

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 3/20/2012, at Kyle City Hall, 100 West Center Street, Kyle, Texas for the purpose of discussing the following agenda.

Posted this 15th day of March, 2012 prior to 7:00 p.m.

I. Call Meeting To Order

II. Approval of Minutes

1. City Council Regular Meeting - March 6, 2012 ~ *Amelia Sanchez, City Secretary*

 [Attachments](#)

III. 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.

IV. Proclamations

2. Proclamation of the City of Kyle, Texas Proclaiming Monday, April 2, 2012 as Autism Awareness Day and April as Autism Awareness Month in the City of Kyle, Texas ~ *Lucy Johnson, Mayor*

 [Attachments](#)

3. Proclamation of the City of Kyle, Texas Designating the Month of March as "Women's History Month" in the City of Kyle, Texas ~ *Lucy Johnson, Mayor*

 [Attachments](#)

V. Appointments

4. Consideration of Nomination(s) for Appointment to the Community Relations Committee ~ *Jerry Hendrix, Director of Community Development*

- *Jerold Terry*

 [Attachments](#)

5. Consideration of Nomination(s) for Appointment to the Depot Board ~ *Lucy Johnson, Mayor*

- *James Adkins*

 [Attachments](#)

VI. Consent Agenda

6. (*Second Reading*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, REVIEWING THE

REQUEST BY MONARCH UTILITIES I, L.P. TO INCREASE WATER RATES ON A SYSTEMWIDE BASIS BY 62.3 PERCENT AFTER CONSOLIDATING SEVEN STAND-ALONE UTILITIES WITH MONARCH; ADOPTING A FINAL DETERMINATION THAT THE REQUEST TO INCREASE RATES IS REJECTED AND DISMISSED; ORDERING MONARCH NOT TO IMPOSE LATE FEES ON BILLS THAT ARE PAID WITHIN 30 DAYS OF ISSUANCE; ORDERING MONARCH TO RESOLVE ALL SERVICE QUALITY COMPLAINTS PROMPTLY, REQUIRING ALL FIRE HYDRANTS TO BE PAINTED RED (SUBJECT TO STATE LAW); ORDERING MONARCH NOT TO FILE ANY REQUESTS TO INCREASE RATES THAT INCLUDE COSTS FROM OTHER UTILITIES; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

 [Attachments](#)

7. (*Second Reading*) AN ORDINANCE SUSPENDING THE IMPLEMENTATION OF THE INTERIM RATE ADJUSTMENT UNDER SECTION 104.301 OF THE TEXAS UTILITIES CODE BY TEXAS GAS SERVICE COMPANY WITHIN THE CITY OF KYLE, TEXAS; REQUESTING REIMBURSEMENT FOR THE CITY'S EXPENSES FOR HIRING CONSULTANTS TO ASSIST THE CITY IN ITS REVIEW AND CONSIDERATION OF THE RATE ADJUSTMENT; AND PROVIDING FOR AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

 [Attachments](#)

VII. Consider and Possible Action

8. Authorize award and execution of a Purchase Order to LITTLE GUYS MOVERS, INC., of San Marcos, Texas, to provide moving services to transport and deliver library books, files, and other items from the old library to the new Kyle Public Library and authorize the City Manager to make a bid exception by reducing the cargo insurance requirement to \$100,000 per occurrence ~ *Connie Brooks, Director of Public Library*

 [Attachments](#)

9. Consideration and Possible Action on the timeline for the Development and Adoption of the City's annual budget for Fiscal Year 2012-13 including special called City Council meetings for budget workshops and public hearings ~ *Perwez A. Moheet, CPA, Director of Finance*

 [Attachments](#)

10. Consideration and Possible Action to authorize the City Manager to submit grant application to U.S. Department of Justice requesting funding under the COPS Hiring grant program to fund 75% (up to \$125,000) of one police officer position in the Kyle Police Department for a period of 3 years ~ *Raquel Garcia, Grants Administrator*

 [Attachments](#)

11. (*First Reading*) AN ORDINANCE DECLARING THE UNOPPOSED CANDIDATES FOR THE POSITIONS OF COUNCILMEMBER PLACE FIVE AND COUNCILMEMBER PLACE SIX TO BE ELECTED, CANCELING THE GENERAL ELECTION SCHEDULED FOR MAY 12, 2012, PROCEEDING WITH THE SPECIAL LOCAL OPTION ELECTION TO LEGALIZE THE SALE OF ALCOHOLIC BEVERAGES, AND PROVIDING FOR THE NECESSARY POSTING OF THIS ORDINANCE ~ *Frank Garza, City Attorney*

