Each employee who is certified by the Texas Commission on Fire Protection Personnel Standards and Education as a Master Firefighter shall receive $318.40 per month Incentive/Certification Pay.

(e) Incentive/Certification Pay shall only be paid for the highest Texas Commission on Fire Protection Personnel Standards and Education Certification achieved.

(f) All Certifications shall be kept current to receive Incentive/Certification Pay.

(g) Each employee who holds an Associates Degree from an accredited college or university shall receive $75.00 per month Education Incentive Pay.

(h) Each employee who holds a Bachelors Degree from an accredited college or university shall receive $175.00 per month Education Incentive Pay.

(i) Each employee who holds a Masters Degree from an accredited college or university shall receive $250.00 per month Education Incentive Pay.

(j) Education Incentive Pay shall only be paid for the highest degree received.

SECTION 4. That, from and after the effective date of the 1st day of October, 2020, the following incentive/certification pay schedules shall be adopted for the Sherman Police Department:

(a) Employees hired prior to October 1, 2020 shall adopt the following incentive/certification pay schedule:

1. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as an Intermediate Peace Officer shall receive $75.00 per month Incentive/Certification Pay.

2. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as an Advanced Peace Officer shall receive $175.00 per month Incentive/Certification Pay.

3. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as a Master Peace Officer shall receive $275.00 per month Incentive/Certification Pay.

4. Incentive/Certification Pay shall only be paid for the highest Texas Commission on Law Enforcement Officer Standards and Education Certification achieved.

5. Each employee who speaks Spanish as a second language, as certified and designated by the Police Chief, shall receive $100.00 per month Incentive/Certification Pay.

6. All Certifications shall be kept current to receive Incentive/Certification Pay.

7. Each employee who holds an Associates Degree from an accredited college or university shall receive $100.00 per month Education Incentive Pay.

8. Each employee who holds a Bachelors Degree from an accredited college or university shall receive $250.00 per month Education Incentive Pay.

9. Each employee who holds a Masters Degree from an accredited college or university shall receive $500.00 per month Education Incentive Pay.

10. Education Incentive Pay shall only be paid for the highest degree received.

(b) Employees hired after October 1, 2020 shall adopt the following incentive/certification pay schedule:

1. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as an Intermediate Peace Officer shall receive $50.00 per month Incentive/Certification Pay.

2. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as an Advanced Peace Officer shall receive $100.00 per month Incentive/Certification Pay.

3. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as a Master Peace Officer shall receive $150.00 per month Incentive/Certification Pay.

4. Incentive/Certification Pay shall only be paid for the highest Texas Commission on Law Enforcement Officer Standards and Education Certification achieved.

5. Each employee who speaks Spanish as a second language, as certified and designated by the Police Chief, shall receive $100.00 per month Incentive/Certification Pay.

6. All Certifications shall be kept current to receive Incentive/Certification Pay.

7. Each employee who holds an Associates Degree from an accredited college or university shall receive $50.00 per month Education Incentive Pay.

8. Each employee who holds a Bachelors Degree from an accredited college or university shall receive $100.00 per month Education Incentive Pay.

9. Each employee who holds a Masters Degree from an accredited college or university shall receive $200.00 per month Education Incentive Pay.

10. Education Incentive Pay shall only be paid for the highest degree received.

SECTION 5. That eligible pay types are authorized by the City Council below for patrolmen and firefighters.

(a) Seniority Pay – Lateral Entry (prior Police Experience):

1. Seniority Pay is authorized by Chapter 143.041 (c)(1) of the Texas Local Government Code.

2. Applicants for patrolmen positions who are hired after July 31, 2018 shall be eligible for Special Seniority Pay for lateral entry if they have at least two (2) years' continuous service as a paid, full-time certified peace officer, or comparable Military Police experience as approved by the Chief of Police, with the authority to enforce laws, investigate crimes, make arrests, respond to calls for service, carry a firearm, and use discretion as part of their assigned duties. A lateral entry applicant shall not have more than a one-year break in service from the time the applicant left employment as a certified peace officer, or Military Police service and, as of the last date, applications are accepted.

3. Starting Pay: The starting pay for lateral entry patrolmen with prior qualifying law enforcement experience will be determined based on the commensurate number of years of prior qualified service at their previous agency or agencies as of the last date applications are accepted.

i. Lateral entry patrolmen who have at least two (2) years of prior qualified service will start at two (2) years of service according to the Sherman Police Department pay schedule.

4. Departmental Seniority Impact: The Lateral Entry Program described in this Sub-section is for seniority pay purposes only to determine placement into the existing pay schedule. Prior law enforcement work experience will not be considered for promotional eligibility requirements, departmental seniority or transfers. Department seniority for lateral patrolmen will begin on their most recent Civil Service hire date with the Sherman Police Department. Exception will be made for reappointed patrolmen in which seniority will include all time served as a paid Sherman Police Officer.

5. Requirements: Guidelines and administration for eligibility for lateral entry shall be governed by police policies and Local Civil Service Commission Rules and Regulations. The Chief of Police shall make the final determination as to whether an applicant meets the criteria for the Police Lateral Entry Program; and the Chief's decision shall be final and non-appealable to the Civil Service Commission or to any court.

6. Longevity Pay: Sworn police employees shall be paid Longevity Pay in accordance with City policy, Chapter 142 of the Texas Local Government Code, and as permitted under Chapter 143.041(c)(1) of the Texas Local Government Code. City policy provides specifics on administration and application.

(b) Seniority Pay – Lateral Entry (prior Fire Experience):

1. Seniority Pay is authorized by Chapter 143.041(c)(1) of the Texas Local Government Code.

2. Applicants for firefighter positions who are hired after December 16, 2018 shall be eligible for Special Longevity pay for lateral entry if they have at least one (1) year of continuous service as a paid, full time certified firefighter as approved by the Fire Chief. A lateral entry applicant shall not have more than a one (1) year break in service from the time the applicant left employment as a certified firefighter as of the date of hire.

