

# CITY OF KYLE



## Notice of Regular City Council Meeting

KYLE CITY HALL  
100 W. Center Street

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 7:00 PM on 9/13/2011, at Kyle City Hall, 100 West Center, Kyle, Texas for the purpose of discussing the following agenda.

Posted this 8th day of September, 2011 prior to 7:00 pm.

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### I. Call Meeting To Order

### II. Citizen Comment Period With City Council

The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak must sign in before the meeting begins at the Kyle City Hall. Speakers may be provided with an opportunity to speak during this time period, and they must observe the three-minute time limit.

### III. Consider and Possible Action

1. Authorize Award and Execution of a Purchase Order to CDW GOVERNMENT of Vernon Hills, Illinois, in an amount Not to Exceed \$8,651.83 to purchase Netmotion mobility software for the Police Department ~ *Jeff Barnett, Chief of Police*

 [Attachments](#)

2. A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING CITY MANAGER TO AWARD AND EXECUTE SECOND SUPPLEMENT TO AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR A LUMP SUM CONSTRUCTION CONTRACT ("AGREEMENT") WITH T.F. HARPER & ASSOCIATES, LP, AUSTIN, TEXAS, IN AN AMOUNT NOT TO EXCEED \$527,649.41 TO CONSTRUCT ALL LAKE KYLE PROJECT IMPROVEMENTS INCLUDED IN THE SPECIFICATIONS, FOR A TOTAL AMENDED CONTRACT AMOUNT NOT TO EXCEED \$1,291,171.00 AS FURTHER DESCRIBED IN ATTACHED EXHIBIT; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS ~ *Kerry Urbanowicz, Director of Parks and Recreation*

 [Attachments](#)

3. (*Second Reading*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS ADOPTING A \$37.1 MILLION BUDGET FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2011 AND ENDING SEPTEMBER 30, 2012; APPROPRIATING THE VARIOUS AMOUNTS THEREOF, INCLUDING WATER AND WASTEWATER RATE INCREASES, IMPLEMENTATION OF NEW CITY FEES, OTHER FEE INCREASES AS SPECIFIED IN THE FEE SCHEDULE, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE ~ *Perwez Moheet, CPA, Director of Finance*

 [Attachments](#)

4. (*Second Reading*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS LEVYING AD VALOREM TAXES FOR USE AND SUPPORT OF THE MUNICIPAL GOVERNMENT OF THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2011 AND TERMINATING SEPTEMBER 30, 2012; PROVIDING FOR APPORTIONING EACH LEVY FOR SPECIFIC PURPOSES; AND PROVIDING WHEN TAXES SHALL BECOME DUE AND WHEN SAME SHALL BECOME DELINQUENT IF NOT PAID ~ *Perwez Moheet, CPA, Director of Finance*

 [Attachments](#)

#### **IV. General Discussion and Possible Action**

5. General Discussion and Possible Action in regards to Determining a Preferred Route for the South Side Sewer Line project and determining other associated projects ~ *James Earp, Assistant City Manager*

 [Attachments](#)

#### **V. ADJOURN**

*At any time during the Regular City Council Meeting, the City Council may adjourn into an Executive Session, as needed, on any item listed on the agenda for which state law authorizes Executive Session to be held*

\*Per Texas Attorney General Opinion No. JC-0169; Open Meeting & Agenda Requirements, Dated January 24, 2000: The permissible responses to a general member communication at the meeting are limited by 551.042, as follows: "SEC.551.042. Inquiry Made at Meeting. (a) If, at a meeting of a government body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by the subchapter, the notice provisions of this subchapter, do not apply to:(1) a statement of specific factual information given in response to the inquiry; or (2) a recitation of existing policy in response to the inquiry. (b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.



# CITY OF KYLE, TEXAS

Meeting Date: 9/13/2011

Date time: 7:00 PM

## Purchase of Netmotion Software for

### Subject/Recommendation:

Authorize Award and Execution of a Purchase Order to CDW GOVERNMENT of Vernon Hills, Illinois, in an amount Not to Exceed \$8,651.83 to purchase Netmotion mobility software for the Police Department ~ *Jeff Barnett, Chief of Police*

### Other Information:

After several weeks of evaluating and testing the mobile connectivity of our patrol fleet, it has been identified that a mobile solutions software for connectivity is needed with no other alternative means available.

Throughout the evaluation of the New World System, the expectation was in place to utilize our existing connectivity method through a standard VPN. At no time did any factors become available to indicate that our standard VPN would not be sufficient. In fact, it was projected that since the New World System is an actual thin client opposed to our obsolete system (ARMS), it would work even more fluid and with fewer connectivity errors. Unfortunately, this was just the opposite as we have measured only a 50% connectivity rate. All other options to include Microsoft Windows VPN to business freeware have been exhausted.

Although Netmotion is a common software used by many law enforcement agencies, an honest and dedicated attempt to avoid the purchase in an effort to cut costs was made. As we have discovered that this type of service is not a luxury, yet a necessity as data packets of transferred information in a law enforcement environment have increased exponentially in the recent years. In a further review of the software to learn about other services provided by this system, we realized that we are in fact behind the times without it.

Netmotion has allowed us to use their software on a trial basis only for 30 days which we have exhausted. Netmotion has granted us an additional one week extension for this trial which is scheduled to terminate on or about September 12, 2011. Once this trial ends, our mobile connection in the field will also terminate. As of this date, Netmotion has kept the field units connected at least 98% of the time which has been phenomenal to this department.

Those services provided by this software that will substantially benefit the Kyle Police Department are as follows:

- Network Access Control
- Network Access Control
- Wireless Performance Optimization
- Application Persistence Procession
- Analytics Reporting (Monitors all connectivity per unit)
- Full control of all clients via server
- Log on facilitation for simplicity
- Security by FIPS 140-2 Encryption (Highest U.S. Government Standard)

As an item of significant benefit, the automated control that is provided by the Network Access Control and the Analytics Reporting will help reduce IT's needed <sup>the</sup> <sub>Cover Memo</sub>

time and resources in maintaining and repairing mobile clients.

The following is an itemized list of the Netmotion Mobility XE software package:

1.	25 Licenses.....	\$4,273.50
2.	Network Access Control .....	\$2,029.91
3.	Mobility Pilot Mod.....	\$ 425.34
4.	Electronic Distribution and One Year Maintenance .....	\$1,923.08
	<i>Total</i> .....	\$8,651.83

\*As listed in #1 above, this subscription would provide 25 licenses (minimum package) which will adequately cover all patrol vehicles. The one year subscription and maintenance would not expire until 12 months from the date of purchase; however, the actual purchase would be rolled over to October of 2011 which would push the subscription renewal into the 2013 fiscal year. The renewal rate is 20% of the total software cost which is shown in # 4 above (\$1,923.08).



**Budget Information:**

The City’s FY 2010-11 amended Budget did not include funding for this software purchase. Available funding in the amount of \$8,651.83 from the 2009 Tax Notes for the CAD/RMS project budgeted for the Police Department in FY 2010-11 will be used to pay for the purchase of the Netmotion software. The City Council’s approval of this item will also authorize staff to apply \$8,651.83 from the 2009 Tax Notes budgeted for the CAD/RMS project.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

-  [Netmotion Purchase Justification Memo](#)
-  [CDW-G's Netmotion Price Quotation](#)



# KYLE POLICE DEPARTMENT

300 West Center Street  
Kyle, Texas 78640  
512.268.0859

Date: September 7, 2011

To: Chief Barnett  
Cc: Moheet Perwez, Director of Finance  
Cc: Mark Shellard, Director of Information Technology  
From: Sgt. Vrana

Ref: *2011 Netmotion Wireless (Mobility XE) Purchase Request*

Vendor: NetMotion Wireless, Inc.  
701 N 34th Street  
Suite 250  
Seattle, WA 98103  
Contact: John Setliff ( 281) 565.0022

(Authorized Dealer: CDW-G (Sales Quotation # CGMM641))

After several weeks of evaluating and testing the mobile connectivity of our patrol fleet, it has been identified that a mobile solutions software for connectivity is needed with no other alternative means available.

Throughout the evaluation of the New World System, the expectation was in place to utilize our existing connectivity method through a standard VPN. At no time did any factors become available to indicate that our standard VPN would not be sufficient. In fact, it was projected that since the New World System is an actual thin client opposed to our obsolete system (ARMS), it would work even more fluid and with fewer connectivity errors. Unfortunately, this was just the opposite as we have measured only a 50% connectivity rate. All other options to include Microsoft Windows VPN to business freeware have been exhausted.