 [Attachments](#)

12. RESOLUTION OF THE KYLE CITY COUNCIL TO PROVIDE PREFERENCE TO LOCAL

BIDDERS OF CITY CONTRACTS IN ACCORDANCE WITH CHAPTER 271 OF THE LOCAL GOVERNMENT CODE; ESTABLISHING A SEVERABILITY PROVISION AND AN EFFECTIVE DATE ~ *Frank Garza, City Attorney*

 [Attachments](#)

13. (*First Reading*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING PART II, CHAPTER 2, ARTICLE III, DIVISION 4, SUBDIVISION I & II OF THE CITY OF KYLE MUNICIPAL CODE DEALING WITH THE STRATEGIC PLANNING AND FINANCE COMMITTEE, THE COMMUNITY RELATIONS COMMITTEE, THE PUBLIC WORKS & SERVICE COMMITTEE, THE MOBILITY COMMITTEE, THE PARKS AND RECREATION COMMITTEE, THE SAFETY & EMERGENCY SERVICES COMMITTEE, AND THE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE; REVISING MEMBERS OF OFFICE; REVISING DUTIES, MEMBERSHIP, TERMS, APPOINTMENTS; AND PROVIDING FOR RELATED MATTERS ~ *James Earp, Assistant City Manager*

 [Attachments](#)

14. Consideration and Possible Action regarding resolutions submitted by the Southlake Ranch Homeowners Association requesting stop signs and speed limit reductions ~ *Jerry Hendrix, Director of Community Development*

 [Attachments](#)

15. Consideration and Possible Action on Approval of Contract with SpawGlass Contractor's, Inc., of Austin, Texas, in the amount of \$222,225.00 for the construction of Phase 1 of the Historic Kyle Depot ~ *Jerry Hendrix, Director of Community Development*

 [Attachments](#)

16. Authorize Amendment of Contract with Catalyst Commercial, Inc., of Dallas, TX, in an amount Not to Exceed \$7,650.00 to provide Retail Recruitment Services for an additional six (6) months ~ *Diana Blank, Director of Economic Development*

 [Attachments](#)

17. Consideration and Possible Action on the Economic Development Agreement between the City of Kyle and the Crossing at Plum Creek ~ *Diana Blank, Director of Economic Development*

 [Attachments](#)

18. Consideration and Possible Action on the Economic Development Agreement between the City of Kyle and Bordeaux's Prime Steakhouse ~ *Diana Blank, Director of Economic Development*

 [Attachments](#)

VIII. City Managers Report

19. Update on Various Capital Improvement Projects, Road Projects, Building Program, and/or General Operational Activities ~ *Lanny Lambert, City Manager*

- Discuss summer water consumption

 [Attachments](#)

IX. Executive Session

20. Convene into Executive Session pursuant to Section 551.087, Tex. Gov't Code, to deliberate offers of financial or other incentives and economic development negotiations with business prospects that

the City seeks to have locate, stay or expand in or near the City (Crossing at Plum Creek)

 [Attachments](#)

21. Convene into Executive Session pursuant to Section 551.087, Tex. Gov't Code, to deliberate offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City (Bordeaux's Prime Steakhouse)

 [Attachments](#)

22. Reconvene into Open Session to take any and all actions as deemed appropriate in the City Council's discretion regarding offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City (Crossing at Plum Creek)

 [Attachments](#)

23. Reconvene into Open Session to take any and all actions as deemed appropriate in the City Council's discretion regarding offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City (Bordeaux's Prime Steakhouse)

 [Attachments](#)

X. 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

City Council Regular Meeting - March 6, 2012

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation: City Council Regular Meeting - March 6, 2012 ~ *Amelia Sanchez, City Secretary*

Other Information: This item is for formal approval of the minutes from the March 6th Regular Meeting of the City Council, a copy of which is included with the meeting packet.