3. Starting Pay: The starting pay for lateral firefighters will be determined based on the number of years of prior qualified service as of the date of hire.

i. Lateral entry firefighter's starting pay will be determined based on the commensurate number of years of qualified service at their previous agency or agencies as of the date of hire.

4. Departmental Seniority Impact: The Lateral Entry Program described in this Sub-Section is for seniority pay purposes only to determine placement into the existing pay schedule. Prior fire work experience will not be considered for promotional eligibility requirements, departmental seniority or transfers. Departmental seniority for lateral entry firefighters will begin on their most recent Civil Service hire date with the Sherman Fire Department.

5. Requirements: Guidelines and administration for eligibility for lateral entry shall be governed by fire department policies and Local Civil Service Commission Rules and Regulations. The Fire Chief shall make the final determination as to whether an applicant meets the criteria for the Fire Lateral Entry Program; and the Chief's decision shall be final and non-appealable to the Civil Service Commission or to any court.

6. Longevity Pay: Fire department employees shall be paid Longevity Pay in accordance with City Policy, Chapter 142 of the Texas Local Government Code, and as permitted under Chapter 143.041(c)(1) of the Texas Local Government Code. City policy provides specifics on administration and application.

7. Base pay for incumbent firefighters, hired prior to the adoption date of this Resolution who have at least one (1) year of prior qualified service will be increased to the commensurate number of years of service according to the Sherman Fire Department pay schedule.

SECTION 6. That detailed rules and regulations for qualifying standards, eligibility and administration of such pay types may be stated within the City and/or Police Department policies and/or Fire Department policies, and/or Local Civil Service Commission Rules and Regulations. Such policies are subject to change as needed and approved by the City Manager for purposes of City policies or by the Chief of Police for purposes for Police Department polices, by the Fire Chief for purposes of Fire Department policies, or by the Local Civil Service Commission for the purposes of Local Civil Service Commission Rules and Regulations.

SECTION 7. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of March 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING AND REPLACING RESOLUTION NO. 6851; ESTABLISHING SALARY STRUCTURES AND INCENTIVE/ CERTIFICATION PAY SCHEDULES FOR FIREFIGHTERS AND POLICE OFFICERS; ESTABLISHING SPECIAL LONGEVITY PAY SCHEDULES FOR NEWLY HIRED FIREFIGHTERS AND POLICE OFFICERS; PROVIDING FOR AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That Resolution No. 6851, passed and approved on the 21st day of February, 2022, is hereby repealed.

SECTION 2. That, from and after the effective date of the 25th day of July, 2022, the following salary structures and incentive/certification pay schedules will be adopted for the Sherman Fire Department and the Sherman Police Department:

FIRE DEPARTMENT CLASSIFICATION	MONTHLY BASE SALARY	MONTHLY STEP PAY	TOTAL
FIREFIGHTER			
Entry	$5,000.00	N/A	$5000.00
1 Year	$5,000.00	$$218.17	$ $5,218.17
2 Year	$5,000.00	$525.00	$5,525.00
3 Year	$5,000.00	$700.00	$5,700.00
4 Year	$5,000.00	$850.00	$5,850.00
5 Year	$5,000.00	$1,100.00	$6,100.00
ENGINEER			
Entry	$6,450.00	N/A	$6,450.00
1 Year	$6,450.00	$150.00	$6,600.00
2 Year	$6,450.00	$275.00	$6,725.00
CAPTAIN			
Entry	$7,200.00	N/A	$7,200.00
1 Year	$7,200.00	$100.00	$7,300.00

BATTALION CHIEF Entry 1 Year	 $7,900.00 $7, 900.00	 N/A $200.00	 $7,900.00 $8,100.00
~~DIVISION CHIEF~~ ~~Entry~~ ~~1 Year~~ ~~2 Year~~	 ~~$9,000.00~~ ~~$9,000.00~~ ~~$9,000.00~~	 ~~N/A~~ ~~$100.00~~ ~~$200.00~~	 ~~$9,000.00~~ ~~$9,100.00~~ ~~$9,200.00~~
~~ASSISTANT CHIEF~~ Deputy Chief Entry 1 Year 2 Year	 $9,700.00 $9,700.00 $9,700.00	 N/A $150.00 $250.00	 $9,700.00 $9,850.00 $9,950.00
POLICE DEPARTMENT CLASSIFICATION	**MONTHLY BASE SALARY**	**MONTHLY STEP PAY**	**TOTAL**
PATROLMAN Entry – Non-Certified 1 Year 2 Year 3 Year 4 Year 5 Year 6 Year 7 Year	 $5,041.67 $5,041.67 $5,041.67 $5,041.67 $5,041.67 $5,041.67 $5,041.67 $5,041.67	 N/A $225.00 $408.33 $625.00 $833.33 $1,125.00 $1,375.00 $1,541.66	 $5,041.67 $5,266.67 $5,450.00 $5,666.67 $5,875.00 $6,166.67 $6,416.67 $6,583.33
CORPORAL Entry 1 Year 2 Year 3 Year	 $6,708.34 $6,708.34 $6,708.34 $6,708.34	 N/A $8.33 $208.33 $374.99	 $6,708.34 $6,791.67 $6,916.67 $7,083.33
SERGEANT Entry 1 Year 2 Year 3 Year	 $7,208.34 $7,208.34 $7,208.34 $7,208.34	 N/A $224.99 $499.99 $791.66	 $7,208.34 $7,433.33 $7,708.33 $8,000.00
LIEUTENANT Entry 1 Year 2 Year 3 Year	 $8,125.00 $8,125.00 $8,125.00 $8,125.00	 N/A $183.33 $372.50 $558.33	 $8,125.00 $8,308.33 $8,497.50 $8,683.33
ASSISTANT CHIEF Entry 1 Year 2 Year 3 Year	 $9,416.67 $9,416.67 $9,416.67 $9,416.67	 N/A $333.33 $666.66 $958.33	 $9,416.67 $9,750.00 $10,083.33 $10,375.00

SECTION 3. That, from and after the effective date of the 1st day of October, 2020, the following incentive/certification pay schedules shall be adopted for the Sherman Fire Department:

(a) Each employee certified by the Texas Department of State Health Services as a Paramedic and who meets the Sherman Medical Director's prescribed Medical Standards for Medical Authorization shall receive $125.00 per month Incentive/Certification Pay.