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# KYLE POLICE DEPARTMENT

300 West Center Street  
Kyle, Texas 78640  
512.268.0859

Netmotion Wireless advertises as follows:

*“Mobility XE is mobile VPN software that maximizes mobile field worker productivity by maintaining and securing their data connections as they move in and out of wireless coverage areas and roam between networks. Your mobile field workers sign in once and Mobility XE allows them to traverse multiple networks without having to re-authenticate or disrupting their applications. Mobility XE increases field worker productivity, creates a more secure network environment with AES encryption, and gives you greater control of your mobile data deployment.”*

Those services provided by this software that will substantially benefit the Kyle Police Department are as follows:

- Network Access Control
- Wireless Performance Optimization
- Application Persistence Procession
- Analytics Reporting (Monitors all connectivity per unit)
- Full control of all clients via server
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<b>Total.....</b>	<b>\$8,651.83</b>

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### Known RMS Project Costs to Date

One Time Project Cost W/Travel.....	\$370,590.00
Additional APS Licenses .....	\$107.64

# **KYLE POLICE DEPARTMENT**

**300 West Center Street**

**Kyle, Texas 78640**

**512.268.0859**

Sgt. T. Vrana



# SALES QUOTATION

QUOTE NO.	ACCOUNT NO.	DATE
CGMM641	9176079	8/16/2011

**BILL TO:**  
CITY OF KYLE  
PO BOX 40

**SHIP TO:**  
CITY OF KYLE  
Attention To: TRACY VRANA  
300 W CENTER ST

Accounts Payable  
KYLE , TX 78640-0040

KYLE , TX 78640-9450  
Contact: TRACY VRANA 512.268.0859

Customer Phone #512.268.5341

Customer P.O. # CGMM641

ACCOUNT MANAGER		SHIPPING METHOD	TERMS	EXEMPTION CERTIFICATE
MELVIN HARMON 877.625.7681		Free Drop Ship	Request Terms	GOVT-EXEMPT
QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	1977113	NETMOTION MOBILITY XE PILOT 25 Mfg#: N-M-090NMXEP Contract: TCPN R4713	4,273.50	4,273.50
1	1977114	NETMOTION NAC/POLICY BND PILOT Mfg#: N-M-090NMBXEP Contract: TCPN R4713	2,029.91	2,029.91
1	1977115	NETMOTION MOBILITY PILOT ANALY MOD Mfg#: N-M-090NMRXEP Contract: TCPN R4713	425.34	425.34
1	2234698	Electronic distribution - NO MEDIA NETMOTION PREM MNT 1Y Mfg#: N-M-090NMPRMMNT1 Contract: TCPN R4713 Electronic distribution - NO MEDIA	1,923.08	1,923.08
SUBTOTAL				8,651.83
FREIGHT				0.00
TAX				0.00

US Currency

**TOTAL** 8,651.83

CDW Government  
230 North Milwaukee Ave.  
Vernon Hills, IL 60061  
Phone: 847.371.5000

Fax: 312-752-4223

**Please remit payment to:**  
CDW Government  
75 Remittance Drive  
Suite 1515  
Chicago, IL 60675-1515





# CITY OF KYLE, TEXAS

Meeting Date: 9/13/2011

Date time: 7:00 PM

## Lake Kyle Budget

### Subject/Recommendation:

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING CITY MANAGER TO AWARD AND EXECUTE SECOND SUPPLEMENT TO AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR A LUMP SUM CONSTRUCTION CONTRACT ("AGREEMENT") WITH T.F. HARPER & ASSOCIATES, LP, AUSTIN, TEXAS, IN AN AMOUNT NOT TO EXCEED \$527,649.41 TO CONSTRUCT ALL LAKE KYLE PROJECT IMPROVEMENTS INCLUDED IN THE SPECIFICATIONS, FOR A TOTAL AMENDED CONTRACT AMOUNT NOT TO EXCEED \$1,291,171.00 AS FURTHER DESCRIBED IN ATTACHED EXHIBIT; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS ~ *Kerry Urbanowicz, Director of Parks and Recreation*

### Other Information:

This City Council action authorizes three related items associated with the contract amendment; (1) award and execution of Second Supplement to Agreement between City of Kyle and T.F. Harper & Associated, L.P., (2) amendment of certain provisions of the General Conditions Construction Contract dated 10/1/2010, and, and (3) the reallocation of project budgets previously approved by City Council.

On or about 10/01/2010, the City of Kyle entered into a construction contract to T.F. HARPER & ASSOCIATES, LP, Austin, Texas, in an amount not to exceed \$763,521.85 to construct all improvements at the City's Gregg-Clarke Park. All improvements constructed by T.F. HARPER AND ASSOCIATES at the Gregg-Clarke Park have been completed to City's satisfaction and have been accepted by the City. Upon final payment to the contractor, a total of \$45,584.37 will remain unexpended from the original \$763,521.85 contract award for the Gregg-Clarke Park Project. The \$45,584.37 unexpended amount will become available for the Lake Kyle Project improvements.

This Contract Amendment No. 1 will add \$527,649.41 to the original contract award of \$763,521.85 with T.F. HARPER & ASSOCIATES, LP for the construction of all improvements included in the specifications for the Lake Kyle Project. Contract Amendment No. 1 will increase the total contract award (cumulative) to T.F. HARPER & ASSOCIATES, LP by \$527,649.41 for a total amended contract amount not to exceed \$1,291,171.26.

The total construction budget for the completion of Lake Kyle Project improvements is \$573,233.78 of which \$45,584.37 is available in the original construction contract with T.F. HARPER AND ASSOCIATES, LP, therefore requiring a net increase in contract award of \$527,649.41 to pay for the cost of all Lake Kyle Project improvements. The total budget authorization for the Lake Kyle Project improvements is comprised of the following:

Unexpended Contract Balance:	\$ 45,584.37
Contract Amendment No. 1:	\$527,649.41
Total Authorization for Lake Kyle:	\$573,233.78

In addition to increasing the amount of total contract award to T.F. HARPER AND ASSOCIATES, LP, this Contract Amendment No. 1 will also amend certain provisions of the Standard General Conditions of the Construction Contract dated Cover Memo

October 1, 2010 as accepted by the City.

This City Council action will also authorize the reallocation of project budgets previously approved by City Council for total project costs and related grant funding for the three City park improvement projects to reflect as shown below under budget information.

**Budget Information:**

This Contract Amendment No. 1 to the construction contract with T.F. HARPER AND ASSOCIATES, LP will increase the total contract award by \$527,649.41 for a total amended contract amount (cumulative) not to exceed \$1,291,171.26.

The source of funds for Contract Amendment No. 1 in the amount of \$527,649.41 is provided from two different grants as follows:

Hays County Parks Grant: \$380,170.63  
Texas Parks & Wildlife Dept. \$147,478.78  
Total Contract Amendment: \$527,649.41

This City Council action will also authorize reallocation of budget authorizations previously approved by City Council for total project costs and related grant funding for the three City park improvement projects to reflect as follows:

Source of Funding:

1. Hays County Parks Grant: \$1,200,000.00  
2. Texas Parks & Wildlife: \$ 500,000.00  
Total Grants: \$1,700,000.00

Project Budget:

1. Gregg-Clarke Park: \$ 717,937.48 (Hays County Parks Grant)  
2. Lake Kyle Park: \$ 445,734.00 (Hays County Parks Grant)  
3. Lake Kyle Park: \$ 500,000.00 (Parks & Wildlife Grant)  
4. City Square Park: \$ 36,288.89 (Hays County Parks Grant)  
Total Budget: \$1,699,960.37

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [Resolution Letter](#)
- [General Conditions Construction Contract](#)
- [Second Supplement to Agreement](#)

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING CITY MANAGER TO AWARD AND EXECUTE SECOND SUPPLEMENT TO AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR A LUMP SUM CONSTRUCTION CONTRACT ("AGREEMENT") WITH T.F. HARPER & ASSOCIATES, LP, AUSTIN, TEXAS, IN AN AMOUNT NOT TO EXCEED \$527,649.41 TO CONSTRUCT ALL LAKE KYLE PROJECT IMPROVEMENTS INCLUDED IN THE SPECIFICATIONS, FOR A TOTAL AMENDED CONTRACT AMOUNT NOT TO EXCEED \$1,291,171.00 AS FURTHER DESCRIBED IN ATTACHED EXHIBIT; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

**Whereas,** the City of Kyle has been awarded grants from the Texas Parks and Wildlife Department and Hays County to match these anticipated expenses; and,

Attachment number 1  
Page 1 of 1

**Whereas,** the Kyle Mayor and City Council adopted resolutions authorizing acceptance of the funding grants for the park improvement projects and equipment; and,

**Whereas,** the City Council adopted Ordinance 642 authorizing the budget amendment setting the budget for these park development projects; and,

**Whereas,** there were savings from the completion of the Gregg-Clarke Park project and the Hays County Grant contemplated that such project budget savings be transferred to the next park development project, Lake Kyle Park,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:**

**Section 1.0 Findings.** The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2.0 Action of Resolution.** This City Council action authorizes three related items associated with the contract amendment; (1) award and execution of Second Supplement to Agreement between City of Kyle and T.F. Harper & Associated, L.P., (2) amendment of certain provisions of the General Conditions Construction Contract dated 10/1/2010, and (3) the reallocation of project budgets previously approved by City Council.

**Section 3.0 Estimated Costs and Net Impact Current and Future Budget.** The total cost associated with this Resolution will be reimbursed by grants received from the Texas Parks and Wildlife Department and the County of Hays. It is understood that the grant funding from one or both sources may be reimbursed and not funded up front at beginning of projects.

**Section 4.0 Conflict.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

**Section 5.0 Open Meetings.** That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Ch. 551, LGC.

**Section 6.0 Effective Date.** This ordinance shall be in full force and effect from and after the date of its final passage and adoption in accordance with the provisions of the Kyle City Charter.

**PASSED AND APPROVED on First Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2011.**

**FINALLY PASSED AND APPROVED on this the \_\_\_\_ day of \_\_\_\_\_, 2011.**

**THE CITY OF KYLE, TEXAS**

\_\_\_\_\_  
Lucy Johnson, Mayor

**ATTEST:**

\_\_\_\_\_  
Amelia Sanchez, City Secretary



The work to construct the proposed park improvements under this contract includes the demolition of existing items indicated in the plan and the construction of an entry drive and parking (8" base, 1 1/2" HMAC with 12" concrete flat curb), pedestrian trails system with signage (trails consisting of decomposed granite, trail signage, natural mulch and concrete), park structures (main building and office, pavilion, and misc. park equipment), park lighting, park plantings, horseshoe courts, washer throwing area, children's playscape, amphitheatre, picnic area, and fishing nooks), and associated water/wastewater/electric facilities to serve these park improvements. Work shall also include any necessary compliance with all regulatory agency requirements, permitting, traffic control, and any other necessary incidentals.

- 1.02 The Design Team will complete sealed plans for the Work prior to the Owner issuing a Notice to Proceed.