Budget Information: N/A

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

Attachments / click to download

[City Council Regular Meeting Minutes - March 6, 2012](#)

Cover Memo

Item # 1

REGULAR CITY COUNCIL MEETING

The City Council of the City of Kyle, Texas met in Regular Session on March 6, 2012 at 7:00 pm at Kyle City Hall, with the following persons present:

Mayor Lucy Johnson
Mayor Pro Tem David Wilson
Council Member Diane Hervol
Council Member Jaime Sanchez
Council Member Becky Selbera
Council Member Russ Huebner
Council Member Brad Pickett
Lanny Lambert, City Manager
James Earp, Assistant City Manager
Jerry Hendrix, Dir .Community Development
Perwez Moheet, Director of Finance
Diana Blank, Director Economic Development
Sofia Nelson, Director of Planning
Steven Widacki, City Engineer
Connie Brooks, Library Director
Mark Shellard, IT Director
Frank Garza, City Attorney
Chief Barnett, Police Chief

CALL MEETING TO ORDER

Mayor Johnson called the meeting to order at 7:03 pm.

ROLL CALL

Mayor Johnson called for roll call. Present were Mayor Johnson, Council Members Hervol, Sanchez, Selbera, Huebner, Pickett and Mayor Pro Tem Wilson.

APPROVAL OF MINUTES

CITY COUNCIL REGULAR MEETING –February 21, 2012 ~ *AMELIA SANCHEZ, CITY SECRETARY*

Council Member Huebner moves to approve the minutes of the February 21, 2012 Regular City Council Meeting. Council Member Hervol seconds the motion. All votes aye. Motion carried.

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.

CITY COUNCIL REGULAR MEETING

March 6, 2012 – Page 2

Kyle City Hall

Mayor Johnson opened the citizens comment period at 7:05 pm and called for comments on items not on the agenda or posted for public hearing. Lila Knight spoke regarding the cutting down of trees in Plum Creek and asked the Council to put forth an ordinance to preserve older trees. She stated that there were a lot of upset citizens over the cutting down of these trees. Cindy Lawton also spoke about the trees being cut down and stated that the trees were a part of Kyle's heritage and asked Council to enact something to protect the trees. Jack Jordan spoke about concern with not having much space in cemeteries to bury people and with all the growth there will be a need for more spaces and asked whether this had been considered. Pat German spoke about the need for space for joggers, cyclists, and walkers to be safe. She asked the Council to consider preparing the neighborhoods better by making more space on the street and making them safer for everyone. Jim Hough spoke about gas prices, utilities and taxes going up and that he had heard about a possible road bond and asked the Council to consider repairing one road at a time and not have a huge increase in taxes at one time. Carmen Luevanos of Texas Gas service stated that she was there in case anyone had any questions. With no one else wishing to speak Mayor Johnson closed citizen's comments at 7:19 pm.

PRESENTATION

RECOGNITION OF EMPLOYEE OF THE MONTH FOR THE MONTH OF FEBRUARY ~ LANNY LAMBERT, CITY MANAGER

- *Robert Olvera, Information Technology Technician, Police Department*

City Manager Lanny Lambert announced that Robert Olvera from the IT Department was the Employee of the Month for the month of February.

APPOINTMENTS

CONSIDERATION OF NOMINATION(S) FOR APPOINTMENT TO THE MOBILITY COMMITTEE ~ STEVEN WIDACKI, P.E., CITY ENGINEER

- *Danton Bankay*

Mayor Johnson moved to appoint Danton Bankay to the Mobility Committee. Mayor Pro Tem David Wilson seconds the motion. All votes aye. Motion carried.

CITY COUNCIL REGULAR MEETING
March 6, 2012 – Page 3
Kyle City Hall

CONSENT AGENDA

GOFORTH DOLLAR GENERAL SUBDIVISION (FP-12-001)
OWNER: ISIDRO AND MARIA MORALES
2.999 ACRES; 2 LOTS
LOCATED AT 2600 GOFORTH ROAD
AGENT: ROB RUGLOSKI, TEXAS LANDMARK SURVEYING
~SOFIA NELSON, DIRECTOR OF PLANNING

PLANNING AND ZONING COMMISSION VOTED 7-0 TO STATUTORILY DISAPPROVE THE FINAL PLAT TO MEET THE 30 DAY STATUTORY REQUIREMENT.