(b) Each employee who is certified by the Texas Commission on Fire Protection Personnel Standards and Education as an Intermediate Firefighter shall receive $104.00 per month Incentive/Certification Pay.

(c) Each employee who is certified by the Texas Commission on Fire Protection Personnel Standards and Education as an Advanced Firefighter shall receive $218.40 per month Incentive/Certification Pay.

(d) Each employee who is certified by the Texas Commission on Fire Protection Personnel Standards and Education as a Master Firefighter shall receive $318.40 per month Incentive/Certification Pay.

(e) Incentive/Certification Pay shall only be paid for the highest Texas Commission on Fire Protection Personnel Standards and Education Certification achieved.

(f) All Certifications shall be kept current to receive Incentive/Certification Pay.

(g) Each employee who holds an Associates Degree from an accredited college or university shall receive $75.00 per month Education Incentive Pay.

(h) Each employee who holds a Bachelors Degree from an accredited college or university shall receive $175.00 per month Education Incentive Pay.

(i) Each employee who holds a Masters Degree from an accredited college or university shall receive $250.00 per month Education Incentive Pay.

(j) Education Incentive Pay shall only be paid for the highest degree received.

SECTION 4. That, from and after the effective date of the 1st day of October, 2020, the following incentive/certification pay schedules shall be adopted for the Sherman Police Department:

(a) Employees hired prior to October 1, 2020 shall adopt the following incentive/certification pay schedule:

1. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as an Intermediate Peace Officer shall receive $75.00 per month Incentive/Certification Pay.

2. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as an Advanced Peace Officer shall receive $175.00 per month Incentive/Certification Pay.

3. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as a Master Peace Officer shall receive $275.00 per month Incentive/Certification Pay.

4. Incentive/Certification Pay shall only be paid for the highest Texas Commission on Law Enforcement Officer Standards and Education Certification achieved.

5. Each employee who speaks Spanish as a second language, as certified and designated by the Police Chief, shall receive $100.00 per month Incentive/Certification Pay.

6. All Certifications shall be kept current to receive Incentive/Certification Pay.

7. Each employee who holds an Associates Degree from an accredited college or university shall receive $100.00 per month Education Incentive Pay.

8. Each employee who holds a Bachelors Degree from an accredited college or university shall receive $250.00 per month Education Incentive Pay.

9. Each employee who holds a Masters Degree from an accredited college or university shall receive $500.00 per month Education Incentive Pay.

10. Education Incentive Pay shall only be paid for the highest degree received.

(b) Employees hired after October 1, 2020 shall adopt the following incentive/certification pay schedule:

1. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as an Intermediate Peace Officer shall receive $50.00 per month Incentive/Certification Pay.

2. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as an Advanced Peace Officer shall receive $100.00 per month Incentive/Certification Pay.

3. Each employee certified by the Texas Commission on Law Enforcement Officer Standards and Education as a Master Peace Officer shall receive $150.00 per month Incentive/Certification Pay.

4. Incentive/Certification Pay shall only be paid for the highest Texas Commission on Law Enforcement Officer Standards and Education Certification achieved.

5. Each employee who speaks Spanish as a second language, as certified and designated by the Police Chief, shall receive $100.00 per month Incentive/Certification Pay.

6. All Certifications shall be kept current to receive Incentive/Certification Pay.

7. Each employee who holds an Associates Degree from an accredited college or university shall receive $50.00 per month Education Incentive Pay.

8. Each employee who holds a Bachelors Degree from an accredited college or university shall receive $100.00 per month Education Incentive Pay.

9. Each employee who holds a Masters Degree from an accredited college or university shall receive $200.00 per month Education Incentive Pay.

10. Education Incentive Pay shall only be paid for the highest degree received.

SECTION 5. That eligible pay types are authorized by the City Council below for patrolmen and firefighters.

(a) Seniority Pay – Lateral Entry (prior Police Experience):

1. Seniority Pay is authorized by Chapter 143.041 (c)(1) of the Texas Local Government Code.

2. Applicants for patrolmen positions who are hired after July 31, 2018 shall be eligible for Special Seniority Pay for lateral entry if they have at least two (2) years' continuous service as a paid, full-time certified peace officer, or comparable Military Police experience as approved by the Chief of Police, with the authority to enforce laws, investigate crimes, make arrests, respond to calls for service, carry a firearm, and use discretion as part of their assigned duties. A lateral entry applicant shall not have more than a one-year break in service from the time the applicant left employment as a certified peace officer, or Military Police service and, as of the last date, applications are accepted.

3. Starting Pay: The starting pay for lateral entry patrolmen with prior qualifying law enforcement experience will be determined based on the commensurate number of years of prior qualified service at their previous agency or agencies as of the last date applications are accepted.

i. Lateral entry patrolmen who have at least two (2) years of prior qualified service will start at two (2) years of service according to the Sherman Police Department pay schedule.

4. Departmental Seniority Impact: The Lateral Entry Program described in this Sub-section is for seniority pay purposes only to determine placement into the existing pay schedule. Prior law enforcement work experience will not be considered for promotional eligibility requirements, departmental seniority or transfers. Department seniority for lateral patrolmen will begin on their most recent Civil Service hire date with the Sherman Police Department. Exception will be made for reappointed patrolmen in which seniority will include all time served as a paid Sherman Police Officer.