## **ARTICLE 2 – THE PROJECT**

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

### **Lake Kyle Park Improvements**

## **ARTICLE 3 – DESIGN TEAM**

- 3.01 The Project has been designed by Neptune-Wilkinson Associates, Inc, Luck Design Team & McIntyre & McIntyre (the Design Team). Contractor retained the services of the Design Team to prepare the Drawings and Specifications pursuant to the Budget of the project attached hereto as Exhibit "D". Contractor will work with the Owner Representative and City Engineer/Inspector to make sure all construction is built per Drawings and Specifications & documents in connection with the completion of the Work. City Engineer/Inspector shall recommend approval to Project Manager for all progress payments, final acceptance of work and final payment to the Contractor.

## **ARTICLE 4 – CONTRACT TIMES**

- 4.01 *Notice to Proceed*

- A. Notice to Proceed shall be a written notice given by Owner to Contractor establishing the date on which the Contract Time for the construction of the Project will commence to run, and on which Contractor may begin performance of its contractual obligations.

- 4.02 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.03 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed **within 240 days** after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions. The Work will be completed and ready for final payment in accordance with the Contract Documents within 270 days after the date when the Contract Times commence to run as provided in Paragraph 4.01.

4.04 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.03 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agrees that as liquidated damages for delay (but not as a penalty), Owner shall have the right to withhold from amounts due to Contractor the sum of \$250 for each day that expires after the time specified in Paragraph 4.03 above for Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner. Owner shall also have the right to withhold from amounts due to Contractor the sum of \$250 for each day that expires after the time specified in Paragraph 4.03 above for completion and readiness for final payment until the Work is completed and ready for final payment. In no event shall liquidated damages ever exceed \$250 per day.

**ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the lump sum of the total amount set forth in Budget of the project attached as Exhibit "D".

- A. The Contract Price, including authorized adjustments, shall not exceed five hundred seventy three thousand two hundred and thirty three dollars

and seventy eight cents (\$573,233.78). This is the total amount payable by the Owner to the Contractor for performance of the Work under the Budget of the Project attached as Exhibit "D".

- B. Paragraph 12.01 is deleted in its entirety and replaced with the following:

The Contract Price may only be changed by a Change Order. Any Claim to an adjustment in the Contract Price shall be based on a written notice submitted by the party making the Claim to the other party. Owner and Contractor shall mutually agree upon the amount of the Contract Price Adjustment and any other aspect of a Change Order that changes the Contract Price. The Contract Price, including any Change orders, shall not exceed the amount stated in Section 5.01A without City Council approval.

## **ARTICLE 6 – PAYMENT PROCEDURES**

### *6.01 Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Contract Documents. Applications for Payment will be processed by Owner Representative.

### *6.02 Progress Payments; Retainage*

- A. Owner shall make undisputed progress payments on account of the Contract Price on the basis of Contractor's Application for Payments which have been approved for payment by the Owner Representative, less any amounts Owner withholds in accordance with the terms of the Contract Documents. Undisputed payments which are due and owing to Contractor shall be payable within 30 days after the Application for Payment has been approved by Owner Representative. In accordance with the Prompt Payment Act, Chapter 2251 Government Code, Contractor shall be owed interest in accordance with the Act. All such payments will be measured by the schedule of values approved by Owner Representative.
- B. In addition to the indemnities provided in Paragraph 6.20 of the General Conditions, CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS

COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR

- C. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work as provided in the affidavit required pursuant to Paragraph 14.02.A.2 of the General Conditions.
- D. Owner shall have the right to withhold retainage in the amount of 5% from each payment due to Contractor under this Contract. Retainage which is due to Contractor after final completion of the work shall be paid to Contractor no later than 15 days after the final payment is made to Contractor. Likewise, Contractor shall have the right to retain 5% from each payment due a Subcontractor or Supplier until Owner makes the final payment to Contractor.

6.03 *Substantial Completion*

- A. Paragraph 14.04 of the General Conditions is deleted in its entirety and replaced with the following:

"Contractor will notify Owner Representative when Contractor considers the entire Work complete, as set forth in the Drawings and Specifications. Contractor, Owner and City Engineer/Inspector will conduct a walk through inspection of the entire work for the purpose of producing a punch list of items that are incomplete or defective and must be corrected. Once the Owner Representative, in conjunction with the City Engineer/Inspector, has delivered the written punch list of such items to Contractor, the Work shall be deemed Substantially Complete."

6.04 *Final Inspection and Final Completion*

- A. Paragraph 14.06 is deleted and replaced with the following:

"Contractor will notify Owner Representative when Contractor considers all of the items in the punch list corrected. Contractor and Owner Representative, with City Engineer/Inspector, will conduct an inspection



of the punch list items. Once Owner Representative notifies Contractor in writing that all punch list items have been corrected to meet the requirements of the Drawings and Specifications, the Work shall be deemed to finally completed and accepted by Owner."

6.05 *Final Payment*

- A. Upon final completion and acceptance of the , Owner shall pay the remainder of the Contract Price then due and payable to Contractor, within thirty (30) days of Owner's receipt of the Owner Representative's recommendation for final payment in accordance with the Prompt Payment Act, Chapter 2251 Government Code.
- B. The first sentence of Paragraph 14.07.A.3 is modified to read as follows:  
  
"In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 of the General Conditions, Contractor may furnish an affidavit pursuant to Section 53.085, Texas Property Code."

**ARTICLE 7 – INTEREST**

- 7.01 Undisputed payments not made when due shall accrue interest in accordance with the provisions of Chapter 2251 of the Texas Government Code.

**ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work, including weather conditions, typical for the location of the project.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relation to existing surface or subsurface structures at the Site (except Underground Facilities).

- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; Information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Design Team written notice of all conflicts, errors, ambiguities, or discrepancies that contractor has discovered in the Contract Documents, and the written resolution thereof by Design Team is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform its obligations under the Contract Documents.
- K. Contractor is able to furnish the tools, materials, supplies, equipment and labor required to perform its obligations hereunder and has sufficient experience and competence to do so.
- L. Contractor understands and accepts that this construction contract is funded by grants from Hays County and Texas Parks and Wildlife Department. Contractor agrees to comply with all conditions and

requirements of the grant agreements, and agrees to provide within thirty (30) days from date of written request, at no additional charge, any and all documentation requested by the City as required by Hays County and/or Texas Parks and Wildlife Department to justify and support the work performed and completed including but not limited to cost and quantity of materials, labor costs and compliance with all regulatory requirements. City will provide Contractor with copies of grant requirements and documentation needed at time when Notice to Proceed is issued.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### *9.01 Contents*

- A. The Contract Documents consist of the following:
  - 1. This First Supplement to a Lump Sum Construction Contract.
  - 2. The Vendor Contract
  - 3. Standard General Conditions EJCDC C-700 2007.
  - 4. Specifications as listed on the plan sheets.
  - 5. Drawings consisting of the Drawings listed on attached sheet index.
  - 6. Exhibits to this Agreement (enumerated as follows):
    - a. Exhibit “A” Insurance Requirements,
    - b. Exhibit “B” Prevailing Wage Rate Requirements, and
    - c. Exhibit “C” Priority Water Boundary Project Area.
    - d. Exhibit “D” Budget of the Project.
  - 7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed (Written, pages 1 to 1, inclusive).
    - b. Work Change Directives.
    - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

- C. There are no Contract Documents other than those listed above in this Article 9. The Contract Documents, as defined in Paragraph 9.01.A are expressly incorporated into and made a part of this Contract between the Owner and the Contractor by reference in this Paragraph. The Contract Documents represent the entire and integrated agreement between the Owner and the Contractor and supersede all prior negotiations, representations or agreements, either written or oral.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the general Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### *10.01 Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions.
- B. The definition of Agreement in Paragraph 1.01.A.2 is revised to read as follows: "The Second Supplement to Agreement between Owner and Contractor for a Lump Sum Construction Contract."
- C. The definition of Bid in Paragraph 1.01.A.5 of the General conditions is revised to read as follows: "The offer or proposal submitted to Owner setting forth the lump sum price for the Work to be performed that is attached to the Purchase Orders."
- D. The definition of Field Order in Paragraph 1.01.A.20 of the General Conditions is revised to read as follows: "An order issued by the Owner Representative to make changes to the Work but which does not involve a change in the Contract Price or the Contract Times."

### *10.02 Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Owner's consent must be approved by the Kyle City Council.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intentions of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practices" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Owner's Obligations*

- A. Paragraph 8.01.A of the General Conditions is modified as follows:  
"Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through the Owner Representative."
- B. As of the Effective Date of this Agreement, Owner has notified Contractor in writing of the documentation that Owner needs from Contractor for Owner's compliance with the grants identified in the Recitals of this Agreement.

#### 10.07 *Dispute Resolution*

- A. Paragraph 16.01.A of the General Conditions is modified by deleting the last sentence and modifying the first sentence to read as follows:  
  
"Either Owner or Contractor may request mediation of any Claim."
- B. The first sentence of Paragraph 16.01.C of the General Conditions is modified to read as follows:  
  
"If the Claim is not resolved by mediation, Owner or Contractor:..."

#### 10.08 *Other Provisions*

- 1. Contractor agrees and warrants to Owner that all Work performed under this Contract will be performed in a good and workmanlike manner, in accordance with the designs and specifications, and terms of the Contract Documents, and in compliance with all applicable, Federal, State and local laws and regulations.
- 2. Paragraph 5.01 of the General Conditions is deleted and replaced with the following:  
  
"The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder within fourteen (14) business days of the execution of this Second Supplement to Contract. Bonds may be obtained through the Contractor's usual source, and the cost thereof shall be included in the cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Price. Statutory Payment and Performance Bonds for the performance of the Work and for payment of those who provide labor and materials will be required within 10 days after Contractor executes the Contract. No

Work shall be performed under the Contract until the bonds have been provided and approved by Owner. These bonds shall remain in effect until one year after date when final payment becomes due or until completion and acceptance of the project, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Any provisions in the Contract Documents to the contrary notwithstanding, all bonds must comply with Chapter 2253, Texas Government Code, including the requirement that such bonds must be executed by a corporate surety licensed to do business in the State of Texas in accordance with Article 7.13-1, Texas Insurance Code. Such bonds shall be on forms supplied or approved by Owner. Surety shall be listed as an approved surety by the U.S. Treasury Department. If any surety on any bond becomes insolvent or is unable to perform its obligations thereunder, the Contractor shall immediately furnish other bonds meeting the requirements of this Contract from a different surety or other equivalent security acceptable to Owner to protect the interests of Owner and persons furnishing labor and materials to the Project."