STATUTORY DISAPPROVAL (NOTE: IN ACCORDANCE WITH THE STATUTORY REQUIREMENTS OF THE TEXAS LOCAL GOVERNMENT CODE REFLECTED IN SECTIONS 12.03.001, 12.05.004, 12.06.004 THE FOLLOWING APPLICATIONS ARE RECOMMENDED FOR STATUTORY DISAPPROVAL IN ORDER TO ALLOW THE CITY TO PROCESS THE APPLICATION. THESE APPLICATIONS WILL CONTINUE THROUGH THE REVIEW PROCESS WITHOUT BIAS AND WILL BE PLACED ON THE AGENDA IN A TIMELY MANNER ONCE THE REVIEW PROCESS IS COMPLETE. STATUTORY DISAPPROVAL IN ORDER TO MEET STATUTORY REQUIREMENTS UNDER THESE SECTIONS SHALL NOT BIAS FUTURE CONSIDERATION OF THIS APPLICATION BY THE PLANNING AND ZONING COMMISSION)

PROCLAMATION OF THE CITY OF KYLE, TEXAS PROCLAIMING MARCH 16, 2012 AS "GWEN RANKIN DAY" IN THE CITY OF KYLE, TEXAS ~ *COUNCIL MEMBER DIANE HERVOL*

PLUM CREEK PHASE 1 SECTION 6E-1, PRELIMINARY PLAN (PP-12-001)
OWNER: PLUM CREEK DEVELOPMENT PARTNERS, LTD.; JASON HARRELL;
THE FELLOWSHIP AT PLUM CREEK
11.957 ACRES; 20 SINGLE FAMILY LOTS, 3 COMMERCIAL LOTS, 1 EASEMENT LOT, 1 PARK LOT
LOCATED AT THE SOUTHEAST CORNER OF FM 2770 AND KOHLER'S CROSSING
AGENT: NICOLE FOLTA FINDEISEN, P.E., AXIOM ENGINEERS, INC.
~SOFIA NELSON, DIRECTOR OF PLANNING

PLANNING AND ZONING COMMISSION VOTED 7-0 TO STATUTORILY DISAPPROVE THE PRELIMINARY PLAN TO MEET THE 30 DAY STATUTORY REQUIREMENT.

CITY COUNCIL REGULAR MEETING
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Kyle City Hall

STATUTORY DISAPPROVAL (NOTE: IN ACCORDANCE WITH THE STATUTORY REQUIREMENTS OF THE TEXAS LOCAL GOVERNMENT CODE REFLECTED IN SECTIONS 12.03.001, 12.05.004, 12.06.004 THE FOLLOWING APPLICATIONS ARE RECOMMENDED FOR STATUTORY DISAPPROVAL IN ORDER TO ALLOW THE CITY TO PROCESS THE APPLICATION. THESE APPLICATIONS WILL CONTINUE THROUGH THE REVIEW PROCESS WITHOUT BIAS AND WILL BE PLACED ON THE AGENDA IN A TIMELY MANNER ONCE THE REVIEW PROCESS IS COMPLETE. STATUTORY DISAPPROVAL IN ORDER TO MEET STATUTORY REQUIREMENTS UNDER THESE SECTIONS SHALL NOT BIAS FUTURE CONSIDERATION OF THIS APPLICATION BY THE PLANNING AND ZONING COMMISSION)

ROLLING HILLS ESTATES SECTION 1 REPLAT OF LOTS 6 & 7, BLOCK 1 (SFP-12-001)

OWNER: SYLVIA VERA

3.61 ACRES; 3 LOTS

LOCATED AT 140 ROLLING HILLS DRIVE

~SOFIA NELSON, DIRECTOR OF PLANNING

PLANNING AND ZONING COMMISSION VOTED 7-0 TO STATUTORILY DISAPPROVE THE REPLAT TO MEET THE 30 DAY STATUTORY REQUIREMENT.

STATUTORY DISAPPROVAL (NOTE: IN ACCORDANCE WITH THE STATUTORY REQUIREMENTS OF THE TEXAS LOCAL GOVERNMENT CODE REFLECTED IN SECTIONS 12.03.001, 12.05.004, 12.06.004 THE FOLLOWING APPLICATIONS ARE RECOMMENDED FOR STATUTORY DISAPPROVAL IN ORDER TO ALLOW THE CITY TO PROCESS THE APPLICATION. THESE APPLICATIONS WILL CONTINUE THROUGH THE REVIEW PROCESS WITHOUT BIAS AND WILL BE PLACED ON THE AGENDA IN A TIMELY MANNER ONCE THE REVIEW PROCESS IS COMPLETE. STATUTORY DISAPPROVAL IN ORDER TO MEET STATUTORY REQUIREMENTS UNDER THESE SECTIONS SHALL NOT BIAS FUTURE CONSIDERATION OF THIS APPLICATION BY THE PLANNING AND ZONING COMMISSION)