5. Requirements: Guidelines and administration for eligibility for lateral entry shall be governed by police policies and Local Civil Service Commission Rules and Regulations. The Chief of Police shall make the final determination as to whether an applicant meets the criteria for the Police Lateral Entry Program; and the Chief's decision shall be final and non-appealable to the Civil Service Commission or to any court.

6. Longevity Pay: Sworn police employees shall be paid Longevity Pay in accordance with City policy, Chapter 142 of the Texas Local Government Code, and as permitted under Chapter 143.041(c)(1) of the Texas Local Government Code. City policy provides specifics on administration and application.

(b) Seniority Pay – Lateral Entry (prior Fire Experience):

1. Seniority Pay is authorized by Chapter 143.041(c)(1) of the Texas Local Government Code.

2. Applicants for firefighter positions who are hired after December 16, 2018 shall be eligible for Special Longevity pay for lateral entry if they have at least one (1) year of continuous service as a paid, full time certified firefighter as approved by the Fire Chief. A lateral entry applicant shall not have more than a one (1) year break in service from the time the applicant left employment as a certified firefighter as of the date of hire.

3. Starting Pay: The starting pay for lateral firefighters will be determined based on the number of years of prior qualified service as of the date of hire.

i. Lateral entry firefighter's starting pay will be determined based on the commensurate number of years of qualified service at their previous agency or agencies as of the date of hire.

4. Departmental Seniority Impact: The Lateral Entry Program described in this Sub-Section is for seniority pay purposes only to determine placement into the existing pay schedule. Prior fire work experience will not be considered for promotional eligibility requirements, departmental seniority or transfers. Departmental seniority for lateral entry firefighters will begin on their most recent Civil Service hire date with the Sherman Fire Department.

5. Requirements: Guidelines and administration for eligibility for lateral entry shall be governed by fire department policies and Local Civil Service Commission Rules and Regulations. The Fire Chief shall make the final determination as to whether an applicant meets the criteria for the Fire Lateral Entry Program; and the Chief's decision shall be final and non-appealable to the Civil Service Commission or to any court.

6. Longevity Pay: Fire department employees shall be paid Longevity Pay in accordance with City Policy, Chapter 142 of the Texas Local Government Code, and as permitted under Chapter 143.041(c)(1) of the Texas Local Government Code. City policy provides specifics on administration and application.

7. Base pay for incumbent firefighters, hired prior to the adoption date of this Resolution who have at least one (1) year of prior qualified service will be increased to the commensurate number of years of service according to the Sherman Fire Department pay schedule.

SECTION 6. That detailed rules and regulations for qualifying standards, eligibility and administration of such pay types may be stated within the City and/or Police Department policies and/or Fire Department policies, and/or Local Civil Service Commission Rules and Regulations. Such policies are subject to change as needed and approved by the City Manager for purposes of City policies or by the Chief of Police for purposes for Police Department polices, by the Fire Chief for purposes of Fire Department policies, or by the Local Civil Service Commission for the purposes of Local Civil Service Commission Rules and Regulations.

SECTION 7. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 18th day of July, 2022.

CITY OF SHERMAN, TEXAS

BY: _____

DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **F. 1.**

Meeting Date: 03/06/2023

Prepared By: Theresa Hutchinson, Parks & Recreation Manager

Approved By: Robby Hefton, City Manager

Caption:

**** REQUEST TO ADVERTISE***

Purchase and Installation to Replace Existing Ballfield Fencing at Old Settlers Park

Issue:

Approval of a request to advertise for proposals for a project to purchase and install new ballfield fencing at Old Settlers Park.

Background:

The existing ballfield fencing at Old Settlers Park has reached the end of its useful life and requires replacement.

At the May 15, 2017 meeting, the City Council approved and adopted the 2017 Parks Master Plan. Included among the priority initiatives arising from the Plan were updates to existing parks, such as Old Settlers Park.

Origination:

Parks and Recreation Department

Financial Consideration:

This project for Old Settlers Park improvements will qualify for funding through the Community Development Block Grand (CDBG) and will not require matching funds. Advertising costs are estimated to be about $200.00.

Staff Recommendation:

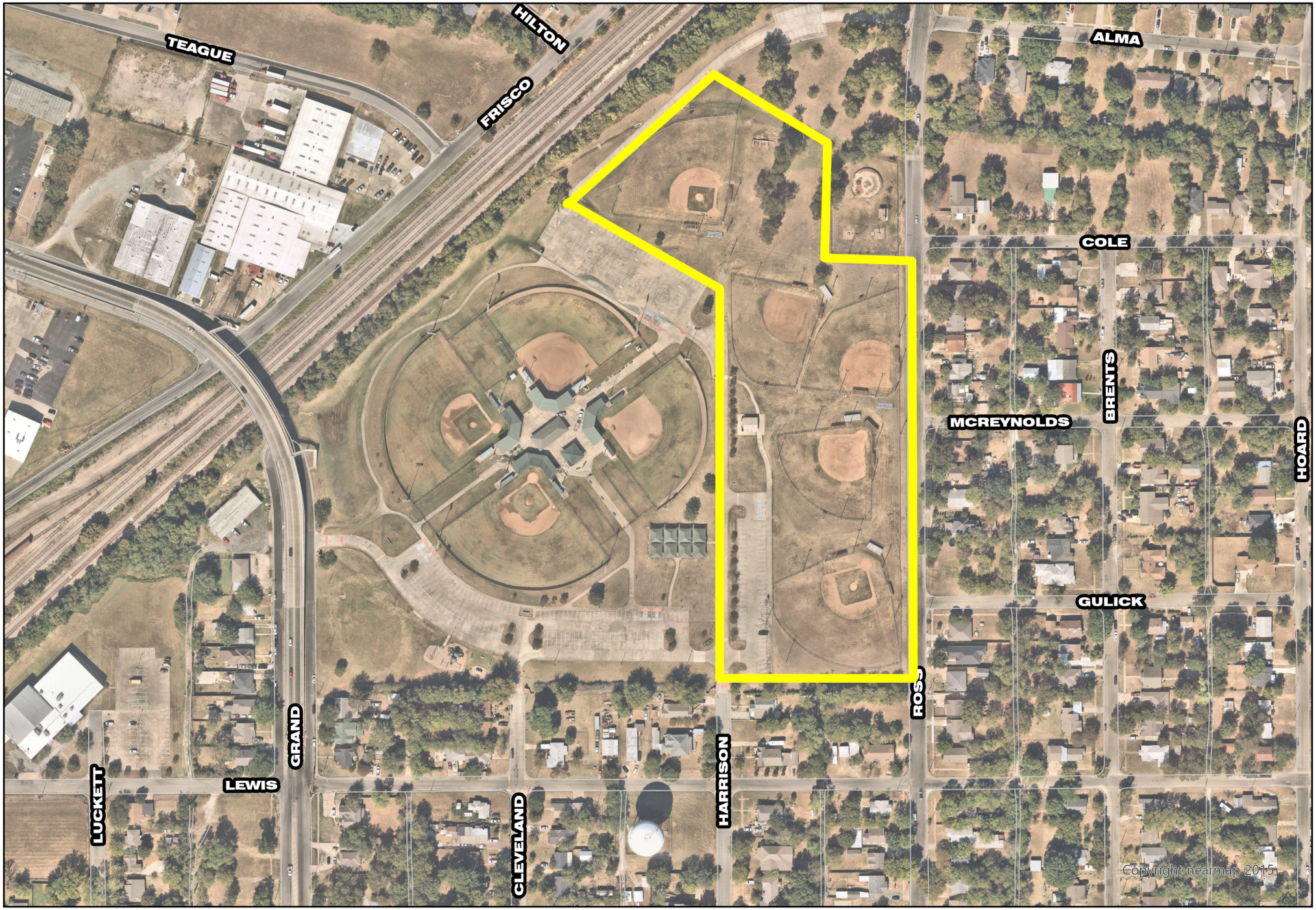
Staff recommends the City Council approved the advertising related to the public request for proposals for the fencing improvements at Old Settlers Park.

Alternatives:

As may be recommended by the City Council

Attachments

Aerial Map_Old Settlers



Sherman
ENGINEERING DEPT.
220 W. MULBERRY
SHERMAN, TX 75090

Old Settlers Park Baseball Fields

1" = 250'

N

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 1.**

Meeting Date: 03/06/2023

Approved By: Robby Hefton, City Manager

Caption:

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Main Street Advisory Board (3)

Issue:

Lindsey Manley and Courtney Mitchell's terms on the Main Street Advisory Board expired on September 5, 2022. Both are eligible for reappointment, and do wish to be reappointed. There is also one vacancy on the Board. Applications are on file from Joey Morneau, Janie Bates, and Deron McCraw for the Main Street Advisory Board.

Background:

The City Council created the Main Street Advisory Board by Resolution No. 6063, approved on March 7, 2016. The purpose of the Board is to encourage participation in the Main Street Downtown Revitalization Program, to establish and evaluate goals and priorities for the Main Street Program, to review design appropriateness for the purpose of participation in the Main Street Low Interest Loan Program and Incentive Grant Projects, to design and coordinate activities coinciding with the Main Street Program, to assist with the Main Street Program Annual Report, and to advise and support the Main Street Manager to further the goals and priorities of the Main Street Program.

Origination:

The appointments originated with the City Clerk's Office.

Financial Consideration:

There is no financial consideration.

Staff Recommendation:

It is the staff recommendation that the City Council reappoint Ms. Manley and Ms. Mitchell, and appoint Deron McCraw to the Main Street Advisory Board.

Alternatives:

The alternative is to delay appointments to the Board.

Attachments

Roster
Fact Sheet
Applicant List
Lindsey Manley Reappointment Letter
Courtney Mitchell Reappointment Letter
Joey Morneau Application
Janie Bates Application
Deron McCraw Application

MEMBERSHIP ROSTER

MAIN STREET ADVISORY BOARD

LENGTH OF TERMS: 2 Years
Consecutive Term Limit 3 Terms

MEMBER	DISTRICT	TERM BEGINS	TERM EXPIRES	TERMS	MEMBERSHIP REQUIREMENTS
David Downtain	1	A 6/8/2021	6/8/2023	1	
Preston Davis	1	A 9/7/2022	9/7/2024	1	
Aaron Jason Bucy	4	A 2/8/2022	2/8/2024	1	
Tommi Sue Homuth	n/a	U 1/22/2020 R 3/31/2020 R 3/31/2022	3/31/2020 3/31/2022 3/31/2024	0 1 2	
David Gunn	n/a	A 3/31/2017 R 3/31/2019 R 3/31/2021	3/31/2019 3/31/2021 3/31/2023	1 2 3	
Lucas Ridley	n/a	A 7/7/2022	7/7/2024	1	
Lindsey Manley	1	A 9/5/2018 R 9/5/2020	9/5/2020 9/5/2022	1 2	
Angela Wilson	n/a	A 7/7/2022	7/7/2024	1	
Courtney Mitchell	1	A 9/5/2018 R 9/5/2020	9/5/2020 9/5/2022	1 2	
Vacant					
Ex-Officio Members					
Daron Holland					Council Member
Karen Tooley					DSP&R President

Ex-Officio Members: City Council Member
Downtown Sherman Preservation & Revitalization President

Chair:
Vice Chair:

Resolution 6063, approved Sept. 4, 2018
Increased membership from 6 to 10

CITY STAFF:
Revised 1/25/2023

FACT SHEET

MAIN STREET ADVISORY BOARD

Established by RESOLUTION 6063 – MARCH 7, 2016

1. **Number of Members: SIX**
2. **Term of Appointment: 2 YEARS**
3. **Consecutive Term Rule: THREE TERMS – ORDINANCE 4223 (10/21/91)**
4. **Qualifications for Membership: PRESERVE AND GROW DOWNTOWN AS A BUSINESS CENTER FOR SHERMAN**
5.
6. **Appointed by: MAYOR AND CITY COUNCIL**
7. **Board Organization**

CHAIRPERSON E VICE CHAIRPERSON ____ SECRETARY E

ELECTED E APPOINTED ___

8. **Departmental Responsibility: DIRECTOR OF COMMUNITY AND SUPPORT SERVICES**
9. **Meeting Date: NO RULE – AS SET BY BOARD BY-LAWS**
10. **Attendance Requirements: NO RULE – AS SET BY BOARD BY-LAWS**

==========

Ex-Officio Members:
City Council Member
Downtown Sherman Preservation & Revitalization President

PURPOSE:

- Encourage participation in the Sherman Main Street Downtown Revitalization Program
- Establish and evaluate goals and priorities for the Main Street Program
- Review design appropriateness for the purpose of participation in the Main Street Low Interest Loan Program and Incentive Grant Projects
- Design and coordinate activities coinciding with the Main Street Program
- Assist with the Main Street Program Annual Report
- Advise and support the Main Street Manager to further the goals and priorities of the Main Street Program.

RESPONSIBILITIES:

Said Board shall work with the Main Street Manager and other City officials to publicize the Main Street Program and shall recommend projects and activities to include marketing, advertising, promotion, design, organization, economic restructuring as related to the Main Street Program. The Board will also review any commercial construction or reconstruction plans proposed within the Main Street Program Target Area.

APPLICANT LIST

Main Street Advisory Board **Positions Vacant 3**

Applicant	Address	District	Qualifications
Lindsey Manley	1506 N. Alexander	1	Current Member; Wishes to be Reappointed
Courtney Mitchell	1000 Yorkshire Dr.	1	Current Member; Wishes to be Reappointed
Joey Morneau	202 Arapaho West	4	II-VI
Janie Bates	210 Chisholm Trail	4	Workforce Solutions of Texoma
Deron McCraw	4993 E. FM 120, Denison	n/a	n/a

COMMENTS:

Sherman
CLASSIC TOWN. BROAD HORIZON

City Clerk's Office

PUBLIC RECORDS DEPARTMENT
Phone No. (903) 892-7204
Fax No. (903) 892-7394

August 31, 2022

Lindsey Manley
1506 N. Alexander
Sherman, Texas 75092

RE: Main Street Advisory Board

Dear Ms. Manley:

Your term on the Main Street Advisory Board expires on September 5, 2022. You are eligible for reappointment to the Board. Please let me know whether or not you are interested in reappointment to this board by checking the appropriate statement at the bottom of this letter and returning a copy to me at the address below. If you have any questions or need additional information, please don't hesitate to contact me.

Best regards,

Linda Ashby

Linda Ashby
City Clerk

cc: Nate Strauch, Community and Support Services Manager
Sarah McRae, Tourism/Main Street Manager

✓ I do wish to be considered for reappointment to this board

____ I do not wish to be considered for reappointment to this board

Lindsey Manley
Signature

9/2/22
Date

Please return to: City of Sherman
City Clerk's Office
P.O. Box 1106
Sherman, Texas 75091-1106

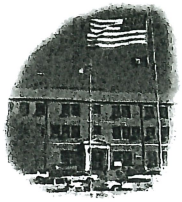
Ashby, Linda

From: courtney courtneymitchellphotography.com <courtney@courtneymitchellphotography.com>
Sent: Thursday, February 2, 2023 3:09 PM
To: Ashby, Linda
Subject: Main St Advisory Board

EXTERNAL EMAIL: -- Avoid clicking on links or files -- Be safe!

Hi Linda!
Sarah just let me know that you needed a response from me about staying on the Main Street Advisory Board. I never received a letter, but I would love to serve another two year term. Let me know if this email will work of if I need to stop by your office. Thanks!

Courtney Mitchell
Master of Photography, Certified Professional Photographer
Courtney Mitchell Photography
217 S. Travis Street
Sherman, Texas 75090
903.487.2865
www.courtneymitchellphotography.com
Facebook Instagram



CITY OF SHERMAN
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

Return completed application to:
City Clerk's Office
220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink
Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: Joey Morneau

(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: Sherman Main Street Board

☒ Yes, I would be interested in serving on subcommittees that may be formed.

Personal Information	Occupational Information
Home Address: 202 Arapaho West	Business Name: II - VI
Mailing Address: 202 Arapaho West	Occupation: Engineer
Telephone: 903-819-2173 Fax:	Address: 6800 South , US 75 Sherman, TX 75090
E-Mail: jmorneau169@gmail.com	Telephone: 903-819-2173 Fax:
Sherman Resident for 38 years County: Grayson	E-Mail: james.morneau@ii-vi.com
Drivers License No.: 0202	
Voter Registration No.: 1025403279 ✓	

Which Council District do you live in? *(see attached map)* District 4 ✓

Prior work experience: *(please include dates)*
Little Fuse 2006 -2021, Elite-Energy Partners 2017 - 2021, II- VI 2021 - 2022

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 2002
Business College, Correspondence School, Adult Education, Other?
Name of College/University: Grayson and Collin County ☒ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: *(please include dates)*
I'm a Sherman Chamber Ambassador, Volunteer for Habitat for Humanity, Master Key and Downtown Sherman Now when needed.