3. Paragraphs 5.03 through 5.09 of the General Conditions are replaced with Exhibit "A" to the Contract. The Contractor is required to maintain and comply with the insurance requirements set out in Exhibit "A" attached hereto and incorporated herein and to require subcontractors to comply with the applicable provision. Notwithstanding any other provision in the Contract Documents, Contractor has no obligation to obtain a Builder's Risk "all risk" policy.
4. The Contractor and each subcontractor who performs Work under this Contract, must comply with the prevailing wage rate requirements set out in Chapter 2258 of the Texas Government Code. The Contractor and each subcontractor must pay not less than the prevailing wage rates described in Exhibit "B" attached hereto and incorporated herein.
5. Any provision of the Contract Documents to the contrary notwithstanding, it is expressly agreed that the extension of the Contract Time shall be Contractor's sole remedy for any delay unless the same shall have been caused by acts constituting interference by the Owner which interfere with Contractor's performance of the Work, and then only to the extent that such acts

continue after Contractor's written notice to Owner of such interference. Owner's exercise of any of its rights or remedies under the Contract shall not under any circumstances be construed as interference with Contractor's performance of the Work.

6. Any notice, communication, request, reply or advice (severally and collectively referred to as "Notice") in this Agreement provided or permitted to be given, made or accepted by either Party to the other must be in writing. Notice may, unless otherwise provided herein, be given or served: (a) by depositing the same in the United States Mail, certified, with return receipt requested, addressed to the Party to be notified and with all charges prepaid; (b) by depositing the same with Federal Express or another service guaranteeing "next day delivery", addressed to the Party to be notified and with all charges prepaid; (c) by delivering the same to such party; or (d) by transmitting the same to the Party to be notified by telecopy or email during normal business hours, provided that receipt for such telecopy is verified by the sender. Except as provided herein, notices hereunder shall be effective on the date of delivery, deposit or transmittal in the manner described hereinabove. Any notice required or permitted to be given under the Contract shall be deemed delivered three days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, correctly addressed to the party at the address set out on the first page of this Agreement. The Design Team shall be copied on any notice sent to Owner.
7. Contractor recognizes and agrees that any substantial modification of the Contract may require the approval of the Kyle City Council. Owner in its sole discretion shall determine whether City Council approval is required in connection with any Change Order.
8. Owner hereby designates Kerry Urbanowicz as Owner Representative.
9. Paragraph 6.01 of the General Conditions is modified by the addition of the following words to the end of the last sentence "except for failure to comply with Paragraph 3.03 of the General Conditions."
10. Paragraph 6.06.G of the General Conditions is hereby modified to read as follows:



“All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate written agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Design Team. In the event the Payment Bond and Performance Bond do not cover a payment claim by a Supplier, then Contractor shall be responsible for paying said Supplier.

11. Paragraph 6.07.B of the General Conditions is deleted in its entirety.
12. Paragraph 10.01.A of the general Conditions is modified to read as follows:
  - A. Owner and Contractor, upon their mutual consent and agreement to the terms, shall execute appropriate Change Orders recommended by Design Team covering:
13. Subparagraph 3 of Paragraph 15.03 of the General Conditions is deleted in its entirety.
14. Paragraph 16.01.C of the General Conditions is modified by substituting the words “within a reasonable time period thereafter” for the words “within that time period.”
15. If no Supplementary Conditions have been prepared by the Design Team, the term “Contract Documents” shall replace the term “Supplementary Conditions” as used in the General Conditions.
16. Any provision of the Contract Documents requiring Owner to indemnify Contractor or any other person is deleted in its entirety.
17. The following provisions are added to the Contract:

Any provisions in the Contract Documents to the contrary notwithstanding, Owner and Contractor each hereby waive any and all rights of recovery, claims, actions or causes of action against the other, its officers, employees, agents, and members of its governing body, for any property damage or personal injury which is insured against by the Contractor or any of Contractor’s subcontractors, to the extent of any proceeds actually received and applied to the payment of such costs or damages.

By signing the agreement or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification code and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. The Contractor's failure to comply with any of these provisions is a breach of Contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

18. In the event of a conflict between the terms of this Agreement and the terms of the General Conditions, the terms of this Agreement shall control. In the event of any conflict between the terms of the Vendor Contract and either this Agreement or the General Conditions, the terms of the Vendor Contract shall control. In no event shall this Contract or any of Contract Documents ever be interpreted so as to have the effect of disqualifying the transaction between Owner and Contractor described in the Budget of the Project attached hereto as Exhibit "D" as being subject to Section 271.101 & 102 Texas Local Government Code.
19. The following provisions of the General Conditions are deleted: Paragraphs 1.01A.8, 1.01.A.36, 1.10.A.49, 1.01.A.51, 2.05, 2.07, 3.04.B.3, 3.06.B, 6.05.C, 6.05.E, 6.13.F, 6.21, 10.05A, 10.05C, 10.05.D, 10.05.E, 10.05.F, 11.01.C, 11.01.D, 11.03, 14.02.B.2-5, 14.03, 14.07.B.1, and all of Article 9.
20. Paragraph 6.09.B is modified by: a) modifying the first sentence to read as follows: "If Contractor performs any Work with actual knowledge or having reason to know that the Work is contrary to Laws or Regulations, Contractor..." and b) adding a new sentence to read as follows: "For purposes of this Paragraph 6.09.B, the phrase "Law or Regulations" does not include any local, state or federal environmental laws."

21. Paragraph 12.03.C of the General Conditions is modified by deleting the word “abnormal.”
22. Notwithstanding any contrary provisions in the Contract, the Owner shall have the right to phase the Work which may decrease the original Contract Price by more than Twenty percent (20%). Contractor acknowledges and agrees Owner may phase the Work and that the Contractor waives its right to consent provided for in Texas Local Government Code Section 252.048, if the cumulative removal of any element(s) of the Work results in a decrease of no more than twenty five percent (25%) of the original Contract Price. Prior to any Change Order that removes any portion of the Work, Owner shall consult with Contractor and Owner shall obtain the approval of the Design Team. Approval by the Design Team shall not be unreasonably withheld and the parties shall execute a Change Order documenting the decrease to the Contract Price, the change in the Work and the change to the Contract Times, if any. Prior to payment of the Final Payment as described in Paragraph 6.03 of the Contract, Owner reserves the right to request the execution of a Change Order to add any of the removed or modified portions of the Work to the Project. This paragraph does not modify any of the Change Order or Claim provision set forth in the Contract Documents.
23. The prevailing Party in any litigation under this Agreement will be entitled to recover from the non-prevailing Party its reasonable attorney’s fees, expenses, expert witness fees, and court costs in connection with any original action, any appeals, and any post-judgment proceedings to collect or enforce a judgment.
24. The Design Team will not have any involvement with the Work once Owner approves the Drawings and Specifications prepared by the Design Team. This exclusion does not include the City Engineer/Inspector per Section 3.01, 6.03 and 6.04. Every provision in the Contract Documents that provides for the Design Team to be involved with the construction of the Project after Owner approves the Drawings and Specifications is hereby modified to delete the term "Design Team" and replace it with the term "Owner Representative." By way of example and not limitation, this paragraph is intended to have the Owner Representative perform the function of the Design Team such as Change Orders and Payment Applications.

*IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.*

Executed to be Effective as of the Date of the Contract.

**OWNER:**  
City of Kyle, Texas

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

Name: \_\_\_\_\_

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

**CONTRACTOR:**  
T. F. Harper & Associates LP  
By: Harper Services, LLC, General Partner of T.F.  
Harper & Associates, LP

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

Thomas F. Harper, Manager of Harper Services,  
LLC, in its capacity as general partner for T.F.  
Harper & Associates, LP

## EXHIBIT "A"

### Insurance Requirements

#### (1) General Requirements

Contractor shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by Owner in the care, custody and control of Contractor prior to and during construction and warranty period.

Contractor must complete and forward the Certificate of Insurance to Owner before the Contract is executed as verification of coverage required below. Contractor shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by Owner. Approval of insurance by Owner shall not relieve or decrease the liability of Contractor hereunder and shall not be construed to be a limitation of liability on the part of Contractor. Contractor must also complete and forward the Certificate of Insurance to Owner whenever a previously identified policy period has expired as verification on continuing coverage.

Contractor's Insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of A or better.

All endorsements naming the Owner as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: Owner, and the address set forth of Owner in the Agreement.

The "other" insurance clause shall not apply to the Owner where the Owner is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both Owner and Contractor, shall be considered primary coverage as applicable.

If insurance policies are not written for amounts specified below, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If excess Liability Insurance is provided, it shall follow the form of the primary coverage.

Owner reserves the right to review the Insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as Contractor. Provided, however, in the event of any such adjustments by Owner, Contractor shall be entitled to a Change Order for any increased costs Contractor incurs as a result of such adjustments.

Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

Contractor shall provide Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable converges indicted within the Contract.

If Owner owned property is being transported or stored off-site by Contractor, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect Owner's property.

The insurance coverage required under this contract are required minimums and are not intended to limit the responsibility or liability of Contractor.