CONSIDER A REQUEST BY SCC KYLE PARTNERS, LTD. FOR THE EXTENSION OF A POSTPONEMENT, REQUEST UNTIL MARCH 20TH, FOR A REQUEST FOR A LANDSCAPE VARIANCE AND CONDITIONAL USE PERMIT AT 5754 KYLE PARKWAY ~ SOFIA NELSON, DIRECTOR OF PLANNING

Council Member Huebner moves to approve Consent Agenda Items # 4 ~ Goforth Dollar General Subdivision (FP-12-001) Owner: Isidro and Maria Morales 2.999 acres; 2 Lots Located at 2600 Goforth Road, Agent: Rob Rugloski, Texas Landmark Surveying;

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

Item #5 ~ Proclamation of the City of Kyle, Texas Proclaiming March 16, 2012 as "Gwen Rankin Day" in the City of Kyle, Texas; Item # ~ 6 Plum Creek Phase 1 Section 6E-1, Preliminary Plan (PP-12-001) Owner: Plum Creek Development Partners, LTD.; Jason Harrell; The Fellowship at Plum Creek 11.957 acres; 20 Single Family Lots, 3 Commercial Lots, 1 Easement lot, 1 Park Lot Located at the southeast corner of FM 2770 and Kohler's Crossing Agent: Nicole Folta Findeisen, P.E., Axiom Engineers, Inc.; Item #7 ~ Rolling Hills Estates Section 1 Replat of Lots 6 & 7, Block 1 (SFP-12-001) Owner: Sylvia Vera 3.61 acres; 3 Lots Located at 140 Rolling Hills Drive; Item # 8 ~ Consider a request by SCC Kyle Partners, LTD. for the extension of a postponement, request until March 20th, for a request for a landscape variance and conditional use permit at 5754 Kyle Parkway. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

CONSIDER AND POSSIBLE ACTION

AUTHORIZE AWARD AND EXECUTION OF (1) ADVANCE FUNDING AGREEMENT WITH TEXAS DEPARTMENT OF TRANSPORTATION FOR VOLUNTARY UTILITY RELOCATION CONTRIBUTIONS ON STATE HIGHWAY IMPROVEMENT PROJECTS ON-SYSTEM IN THE AMOUNT OF \$36,135.00 FOR RELOCATING AND ADJUSTMENTS OF EXISTING WASTEWATER LINES ALONG IH35 FROM FM 1626 (KYLE PARKWAY) TO SOUTH OF RM 150, (2) STANDARD MODIFIED UTILITY AGREEMENT WITH TEXAS DEPARTMENT OF TRANSPORTATION FOR THE SAME UTILITY RELOCATION AND ADJUSTMENTS, AND (3) LETTER AGREEMENT WITH HAYS COUNTY, TEXAS, TO MODIFY THE REIMBURSEMENT TO THE CITY OF KYLE FOR THE SAME PROJECT FROM UPON COMPLETION OF THE PROJECT TO 90 PERCENT UPON NOTICE TO PROCEED AND THE REMAINING 10 PERCENT UPON SUBSTANTIAL COMPLETION OF THE PROJECT ~ *STEVEN WIDACKI, P.E., CITY ENGINEER*

Mayor Pro Tem Wilson moves to Authorize award and execution of (1) Advance Funding Agreement with Texas Department of Transportation for Voluntary Utility Relocation Contributions on State Highway Improvement Projects On-System in the amount of \$36,135.00 for relocating and adjustments of existing wastewater lines along IH35 from FM 1626 (Kyle Parkway) to south of RM 150, (2) Standard Modified Utility Agreement with Texas Department of Transportation for the same utility relocation and adjustments, and (3) Letter Agreement with Hays County, Texas, to modify the reimbursement to the City of Kyle for the same project from upon completion of the project to 90 percent upon notice to proceed and the remaining 10 percent upon substantial completion of the project. Council Member Selbera seconds the motion. All votes aye. Motion carried.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

AUTHORIZE AWARD AND EXECUTION OF A PURCHASE ORDER TO TELEPHONE CONNECTION OF AUSTIN, TEXAS, IN AN AMOUNT NOT TO EXCEED \$7,601.76 FOR THE PURCHASE AND INSTALLATION OF A TELEPHONE AND INTERCOM PAGING SYSTEMS FOR THE KYLE PUBLIC LIBRARY ~ *MARK SHELLARD, DIRECTOR OF INFORMATION TECHNOLOGY*

Council Member Huebner moves to Authorize award and execution of a Purchase Order to TELEPHONE CONNECTION of Austin, Texas, in an amount Not to Exceed \$7,601.76 for the purchase and installation of a telephone and intercom paging systems for the Kyle Public Library. Council Member Hervol seconds the motion. All votes aye. Motion carried.