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☒ Yes ☐ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.
Approximate Date July 2005. Everything has been completed.
Class C Misdemeanor for street racing.

Taxes - None

Application held for 12 months from date received

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? _____

Why do you want to become a member of this particular board or commission *(how would you use this experience to benefit the City)*?
I love the growth our city is making and how our Downtown is growing. I love the events that Sherman Main Street puts on and have volunteers in the past. I think with knowing how Sherman Main Street runs I could help grow this board and give insight.

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

1) Having Board members who are over committed. I believe this could be fixed really researching applications and having an interview with each applicant.

2) Roles and responsibilities are a huge factor on every board. I believe that each role and responsibilities should be set in place every year.

3) Monitor and strengthen programs and events. I believe all board members can determine which programs are consistent and effective.

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:
I'm dedicated and committed with the ability to lead others.

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☒ Yes ☐ No
Comments: _____

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: _____ *Date:* _____

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.

Sherman
CLASSIC TOWN. BROAD HORIZON.

CITY OF SHERMAN APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

Return completed application to:
City Clerk's Office
220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink
Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: Janie Bates
(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: Sherman Main Street Board

☒ Yes, I would be interested in serving on subcommittees that may be formed.

Personal Information

Home Address: 210 Chisholm Trail
Mailing Address: Same
Telephone: 903-821-0820 Fax: _____
E-Mail: janie.bates@wfstexoma.org
Sherman Resident for 45 years County: Grayson
Drivers License No.: 07627571
Voter Registration No.: VIUD-1024895569 ✓

Occupational Information

Business Name: Workforce Solutions Texoma
Occupation: Executive Director
Address: 5904 Texoma Pkwy
Telephone: 903-957-7408 Fax: 903-957-7413
E-Mail: janie.bates@wfstexoma.org

Which Council District do you live in? *(see attached map)* #4 ✓

Prior work experience: *(please include dates)*
Private business owner before joining Workforce—45 years with Workforce.
Owner of downtown business since January 2022 (Designs by Janie)

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 1973 SOSU
Business College, Correspondence School, Adult Education, Other? _____
Name of College/University: SOSU ☒ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: *(please include dates)*
See attached

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☐ Yes ☒ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

Taxes - None

Application held for 12 months from date received

Are you presently serving on a City board or commission? X Yes ☐ No

If so, which one? SEDCO/Sherman Housing Authority

Why do you want to become a member of this particular board or commission *(how would you use this experience to benefit the City)*?
I am interested in building a vibrant downtown for Sherman.

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue

1) Attracting more diversity in types of downtown businesses.
Create a friendly environment for downtown business. Increase marketing for downtown to make it a destination.

2)Public restrooms or lack thereof

Need to raise funds/write grants to provide restrooms which would benefit activities and festivals.

3) Downtown Infrastructure/Business needs
To advocate for City to continue to provide façade grants. Survey downtown merchants to create assessment of pressing issues.

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission. Grant writing, partnerships with local agencies, networking

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:
None

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☐X Yes ☐
No
Comments:

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: Janice Bates *Date:* 7-16-22

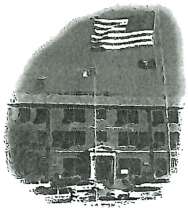
In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.

Sherman
CLASSIC TOWN. BROAD HORIZON.

Janie Bates

Volunteer Service

- Sherman Band Boosters--1992-2000
- United Way (served 15 years, 2 terms as chair)
- North Texas Enterprise Facilitation, Fannin County (founded by Workforce--served 3 years)
- Fannin Literacy Council (founder, first chair--served 7 years)
- Workforce Executive Directors' Council (chair 2 years, member for 27 years)
- Sherman Boys and Girls Club 26 years—Served as chair and Capital Campaign Chair
- Center for Workplace Learning—Founding Member
- Sherman Chamber (served 3 terms including 1 ½ terms as chair)
- SEDCO (current chair)
- Texoma Family Shelter—2 years (current VP)



RECEIVED
FEB 17 2023
City Clerk's Office

CITY OF SHERMAN
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

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220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

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Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: Deron McCraw
(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: Main Street

☒ Yes, I would be interested in serving on subcommittees that may be formed.

Personal Information	Occupational Information
Home Address: 4993 E. FM 120 Denison 7502/	Business Name:
Mailing Address: SAME	Occupation: N/A
Telephone: 903-624-7421 Fax:	Address:
E-Mail: dhmccraw@ms1.com	Telephone: Fax:
Sherman Resident for — years County: 25+	E-Mail:
Drivers License No.: 12858057	
Voter Registration No.:	

Which Council District do you live in? *(see attached map)* NA

Prior work experience: *(please include dates)*
Executive Director Downtown Sherman P&R 2004-2008

Educational Achievement:

High School Graduate? ☐ Yes ☐ No Year Graduated/Left School?
Business College, Correspondence School, Adult Education, Other?
Name of College/University: UNT ☒ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: *(please include dates)*
United Way Board 2022 – Present, Sherman Cultural District Volunteer 2022
North Texas Youth Connection Board 2014-2018, Sherman Arts & St
Sherman Preservation League Board, Sherman Tourism 2004
Sherman Christmas Parade 2000-2009

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☐ Yes ☒ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

Application held for 12 months from date received

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? _____

Why do you want to become a member of this particular board or commission *(how would you use this experience to benefit the City)*?
To continue to help downtown grow and offer
daytime events and activities to citizens
& visitors.

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

1) Promotion of Downtown / central business district
its assets. Downtown is rich with not only
businesses, but art & cultural activities that
need to be promoted both to citizens & potential
visitors.

2) Preservation of the historic nature of the
downtown area so it retains its unique character
as the city continues to grow.

3) Revitalization / Restoration of the central business
district to attract & invest in programs
to rehab existing downtown properties.