**(2) Business Automobile Liability Insurance.** Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of Owner or such alternate endorsement designations as Owner may hereafter specify:

- (a) Waiver of Subrogation endorsement TE 2046A;
- (b) 30 day Notice of Cancellation endorsement TE 020A; and
- (c) Additional Insured endorsement TE 9901 B.
- (d) Provide converge in the following types and amounts:

*A minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability each accident.*

**(3) Workers' Compensation And Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). Contractor shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance must be presented as evidence of coverage for Contractor. Workers' Compensation Insurance coverage

written by the Texas Workers Compensation Fund is required, unless Owner agrees otherwise in writing, Contractor's policy shall apply to the State of Texas and include these endorsements in favor of Owner.

- (a) Waiver of Subrogation, form WC 420304; and
- (b) 30 days Notice of Cancellation, form WC 420601.
- (c) The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

*\$500,000 bodily injury per accident, \$500,000 bodily injury by disease policy limit and \$500,000 bodily injury by disease each employee.*

**(4) Commercial General Liability Insurance.** The Policy shall contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.
- (b) Completed Operations/Products Liability for the duration of the warranty period.
- (c) Explosion, Collapse and Underground (X, C & U) coverage.
- (d) Independent Contractors coverage.
- (e) Aggregate limits of insurance per project, endorsement CG 2503.
- (f) Owner listed as additional insured, endorsement CG 2010.
- (g) 30 day notice of cancellation in favor of Owner, endorsement CG 0205.
- (h) Waiver of Transfer of Recovery Against Others in favor of Owner, endorsement CG 2404.
- (i) Provide coverage categories A & B with minimum limits as follows: A combined bodily injury and property damage limit of \$2,000,000 per occurrence.

**Subcontractor Insurance Requirements:**

- (1)** Unless waived by Owner, the following forms of insurance are the minimum coverage requirements are to be furnished by all Subcontractors, and deductibles shall not exceed ten thousand dollars (\$10,000). The Contractor has the option to require higher limits of liability from designated Subcontractors in the form of primary or excess liability coverage.
  - (a) Workers' compensation insurance to cover full liability under Workers' Compensation Laws of the State of Texas with employer's liability

coverage in limit not less than Five Hundred Thousand Dollars (\$500,000.00).

- (b) Commercial general liability insurance coverage shall be on an “occurrence” basis and shall insure the Subcontractor against claims related to Work performed under the Subcontract for bodily injury, including death of any person other than the Trade Contractor’s employees, and property damage for injury to or destruction of tangible property, other than the Work itself. The policy shall contain the personal injury and broad form property damage endorsements modified as set forth below, and the policy exclusions pertaining to loss by explosion, collapse or underground damage. Owner and Contractor are to be named as additional insured. The policy shall include the following Overages and limits:
  - (i) Completed operations liability
  - (ii) Contractual liability insuring the indemnification agreement contained in the Trade Contract
  - (iii) Personal injury liability with employee’s exclusion deleted
  - (iv) Broad form property damage extended to apply to completed operations
  - (v) Automobile liability insuring Trade Contractor for operations of all owned, hired and non-owned vehicles
  - (vi) Limits of liability shall not be less than:
    - (a) Bodily injury, except automobile:
      - (I) \$1,000,000 each occurrence
      - (II) \$1,000,000 aggregate
    - (b) Property Damage, except automobile
      - (I) \$1,000,000 each occurrence
      - (II) \$1,000,000 aggregate
    - (c) Bodily injury: Automobile
      - (I) \$1,000,000 each person
      - (II) \$1,000,000 each occurrence
    - (d) Property damage: Automobile
      - (I) \$500,000 each occurrence



(e) Umbrella excess liability \$1,000,000

- (2) All policies are to be written through a company duly authorized to transact that class of insurance in the State of Texas, with an A.M. Best Rating of B+VII or better.
- (3) Any of such insurance policies may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.
- (4) Contractor's Subcontracts shall provide for reasonable indemnification of the Owner and the Architect for adequate insurance coverage, and contain such other clauses as may be required to fully protect Owner and Contractor's interests.

## **EXHIBIT “B”**

### **Prevailing Wage Rates**

#### **GENERAL SUMMARY**

In the execution of the Contract for this project, the Contractor must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code.

The Contractor and each Subcontractor who performs Work under this Contract must pay not less than the rates described herein to a worker employed by it in the execution of the Work.

A Contractor or Subcontractor who violates these provisions shall pay to Owner \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated herein.

The Contractor and each Subcontractor shall keep a record showing:

- (1) The name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the public work; and
- (2) The actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by officers and agents of Owner.

In the event of a complaint of breach of these requirements by Contractor or a Subcontractor, Owner shall have the right to make a determination as provided by law, and to retain any amount due under the contract pending a final determination of the violation.

#### **DEFINITIONS**

**Base Per Diem Wage Rates:** Except for work on legal holidays, the “general prevailing rate of per diem wage” for the various crafts, type of workers, or mechanics is the product of (a) number of hours worked per day, except for overtime hours, times (b) respective Rate Per Hour.

**Multipliers for Overtime Rates:** Over 40 hours per week: The “general prevailing rate for overtime work” for the crafts, type of workers, or mechanics is one and one-half times the respective Rate Per Hour.

**Multipliers for Holiday Rates:** For legal holidays, the “general prevailing rate of per diem wage” for the various crafts, type of workers, or mechanics is the product of (a) one and one-half times the respective Rate Per Hour times (b) the number of hours worked on the legal holiday.

EXHIBIT "C"

Priority Water Boundary Project Area

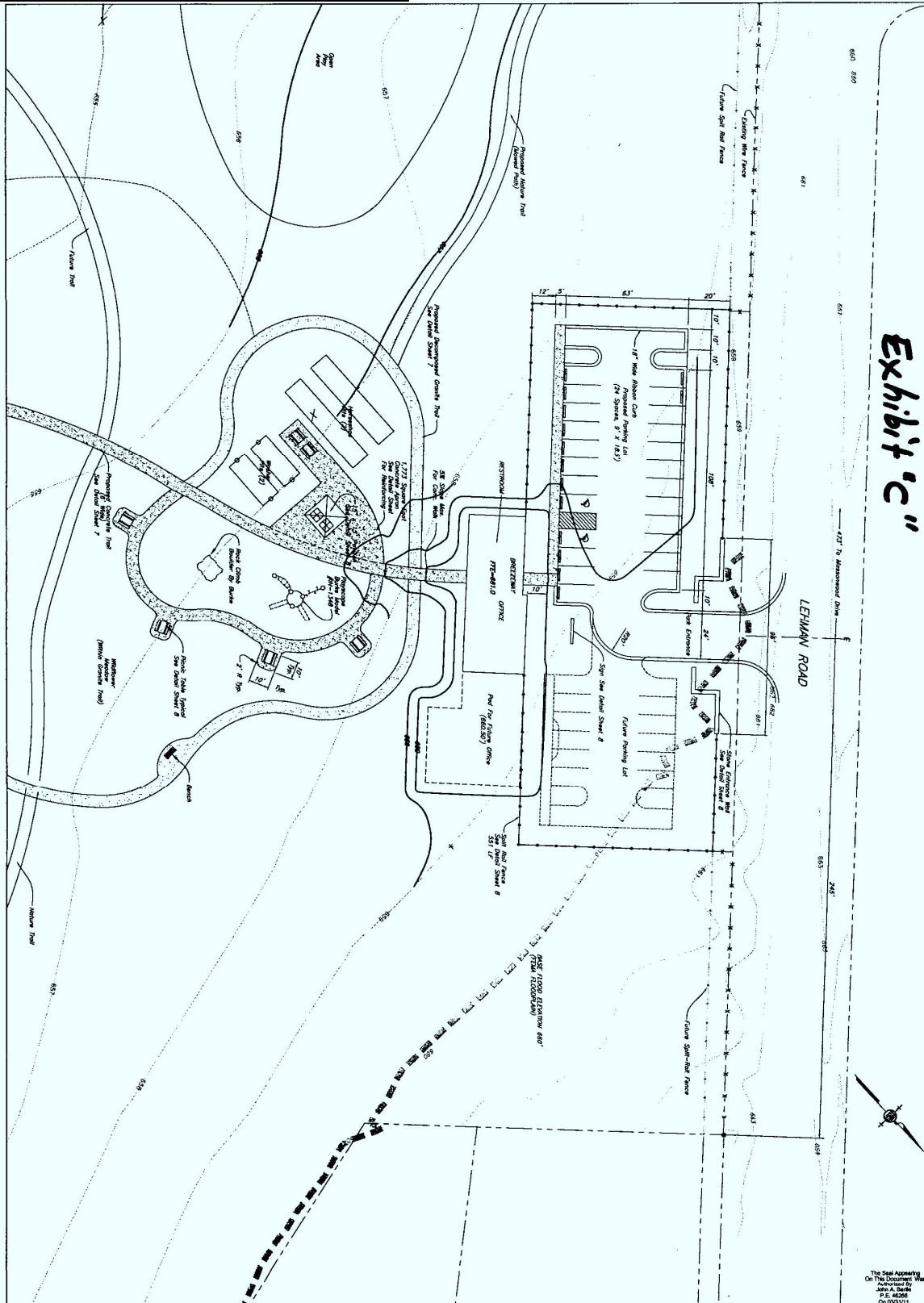


Exhibit "C"

The Seal Appearing  
On This Document Was  
Submitted To  
John A. Smith  
P.E. 46268  
On 08/25/11

<p>5.8 1190-480</p>	<p>CITY OF KYLE HAYS COUNTY, TEXAS</p>	<p>LAKE KYLE PARK SITE DEVELOPMENT PLAN</p>	<p>PARK ENTRANCE PLAN</p>				<p><b>NWA</b> 1999 Firm # P-88 Neytina-Wilkinson Associates, Inc. consulting engineers 4010 Monahan Road Austin, Texas 78704 (512) 482-3373</p>						
			<table border="1"> <tr> <td>Designer</td> <td>Checker</td> <td>Drawn By</td> <td>Reviewed By</td> <td>Scale</td> <td>Date</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>	Designer	Checker	Drawn By			Reviewed By	Scale	Date		
Designer	Checker	Drawn By	Reviewed By	Scale	Date								

EXHIBIT "D"

**Budget of the Project:**

This Contract Amendment No. 1 will add \$527,649.41 to the original contract award of \$763,521.85 with T.F. HARPER & ASSOCIATES, LP for the construction of all improvements included in the specifications for the Lake Kyle Project. Contract Amendment No. 1 will increase the total contract award (cumulative) to T.F. HARPER & ASSOCIATES, LP by \$527,649.41 for a total amended contract amount not to exceed \$1,291,171.26.