AUTHORIZE AWARD AND EXECUTION OF A 36-MONTH SERVICE CONTRACT WITH TIME WARNER CABLE OF AUSTIN, TEXAS, IN AN AMOUNT NOT TO EXCEED \$669.45 PER MONTH FOR A TOTAL 36-MONTH CONTRACT AMOUNT OF \$24,100.20 TO PROVIDE WIDEBAND INTERNET AND LAND LINE PHONE SERVICE AT THE NEW KYLE PUBLIC LIBRARY ~ *MARK SHELLARD, DIRECTOR OF INFORMATION TECHNOLOGY*

Council Member Huebner moves to Authorize award and execution of a 36-month service contract with TIME WARNER CABLE of Austin, Texas, in an amount Not to Exceed \$669.45 per month for a total 36-month contract amount of \$24,100.20 to provide wideband internet and land line phone service at the new Kyle Public Library. Council Member Pickett seconds the motion. All votes aye. Motion carried.

CONSIDERATION AND POSSIBLE ACTION FOR APPROVAL OF THE KYLE PUBLIC LIBRARY COMMUNITY ROOM POLICY TO ESTABLISH GUIDELINES AND PROCEDURES FOR THE USE OF THE LIBRARY'S FACILITIES ~ *CONNIE BROOKS, DIRECTOR OF KYLE PUBLIC LIBRARY*

Council Member Huebner moves to Approve the Kyle Public Library Community Room Policy to Establish Guidelines and Procedures for the use of the library's facilities. Council Member Selbera seconds the motion. All votes aye. Motion carried.

CONSIDERATION AND POSSIBLE ACTION FOR APPROVAL OF THE KYLE PUBLIC LIBRARY CARD APPLICATION POLICY ~ *CONNIE BROOKS, DIRECTOR OF KYLE PUBLIC LIBRARY*

Council Member Huebner moves to Approve the Kyle Public Library Card Application Policy. Council Member Selbera seconds the motion. All votes aye. Motion carried.

CITY COUNCIL REGULAR MEETING

March 6, 2012 – Page 7

Kyle City Hall

DISCUSS AND CONSIDER APPOINTMENT TO THE HAYS CALDWELL PUBLIC UTILITY AGENCY (HCPUA) PUBLIC ADVOCACY COMMITTEE AND PROVIDE DIRECTION TO STAFF ~ *LUCY JOHNSON, MAYOR*

Alan McPherson

Mayor Johnson moves to appoint Alan McPherson to the Hays Caldwell Public Utility Agency (HCPUA) Public Advocacy Committee. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried. Council Member Huebner was off the dais and did not vote.

(First Reading) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, REVIEWING THE REQUEST BY MONARCH UTILITIES I, L.P. TO INCREASE WATER RATES ON A SYSTEMWIDE BASIS BY 62.3 PERCENT AFTER CONSOLIDATING SEVEN STAND-ALONE UTILITIES WITH MONARCH; ADOPTING A FINAL DETERMINATION THAT THE REQUEST TO INCREASE RATES IS REJECTED AND DISMISSED; ORDERING MONARCH NOT TO IMPOSE LATE FEES ON BILLS THAT ARE PAID WITHIN 30 DAYS OF ISSUANCE; ORDERING MONARCH TO RESOLVE ALL SERVICE QUALITY COMPLAINTS PROMPTLY, REQUIRING ALL FIRE HYDRANTS TO BE PAINTED RED (SUBJECT TO STATE LAW); ORDERING MONARCH NOT TO FILE ANY REQUESTS TO INCREASE RATES THAT INCLUDE COSTS FROM OTHER UTILITIES; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

Council Member Huebner moved to approve (First Reading) An Ordinance of the City of Kyle, Texas, Reviewing the Request by Monarch Utilities I, L. P. to Increase Water Rates on a System wide Basis by 62.3 Percent after Consolidating Seven Stand-Alone Utilities with Monarch; Adopting a Final Determination that the Request to Increase Rates is Rejected and Dismissed; Ordering Monarch not to Impose Late Fees on bills that are Paid within 30 Days of Issuance; Ordering Monarch to Resolve all Service Quality Complaints Promptly, Requiring all Fire Hydrants to be Painted Red (Subject to State Law); Ordering Monarch not to file any Requests to Increase Rates that Include Costs from other Utilities; Determining that the meeting at which this Resolution was Adopted Complied with the Texas Open Meetings Act,; Making such other Findings and Provisions Related to the Subject; And Declaring an Effective Date. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