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:
Previous experience as Downtown Director / Tourism Officer

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:
None

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☐ Yes ☐ No
Comments: No

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: _____ *Date:* 2/16/2023

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.

Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 2.**

Meeting Date: 03/06/2023

Approved By: Robby Hefton, City Manager

Caption:

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Animal Control Advisory Committee (2)

Issue:

Two positions on the Animal Control Advisory Committee are held by a "Municipal Officer" and the "Animal Services Supervisor". Council Member Henry Marroquin and Morgan Simpson, Animal Services Supervisory, were previously appointed to serve in these positions. Their term ends on March 17, 2023. Both are eligible for reappointment.

Background:

The Texas Health and Safety Code, Section 823.005, requires that the City establish and maintain an Advisory Committee to assist the City's Animal Control Department in carrying out its duties. On February 12, 2020, the City Council approved Resolution No. 6593, creating the Animal Control Advisory Committee. The purpose of this Committee is to serve in an advisory capacity to assist the City's Animal Control Department in compliance with city and state regulations concerning the operation of the City's Animal Control facility; to assist the City in communicating awareness to the citizens of Sherman regarding the services, procedures, and compliance with state regulations concerning the operation of animal shelters and coordinating review of programs and services to make recommendations for improvements in those programs and services to better serve the community.

Origination:

This reappointment originated with the City Clerk's Office.

Financial Consideration:

There is no financial consideration to the City.

Staff Recommendation:

The staff's recommendation is to consider the reappointment of Mr. Marroquin and Ms. Simpson to the Animal Control Advisory Committee.

Alternatives:

Council Members could appoint someone else that meets the criteria.

Attachments

Roster
Fact Sheet
Applicant List

MEMBERSHIP ROSTER

ANIMAL CONTROL ADVISORY COMMITTEE **LENGTH OF TERMS: 3 Years**

MEMBER	DISTRICT	TERM BEGINS	TERM EXPIRES	TERMS	MEMBERSHIP REQUIREMENTS
Dr. Ken Lawrence		A 2/2/2021	2/2/2024		Licensed Veterinarian
Henry Marroquin		A 11/16/2021	3/17/2023		Municipal Official
Morgan Simpson		A 3/17/2020	3/17/2023		Animal Services Supervisor
Stephanie Phillips	n/a	A 3/17/2020 R 3/17/2022	3/17/2022 3/17/2025	1 2	Animal Welfare Organization
Kyle Wiser	1	A 3/17/2020 R 3/17/2022	3/17/2022 3/17/2025	1 2	Sherman Citizen
Amber Doan	3	A 3/17/2020 R 3/17/2022	3/17/2022 3/17/2025	1 2	Sherman Citizen
Aaron Jason Bucy	4	A 10/5/2021	10/5/2024	1	Sherman Citizen
Mignon Plyler	4	A 3/17/2020 R 3/17/2021	3/17/2021 3/17/2024	0 1	Sherman Citizen

NOTE:

Officers		Term Begins	Term Expires
Chairman	Aaron Bucy	4/13/2022	4/13/2024
Vice Chairman	Amber Doan	4/13/2022	4/13/2024

City Staff: Zach Flores, Police Chief
4/18/2022

FACT SHEET

ANIMAL CONTROL ADVISORY COMMITTEE

Established by RESOLUTION 6593 – FEBRUARY 12, 2020

1. **Number of Members: EIGHT (8)**
2. **Term of Appointment: THREE (3) YEARS**
3. **Consecutive Term Rule: TWO FULL TERMS**
4. **Qualifications for Membership: COMPRISED OF 8 MEMBERS, AS FOLLOWS: 1 LICENSED VETERINARIAN; 1 MUNICIPAL OFFICIAL; 1 SHERMAN ANIMAL SERVICES SUPERVISOR; 1 REPRESENTATIVE FROM AN ANIMAL WELFARE ORGANIZATION; AND 4 SHERMAN CITIZENS**
5. **Appointed by: MAYOR AND CITY COUNCIL**
6. **Board Organization**

CHAIRPERSON E VICE CHAIRPERSON E SECRETARY E

ELECTED ___ APPOINTED ___

7. **Departmental Responsibility: POLICE CHIEF**
8. **Meeting Date: ROUTINELY, BASED ON ADOPTED MEETING SCHEDULE, AT LEAST QUARTERLY**
9. **Attendance Requirements: IF A MEMBER IS ABSENT 33% OF THE REGULARLY SCHEDULED MEETING IN A CALENDAR YEAR, REGARDLESS OF EXCUSED OR NOT, (SPECIAL EXCEPTIONS MAY BE MADE – SEE BY-LAWS)**

==========

PURPOSE:
Committee is a citizen's committee to the City Council, created to assist the City in communicating awareness to the citizens of Sherman, regarding the services, procedure, and compliance with State regulations concerning the operation of animal shelters and coordinating review of programs and services to better serve the community.

RESPONSIBILITIES:
(1) Assist in the development of Animal Services' mission and policies;
(2) Review and recommend long-range planning and budgeting for Animal Services;
(3) Provide research, guidance, advice, sponsor reports and contribute information relevant to Animal Services program development, policies and procedures;
(4) Serve as liaisons to the community, increasing support and awareness of Animal Services and assisting in the resolution of citizen concerns, issues, and grievances

APPLICANT LIST

Animal Control Advisory Committee **Positions Vacant 2**

Applicant	Address	District	Qualifications
Henry Marroquin			Council Member
Morgan Simpson			Animal Services Supervisor

COMMENTS:

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting

Meeting Date: 03/06/2023

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2023 Council Calendar

2023
Council Calendar

January

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
11	12	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

March

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

June

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	6	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

July

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

August

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

December

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

CALLED MEETINGS	
4/20/20223	Budget Planning Meeting
5/25/2023	CIP Work Session
6/15/2023	Budget Workshop Day 1
6/16/2023	Budget Workshop Day 2