The total construction budget for the completion of Lake Kyle Project improvements is \$573,233.78 of which \$45,584.37 is available in the original construction contract with T.F. HARPER AND ASSOCIATES, LP, therefore requiring a net increase in contract award of \$527,649.41 to pay for the cost of all Lake Kyle Project improvements. The total budget authorization for the Lake Kyle Project improvements is comprised of the following:

Unexpended Contract Balance:	\$ 45,584.37
Contract Amendment No. 1:	<u>\$527,649.41</u>
Total Authorization for Lake Kyle:	<u>\$573,233.78</u>

In addition to increasing the amount of total contract award to T.F. HARPER AND ASSOCIATES, LP, this Contract Amendment No. 1 will also amend certain provisions of the Standard General Conditions of the Construction Contract dated October 1, 2010 as accepted by the City.

This City Council action will also authorize the reallocation of project budgets previously approved by City Council for total project costs and related grant funding for the three City park improvement projects to reflect as shown below under budget information.

This Contract Amendment No. 1 to the construction contract with T.F. HARPER AND ASSOCIATES, LP will increase the total contract award by \$527,649.41 for a total amended contract amount (cumulative) not to exceed \$1,291,171.26.

The source of funds for Contract Amendment No. 1 in the amount of \$527,649.41 is provided from two different grants as follows:

Hays County Parks Grant:	\$380,170.63
Texas Parks & Wildlife Dept.	<u>\$147,478.78</u>
Total Contract Amendment:	<u>\$527,649.41</u>

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. *Application for Payment*—The form acceptable to Design Team which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Design Team which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

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11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Design Team's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Design Team which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Design Team*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Design Team which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

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23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

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36. *Resident Project Representative*—The authorized representative of Design Team who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Design Team, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish

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materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Design Team ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
  1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Design Team. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Design Team as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Design Team any duty or authority to supervise or direct the performance of the Work, or any duty or authority to

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undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents; or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. has been damaged prior to Design Team's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.



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## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### 2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### 2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

### 2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Design Team for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  - 2. a preliminary Schedule of Submittals; and

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3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Design Team, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Design Team, and others as appropriate will be held to review for acceptability to Design Team as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Design Team.
  1. The Progress Schedule will be acceptable to Design Team if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Design Team responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to Design Team if it provides a workable arrangement for reviewing and processing the required submittals.
  3. Contractor's Schedule of Values will be acceptable to Design Team as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.



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## ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Design Team as provided in Article 9.

### 3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
  - 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Design Team, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Design Team, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*
  - 1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Design Team any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual

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knowledge of, and shall obtain a written interpretation or clarification from Design Team before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Design Team in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Design Team for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  1. A Field Order;
  2. Design Team's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
  3. Design Team's written interpretation or clarification.

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### 3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Design Team or its consultants, including electronic media editions; or
  2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Design Team and specific written verification or adaptation by Design Team.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Design Team to Contractor, or by Contractor to Owner or Design Team, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### 4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on

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the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

- 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Design Team, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

- 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
- 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

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1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Design Team in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Design Team's Review:* After receipt of written notice as required by Paragraph 4.03.A, Design Team will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Design Team's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or



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c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Design Team, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all such information and data;
  - b. locating all Underground Facilities shown or indicated in the Contract Documents;
  - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the

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existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Design Team's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Design Team whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Design Team, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

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3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
  - D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Design Team (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Design Team concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Design Team, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
  - E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
  - F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
  - G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Design Team, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and



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other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Design Team, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the

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Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Design Team and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

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1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
    - b. by any other person for any other reason;
  5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Design Team, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
  2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
  3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
  4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

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5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
  - a. Such insurance shall remain in effect for two years after final payment.
  - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. include the interests of Owner, Contractor, Subcontractors, and Design Team, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that

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such materials and equipment have been included in an Application for Payment recommended by Design Team;

5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Design Team with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Design Team, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Design Team, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered



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thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Design Team, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

#### 5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

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- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

**ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES**

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of

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Owner or Design Team in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Design Team except under extraordinary circumstances.

#### 6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Design Team.

#### 6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Design Team, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Design Team for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result



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in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Design Team for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Design Team's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Design Team as an "or-equal" item, in which case review and approval of the proposed item may, in Design Team's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Design Team determines that:
  - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
  - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
  - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

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- a. If in Design Team's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Design Team to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Design Team from anyone other than Contractor.
- c. The requirements for review by Design Team will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Design Team may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Design Team for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use as that specified;
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
  - 3) will identify:
    - a) all variations of the proposed substitute item from that specified, and
    - b) available engineering, sales, maintenance, repair, and replacement services; and

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- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Design Team. Contractor shall submit sufficient information to allow Design Team, in Design Team's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Design Team will be similar to those provided in Paragraph 6.05.A.2.
- C. *Design Team's Evaluation:* Design Team will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Design Team may require Contractor to furnish additional data about the proposed substitute item. Design Team will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Design Team's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Design Team will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Design Team's Cost Reimbursement:* Design Team will record Design Team's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Design Team approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Design Team for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Design Team for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for

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acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Design Team to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Design Team for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Design Team and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Design Team to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Design Team through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Design Team. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Design Team, and all other

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individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Design Team, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Design Team, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the



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Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Design Team shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by

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negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Design Team, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Design Team, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
  - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents. All cleaning products shall be aquifer friendly and approved by Landscape Architect or City.
  - D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Design Team for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Design Team for Owner.

#### 6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

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1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Design Team of the specific requirements of Contractor's safety program with which Owner's and Design Team's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Design Team or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Damage incurred to existing trees as referred to in Paragraph 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall result in the assessment of liquidated damages at a rate of \$1000/caliper inch of tree damaged. These liquidated damages are applicable to any and all trees indicated to remain in place by the Contract Documents. No trees shall be removed unless indicated as such in the Contract Documents or without the prior approval of the Project Landscape Architect.
- G. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Design Team has issued a



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notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Design Team prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Design Team determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Design Team for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Design Team may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Design Team the services, materials, and equipment Contractor proposes to provide and to enable Design Team to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.

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- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Design Team may require to enable Design Team to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Design Team's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Submittal Procedures:*
  1. Before submitting each Shop Drawing or Sample, Contractor shall have:
    - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
    - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
    - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
  2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
  3. With each submittal, Contractor shall give Design Team specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Design Team for review and approval of each such variation.
- D. *Design Team's Review:*
  1. Design Team will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Design Team. Design Team's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design

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concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Design Team's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Design Team's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Design Team has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Design Team's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Design Team and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Design Team on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Design Team and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.

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- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Design Team;
  2. recommendation by Design Team or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Design Team or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Design Team;
  6. any inspection, test, or approval by others; or
  7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Design Team, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Design Team or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Design Team and Design Team's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Design Team will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Design Team.
- C. Owner and Design Team shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Design Team have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Design Team's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Design Team's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.



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## ARTICLE 7 – OTHER WORK AT THE SITE

### 7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
  2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Design Team and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Design Team in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### 7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

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2. the specific matters to be covered by such authority and responsibility will be itemized; and
  3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

**ARTICLE 8 – OWNER'S RESPONSIBILITIES**

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Design Team.

8.02 *Replacement of Design Team*

- A. In case of termination of the employment of Design Team, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Design Team.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and

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4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.



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## ARTICLE 9 – DESIGN TEAM’S STATUS DURING CONSTRUCTION

### 9.01 *Owner’s Representative*

- A. Design Team will be Owner’s representative during the construction period. The duties and responsibilities and the limitations of authority of Design Team as Owner’s representative during construction are set forth in the Contract Documents.

### 9.02 *Visits to Site*

- A. Design Team will make visits to the Site at intervals appropriate to the various stages of construction as Design Team deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Design Team, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Design Team will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Design Team’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Design Team will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Design Team’s visits and observations are subject to all the limitations on Design Team’s authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Design Team’s visits or observations of Contractor’s Work, Design Team will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 9.03 *Project Representative*

- A. If Owner and Design Team agree, Design Team will furnish a Resident Project Representative to assist Design Team in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Design Team’s consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### 9.04 *Authorized Variations in Work*

- A. Design Team may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the

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Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Design Team will have authority to reject Work which Design Team believes to be defective, or that Design Team believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Design Team will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Design Team's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Design Team's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Design Team's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Design Team's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work (not applicable to this contract).*

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Design Team will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Design Team in writing within 30 days of the event giving rise to the question.
- B. Design Team will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made

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under Paragraph 10.05. The date of Design Team's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

- C. Design Team's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Design Team will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Design Team's Authority and Responsibilities*

- A. Neither Design Team's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Design Team in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Design Team shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Design Team to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Design Team will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Design Team will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Design Team will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Design Team's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Design Team's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Design Team has been informed pursuant to Paragraph 6.13.D.