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Kyle City Hall

First Reading) AN ORDINANCE SUSPENDING THE IMPLEMENTATION OF THE INTERIM RATE ADJUSTMENT UNDER SECTION 104.301 OF THE TEXAS UTILITIES CODE BY TEXAS GAS SERVICE COMPANY WITHIN THE CITY OF KYLE, TEXAS; REQUESTING REIMBURSEMENT FOR THE CITY'S EXPENSES FOR HIRING CONSULTANTS TO ASSIST THE CITY IN ITS REVIEW AND CONSIDERATION OF THE RATE ADJUSTMENT; AND PROVIDING FOR AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

Council Member Huebner moved to approve (First Reading) An Ordinance Suspending the Implementation of the Interim Rate Adjustment under Section 104.301 of the Texas Utilities Code by Texas Gas Service Company within the City of Kyle, Texas; Requesting Reimbursement for the City's Expenses for Hiring Consultants to Assist the City in its Review and Consideration of the Rate Adjustment; And Providing for an Effective Date. Council Member Selbera seconds the motion. All votes aye. Motion carried.

PLANNING AND ZONING

CONDITIONAL USE PERMIT/CONDITIONAL USE OVERLAY DISTRICT

CONSIDER A REQUEST BY THE KYLE AREA CHAMBER OF COMMERCE ON BEHALF OF H&R LAND DEVELOPMENT, LLC (THUNDER MOWER 500) FOR A CONDITIONAL USE PERMIT TO HOLD A CARNIVAL EVENT ON MARCH 29, 2012 TO APRIL 1, 2012. LOCATED AT 24801 IH-35 (THUNDERHILL RACEWAY) APPLICANT: H&R LAND DEVELOPMENT, LLC.

AGENT: RAY HERNANDEZ AND/OR MARY ANN NAUMANN

~*SOFIA NELSON, DIRECTOR OF PLANNING*

Planning and Zoning Commission voted 5-0 to approve the Conditional Use Permit.

Public Hearing

Mayor Johnson opened the Public Hearing at 8:00 pm. With no one wishing to speak Mayor Johnson closed the Public Hearing at 8:00 pm.

Council Member Huebner moved to approve a request by the Kyle Area Chamber of Commerce on behalf of H&R Land Development, LLC (Thunder Mower 500) for a Conditional Use Permit to hold a carnival event on March 29, 2012 to April 1, 2012. Council Member Selbera seconds the motion. All votes aye. Motion carried.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

CITY MANAGERS REPORT

UPDATE ON VARIOUS CAPITAL IMPROVEMENT PROJECTS, ROAD PROJECTS, BUILDING PROGRAM, AND/OR GENERAL OPERATIONAL ACTIVITIES ~ *LANNY LAMBERT, CITY MANAGER*

Discussion of Community Visioning Forum to be held on March 24, 2012

City Manager Lanny Lambert spoke to the Council about the employee survey done in January and stated that he was pleased to learn that employees are mostly satisfied with their jobs, and there was mention that communication with Department Heads and dissatisfaction with the evaluation process were issues. Mr. Lambert also informed Council that the Community Forum was to be held at the Ernest Kimbro Building.

STAFF REPORT

PRESENTATION OF DEPARTMENT OF ECONOMIC DEVELOPMENT'S END OF YEAR 2011 REPORT ~ *DIANA BLANK, DIRECTOR OF ECONOMIC DEVELOPMENT*

Diana Blank Director of Economic Development presented the 2011 end of the year report to the Council.

PRESENT CITY OF KYLE'S FINANCIAL PERFORMANCE REPORT (UNAUDITED) FOR THE 1ST QUARTER ENDING DECEMBER 31, 2011 ~ *PERWEZ A. MOHEET, CPA, DIRECTOR OF FINANCE*

Perwez Moheet provided Council the Financial Performance Report for the 1st Quarter ending December 31, 2011.

PRESENTATION OF THE POLICE DEPARTMENT'S ANNUAL RACIAL PROFILING REPORT FOR 2011 ~ *JEFF BARNETT, CHIEF OF POLICE*

Jeff Barnett Chief of Police presented the Annual Racial Profiling Report for 2011.