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## ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

### 10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

### 10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

### 10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Design Team covering:
  - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
  - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Design Team pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

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#### 10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

#### 10.05 *Claims*

- A. *Design Team's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Design Team for decision. A decision by Design Team shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Design Team and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Design Team and the other party to the Contract within 60 days after the start of such event (unless Design Team allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Design Team and the claimant within 30 days after receipt of the claimant's last submittal (unless Design Team allows additional time).
- C. *Design Team's Action:* Design Team will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
  2. approve the Claim; or
  3. notify the parties that the Design Team is unable to resolve the Claim if, in the Design Team's sole discretion, it would be inappropriate for the Design Team to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Design Team does not take action on a Claim within said 30 days, the Claim shall be deemed denied.



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- E. Design Team's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### *11.01 Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
  - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
  - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  - 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to

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Owner, who will then determine, with the advice of Design Team, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Design Team, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.





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### 11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Design Team.
- B. *Cash Allowances:*
1. Contractor agrees that:
    - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
    - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Design Team to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### 11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Design Team subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

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1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect to any other item of Work; and
3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

### 12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Design Team and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
  1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

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- b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Design Team and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Design Team, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times,

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or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Design Team, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### *13.01 Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Design Team has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### *13.02 Access to Work*

- A. Owner, Design Team, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### *13.03 Tests and Inspections*

- A. Contractor shall give Design Team timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

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- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Design Team the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Design Team's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Design Team.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Design Team, Contractor shall, if requested by Design Team, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Design Team timely notice of Contractor's intention to cover the same and Design Team has not acted with reasonable promptness in response to such notice.

#### 13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Design Team, it must, if requested by Design Team, be uncovered for Design Team's observation and replaced at Contractor's expense.
- B. If Design Team considers it necessary or advisable that covered Work be observed by Design Team or inspected or tested by others, Contractor, at Design Team's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Design Team may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers,



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architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Design Team, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as

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contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
  2. correct such defective Work; or
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Design Team's recommendation of final payment, Design Team) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Design Team as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Design Team's recommendation

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of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

*13.09 Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Design Team to correct defective Work, or to remove and replace rejected Work as required by Design Team in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Design Team and Design Team's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.



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## ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Design Team. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payments*

#### A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Design Team for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### B. *Review of Applications:*

1. Design Team will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Design Team's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

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2. Design Team's recommendation of any payment requested in an Application for Payment will constitute a representation by Design Team to Owner, based on Design Team's observations of the executed Work as an experienced and qualified design professional, and on Design Team's review of the Application for Payment and the accompanying data and schedules, that to the best of Design Team's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Design Team's responsibility to observe the Work.
3. By recommending any such payment Design Team will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Design Team in the Contract Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Design Team's review of Contractor's Work for the purposes of recommending payments nor Design Team's recommendation of any payment, including final payment, will impose responsibility on Design Team:
  - a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

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- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Design Team may refuse to recommend the whole or any part of any payment if, in Design Team's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Design Team may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Design Team's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
  - d. Design Team has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Design Team's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*D. Reduction in Payment:*

- 1. Owner may refuse to make payment of the full amount recommended by Design Team because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

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2. If Owner refuses to make payment of the full amount recommended by Design Team, Owner will give Contractor immediate written notice (with a copy to Design Team) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

#### 14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Design Team in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Design Team issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Design Team shall make an inspection of the Work to determine the status of completion. If Design Team does not consider the Work substantially complete, Design Team will notify Contractor in writing giving the reasons therefor.
- C. If Design Team considers the Work substantially complete, Design Team will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Design Team as to any provisions of the certificate or attached list. If, after considering such objections, Design Team concludes that the Work is not substantially complete, Design Team will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Design Team considers the Work substantially complete, Design Team will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Design Team believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Design Team will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities,

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insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Design Team in writing prior to Design Team's issuing the definitive certificate of Substantial Completion, Design Team's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Design Team, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Design Team will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
  2. Contractor at any time may notify Owner and Design Team in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Design Team to issue a certificate of Substantial Completion for that part of the Work.
  3. Within a reasonable time after either such request, Owner, Contractor, and Design Team shall make an inspection of that part of the Work to determine its status of completion. If Design Team does not consider that part of the Work to be substantially complete, Design Team will notify Owner and Contractor in writing giving the reasons therefor. If Design Team considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Design Team will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.



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#### 14.07 *Final Payment*

##### A. *Application for Payment:*

1. After Contractor has, in the opinion of Design Team, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### B. *Design Team's Review of Application and Acceptance:*

1. If, on the basis of Design Team's observation of the Work during construction and final inspection, and Design Team's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Design Team is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Design Team will, within ten days after receipt of the final Application for Payment, indicate in writing Design Team's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Design Team will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Design Team will return the Application for Payment

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to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

*C. Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Design Team, less any sum Owner is entitled to set off against Design Team's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

*14.08 Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Design Team so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Design Team, 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 to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Design Team with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

*14.09 Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
  1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
  2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

**ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

*15.01 Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Design Team which will fix the date on which Work will be resumed. Contractor shall



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resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Design Team; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Design Team as to their reasonableness and, when so approved by Design Team, incorporated in a Change Order. When exercising any rights or remedies

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under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

#### 15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Design Team, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
  - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Design Team fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined

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to be due, then Contractor may, upon seven days written notice to Owner and Design Team, and provided Owner or Design Team do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Design Team has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Design Team, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

## ARTICLE 16 – DISPUTE RESOLUTION

### 16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Design Team for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Design Team's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

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## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### 17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### 17.05 *Controlling Law*

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

### 17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.



# CITY OF KYLE, TEXAS

## Ordinance for Adoption of Annual Budget for FY 2011-12

Meeting Date: 9/13/2011

Date time: 7:00 PM

**Subject/Recommendation:**

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS ADOPTING A \$37.1 MILLION BUDGET FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2011 AND ENDING SEPTEMBER 30, 2012; APPROPRIATING THE VARIOUS AMOUNTS THEREOF, INCLUDING WATER AND WASTEWATER RATE INCREASES, IMPLEMENTATION OF NEW CITY FEES, OTHER FEE INCREASES AS SPECIFIED IN THE FEE SCHEDULE, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE ~ *Perwez Moheet, CPA, Director of Finance*

**Other Information:**

The Fiscal Year 2011-12 Annual Budget is a financial plan for all City funds, programs, services, operations, and activities for the period covering October 1, 2011 through September 30, 2012. The City's Fiscal Year 2011-12 Annual Budget requires raising more revenue from property taxes than in the previous year. The City's Annual Budget also requires raising more revenue from fees and charges and water and wastewater rates than in the previous year. The Fiscal Year 2011-12 Annual Budget for all City expenditures totals approximately \$37.1 million from all City funds; which includes approximately \$12.3 million for the City's General Fund expenditures.

During the month of August 2011, the City Council held six (6) special called public meetings to review revenue estimates for the City's General Fund and the Water and wastewater Utility Fund, line item expenditure budgets for all City departments, revenue, expenditures and fund balances for all City Funds, miscellaneous fee schedule, implementation of new fees, rate increases for water and wastewater services, and property tax increases.


By September 13, 2011, the scheduled date of the 2nd Reading of the Budget Adoption Ordinance, the City Council will have held a total of twenty eight (28) public hearings to obtain comments and recommendations from Kyle citizens, residents, businesses, and other interested persons on the City's annual budget, property tax rate increases, implementation of new City fees, miscellaneous City fee increases, and increases to the water and wastewater service rates. All Public Hearings were conducted and will continue to be conducted in open meetings as part of special called and regular meetings of the Kyle City Council on the City's proposed Fiscal Year 2011-12 Annual Budget, Property Tax Rates, Fees & Charges, and Water/Wastewater Rates at the Kyle City Hall, 100 West Center Street, Kyle, Texas.

**Budget Information:**

The City's Annual Budget as reviewed and amended by the City Council for Fiscal Year 2011-12 totals approximately \$37.1 million in expenditures for all City funds. Please refer to the budget document for more details.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

 [Ordinance for Adoption of Annual Budget FY 2012](#)

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS ADOPTING A \$37.1 MILLION BUDGET FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2011 AND ENDING SEPTEMBER 30, 2012; APPROPRIATING THE VARIOUS AMOUNTS THEREOF, INCLUDING WATER AND WASTEWATER RATE INCREASES, IMPLEMENTATION OF NEW CITY FEES, OTHER FEE INCREASES AS SPECIFIED IN THE FEE SCHEDULE, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE**

**Whereas**, the City Manager of the City of Kyle, Texas has submitted to the Mayor and City Council on August 1, 2011 a proposed Operating Budget for the revenue and expenditures, water and wastewater rates, implementation of new City fees, and other fees and charges included in the Fee Schedule for conducting the affairs of the City thereof and providing a complete financial plan for Fiscal Year 2011-12 in compliance with the Kyle City Charter; and which said proposed budget has been compiled from detailed information obtained from all departments and offices of the City; and,

**Whereas**, the Mayor and City Council received the City Manager's proposed budget and conducted public hearings on the budget, a copy of which with all supporting materials has been filed with the City Secretary, all in compliance with state law and the Kyle City Charter; and,

**Whereas**, during the month of August 2011, the City Council held six (6) special called public meetings to review revenue estimates for the City's General Fund and the Water and Wastewater Utility Fund, line item expenditure budgets for all City departments, revenue, expenditures and fund balances for all City Funds, miscellaneous fee schedule, implementation of new City fees, rate increases for water and wastewater services, and property tax increases.

**Whereas**, the Mayor and City Council have reviewed the Fiscal Year 2011-12 Operating Budget including line item expenditure budgets of all City departments, water and wastewater rate increases, implementation of new City fees, and other fee increases as specified in the Fee Schedule and, having considered any and all appropriate amendments, now deem this document to be the appropriate financial plan for the City of Kyle in the ensuing fiscal year.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:**

**Section 1. Findings.** The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2. Public Hearings.** By September 13, 2011, the scheduled date of the 2<sup>nd</sup> Reading of the Budget Adoption Ordinance, the City Council will have held a total of twenty eight (28)



public hearings to obtain comments and recommendations from Kyle citizens, residents, businesses, and other interested persons on the City's annual budget, property tax rate increases, implementation of new City fees, miscellaneous City fee increases, and increases to the water and wastewater service rates.

**Section 3. Budget Adoption.** The Annual Budget of the City of Kyle including revenue and expenditures, water and wastewater rates, and other fees and charges listed in the Fee Schedule for conducting the affairs of the City thereof and providing a complete financial plan for Fiscal Year 2011-12 beginning October 1, 2011 and ending September 30, 2012, a copy of which is attached hereto as "Exhibit A", be and the same is in all things adopted and approved as the fund budget for all expenditures/expenses as well as fixed charges against the City for the fiscal year beginning October 1, 2011 and ending September 30, 2012.

**Section 4. Approval of Expenditures by Fund.** The sums included within the budget as described herein are hereby appropriated from the respective funds for the payment of expenditures on behalf of the City of Kyle as established in the approved budget for the fiscal year beginning October 1, 2011 and ending September 30, 2012.

**Section 5. Conflict.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

**Section 6. Open Meetings.** That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Ch. 551, Texas Local Government Code.

**Section 7. Effective Date.** This Ordinance shall be in full force and effect from and after the date of its final passage and adoption in accordance with the provisions of applicable state law and the City Charter.

**PASSED AND APPROVED on First Reading this \_\_\_\_ day of September, 2011.**

**FINALLY PASSED AND APPROVED on this \_\_\_\_ day of September, 2011.**

**ATTEST:**

**CITY OF KYLE, TEXAS**

\_\_\_\_\_  
Amelia Sanchez, City Secretary

\_\_\_\_\_  
Lucy Johnson, Mayor



# CITY OF KYLE, TEXAS

## Ordinance for Adoption of Property Tax Rates for FY 2011-12

Meeting Date: 9/13/2011  
Date time: 7:00 PM

**Subject/Recommendation:**

*(Second Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS LEVYING AD VALOREM TAXES FOR USE AND SUPPORT OF THE MUNICIPAL GOVERNMENT OF THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2011 AND TERMINATING SEPTEMBER 30, 2012; PROVIDING FOR APPORTIONING EACH LEVY FOR SPECIFIC PURPOSES; AND PROVIDING WHEN TAXES SHALL BECOME DUE AND WHEN SAME SHALL BECOME DELINQUENT IF NOT PAID ~ *Perwez Moheet, CPA, Director of Finance*

**Other Information:**

The Fiscal Year 2011-12 Annual Budget is a financial plan for all City funds, programs, services, operations, and activities for the period covering October 1, 2011 through September 30, 2012. The City's Fiscal Year 2011-12 Annual Budget requires raising more revenue from property taxes than in the previous year. The City's Annual Budget also requires raising more revenue from fees and charges and water and wastewater rates than in the previous year. The Fiscal Year 2011-12 Annual Budget for all City expenditures totals approximately \$37.1 million from all City funds; which includes approximately \$12.3 million for the City's General Fund expenditures.

The City Council is considering the adoption of property tax rates which includes a component for Maintenance and Operations (use and support) of the municipal government of the City of Kyle and a component for Interest and Sinking Fund (debt service) for the Fiscal Year 2011-12, upon all property, real, personal and mixed, within the corporate limits of the City of Kyle, Texas on January 1, 2011. The total property tax rate being considered is \$0.4845 on each \$100.00 valuation of property and the breakdown between the two tax components are as follows:

1. \$0.2361 on each \$100.00 valuation of property for the Maintenance and Operation support of the general government (General Fund) and,
2. \$0.2484 on each \$100.00 valuation of property for the Interest and Sinking Fund (Debt Service).
3. The total tax rate of \$0.4845 is 15.53 percent above the effective tax rate.

During the month of August 2011, the City Council held six (6) special called public meetings to review revenue estimates for the City's General Fund and the Water and wastewater Utility Fund, line item expenditure budgets for all City departments, revenue, expenditures and fund balances for all City Funds, miscellaneous fee schedule, implementation of new fees, rate increases for water and wastewater services, and property tax increases.

By September 13, 2011, the scheduled date of the 2nd Reading of the Budget Adoption Ordinance, the City Council will have held a total of twenty eight (28) public hearings to obtain comments and recommendations from Kyle citizens, residents, businesses, and other interested persons on the City's annual budget, property tax rate increases, implementation of new City fees, miscellaneous City fee increases, and increases to the water and wastewater service rates.

Of the twenty eight (28) public hearings, seven (7) public hearings specifically to

Cover Memo

obtain comments and recommendations from Kyle citizens, residents, businesses, and other interested persons on the City's property tax rates. In compliance with the Truth-in-Taxation requirements, all public notices were published in the Hays Free Press and the two required public hearings on tax increase were held on August 17, 2011 and August 17, 2011.

All Public Hearings were conducted and will continue to be conducted in open meetings as part of special called and regular meetings of the Kyle City Council on the City's proposed Fiscal Year 2011-12 Annual Budget, Property Tax Rates, Fees & Charges, and Water/Wastewater Rates at the Kyle City Hall, 100 West Center Street, Kyle, Texas.

**Budget Information:**

The City's Annual Budget as reviewed and amended by the City Council for Fiscal Year 2011-12 totals approximately \$37.1 million in expenditures for all City funds. Please refer to the budget document for more details.

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 [Ordinance for Adoption of Property Tax Rates FY 2012](#)

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS  
LEVYING AD VALOREM TAXES FOR USE AND  
SUPPORT OF THE MUNICIPAL GOVERNMENT OF THE  
CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1,  
2011 AND TERMINATING SEPTEMBER 30, 2012;  
PROVIDING FOR APPORTIONING EACH LEVY FOR  
SPECIFIC PURPOSES; AND PROVIDING WHEN TAXES  
SHALL BECOME DUE AND WHEN SAME SHALL  
BECOME DELINQUENT IF NOT PAID.**

**Whereas**, the City Council of the City of Kyle, Texas approved the municipal budget for the fiscal year beginning October 1, 2011 and ending September 30, 2012; and

**Whereas**, it is necessary that an Ordinance be passed levying an ad valorem tax on all property, both real and personal, within the corporate limits of the City of Kyle, Texas in accordance with such budget and the Texas Tax Code.

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

**Section 1.** There is hereby levied and there shall be collected for the Maintenance and Operations (use and support) of the municipal government of the City of Kyle (herein the "City") and to provide an Interest and Sinking Fund for the Fiscal Year 2011-12 , upon all property, real, personal and mixed, within the corporate limits of said City on January 1, 2011 subject to taxation, a tax of **\$0.4845 on each \$100.00 valuation of property**, said tax being so levied and apportioned to the specific purposes here set forth:

1. For the Maintenance and Operation support of the general government (General Fund), **\$0.2361** on each \$100.00 valuation of property; and
2. For the Interest and Sinking Fund, **\$0.2484** on each \$100.00 valuation of property.
3. The total tax rate of **\$0.4845** is 15.53 percent above the effective tax rate.
4. THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE.  
(Required Statement Per 2011 Truth-in-Taxation Guide, Ch. 1 Pg. 7)
5. FOR EXAMPLE, THIS TOTAL TAX RATE OF **\$0.4845** PER \$100.00 OF ASSESSED VALUATION WILL INCREASE CITY PROPERTY TAX ON A \$100,000 HOME BY \$65.14 AS COMPARED TO THE

EFFECTIVE TAX RATE OF \$0.419363 PER \$100.00 OF ASSESSED  
VALUATION. (Required Statement Per 2011 Truth-in-Taxation Guide, Ch. 1 Pg. 7)

**Section 2.** That taxes levied under this Ordinance shall be due October 1, 2011 and if not paid on or before January 31, 2012 shall immediately become delinquent.

**Section 3.** All taxes shall become a lien upon the property against which assessed, and the Hays County Tax Office as the assessor and collector of the City is hereby authorized and empowered to enforce the collection of such taxes according to the Constitution and laws of the state of Texas and ordinances of the City, and shall, by virtue of the tax rolls, fix and establish a lien by levying upon such property, whether real or personal, for the payment of said taxes, penalty and interest, and the interest and penalty collected from such delinquent taxes shall be apportioned to the general fund of the City. All delinquent taxes shall bear interest from date of delinquency at the rate as prescribed by state law.

**Section 4. Public Hearings.** By September 13, 2011, the scheduled date of the 2<sup>nd</sup> Reading of the Property Tax Rate Adoption Ordinance, the City Council will have held a total of seven (7) public hearings to obtain comments and recommendations from Kyle citizens, residents, businesses, and other interested persons specifically on the City's property tax rates. In compliance with Truth-in-Taxation requirements, all public notices were published in the Hays Free Press and the two required public hearings on tax increase were held on August 17, 2011 and August 17, 2011.

**Section 4. Effective Date.** This Ordinance shall take effect immediately from and after its passage.

**Section 5. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

**PASSED AND APPROVED** on 1st reading this \_\_\_\_ day of September, 2011.

**PASSED AND FINALLY APPROVED** on 2nd reading on this \_\_\_\_ day of September, 2011.

**ATTEST:**

**CITY OF KYLE, TEXAS**

\_\_\_\_\_  
Amelia Sanchez, City Secretary

\_\_\_\_\_  
Lucy Johnson, Mayor



# CITY OF KYLE, TEXAS

## South Side Sewer Line

**Meeting Date: 9/13/2011**

**Date time: 7:00 PM**

**Subject/Recommendation:**

General Discussion and Possible Action in regards to Determining a Preferred Route for the South Side Sewer Line project and determining other associated projects ~  
*James Earp, Assistant City Manager*

**Other Information:**

**Budget Information:**

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