EXECUTIVE SESSION

CONVENE INTO EXECUTIVE SESSION PURSUANT TO SECTION 551.072, TEX. GOV'T CODE, TO DISCUSS THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY (RM 150)

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

Mayor Johnson moved to Convene into Executive Session at 8:48 pm pursuant to Section 551.072, Tex. Gov't Code, to discuss the purchase, exchange, lease or value of real property (RM 150). Council Member Huebner seconds the motion. All votes aye. Motion carried.

RECONVENE INTO OPEN SESSION TO TAKE ACTION AS DEEMED APPROPRIATE IN THE CITY COUNCIL'S DISCRETION REGARDING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY (RM 150)

Mayor Johnson moved to Reconvene into Open Session at 8:54 pm to take action as deemed appropriate in the City Council's discretion regarding the purchase, exchange, lease or value of real property (RM 150). Council Member Selbera seconds the motion. All votes aye. Motion carried.

Mayor Johnson stated that no action was taken during Executive Session but that action would be taken now.

Mayor Johnson moves to approve the waiver of fees agreement with the amendment to provide a maximum dollar amount of \$30,000.00 and a clause to make the agreement non-transferable to other parties. Council Member Huebner seconds the motion. All votes aye. Motion carried.

ADJOURN

With no further business to discuss Council Member Huebner moves to adjourn. Council Member Pickett seconds the motion. All votes aye. Motion carried.

The City Council meeting adjourned at 8:55 pm.

Lucy Johnson, Mayor

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Autism Awareness Proclamation

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation:

Proclamation of the City of Kyle, Texas Proclaiming Monday, April 2, 2012 as Autism Awareness Day and April as Autism Awareness Month in the City of Kyle, Texas ~ *Lucy Johnson, Mayor*

Other Information:

Budget Information:

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

Attachments / click to download

 [Autism Awareness Proclamation](#)

City of Kyle



City Council Proclamation

WHEREAS, Autism is fast becoming an epidemic with no known cause or cure; and

Attachment number 1 \nPage 1

WHEREAS, Autism robs families of the child they thought they had and immediately changes life for the entire family forever; and

WHEREAS, a different parent hears their child has autism every 15 minutes; and

WHEREAS, money and time involved in treating autism is staggering—not to mention the emotional pull of every single day; and

WHEREAS, school districts are already bending under the load since 70% of those diagnosed are under the age of 18; and

WHEREAS, many of these children will have to be cared for throughout adulthood resulting in a huge burden for Cities, States and Nations; and

WHEREAS, in 2007, the United Nations adopted a resolution naming April 2nd as *World Autism Awareness Day*; and

WHEREAS, Autism Speaks, the world's largest autism science and advocacy organization, created *Light It Up Blue* to shine a light on Autism during the month of April; and

WHEREAS, last year over 1,800 iconic landmarks all over the world turned their lighting blue from Niagara Falls, Rockefeller Center, Radio City Music Hall, the New York Stock Exchange and the Empire State Building in New York City to Christ the Redeemer Statue in Brazil as well as the Cairo Tower in Egypt, the Hungarian Parliament, the Sydney Opera House in Australia; and

WHEREAS, the Greater Austin Area will be celebrating *Light It Up Blue* for the first year; and

WHEREAS, buildings all over the Austin area will be changing their lighting to blue;

NOW, THEREFORE I, Lucy Johnson, Mayor of Kyle, Do hereby proclaim Monday, April 2nd, 2012 as

Autism Awareness Day and April as Autism Awareness Month

I urge that we observe this day by wearing blue, eating blue, drinking blue and this month by changing our light bulbs to blue. *"Together we will make the whole world blue."*

SIGNED AND ENTERED THIS 20TH DAY OF MARCH, 2012

Lucy Johnson, Mayor

Diane Hervol, Council District 1

David Wilson, Mayor Pro Tem

Becky Selbera, Council District 2

Brad Pickett, Council District 3

Jaime Sanchez, Council District 5

Russ Huebner, Council District 6



CITY OF KYLE, TEXAS

Women's History Month Proclamation

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation: Proclamation of the City of Kyle, Texas Designating the Month of March as "Women's History Month" in the City of Kyle, Texas ~ *Lucy Johnson, Mayor*

Other Information:

Budget Information:

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[Women's History Month Proclamation](#)

City of Kyle



City Council Proclamation

Whereas, American women of every race, class, and ethnic background have made historic contributions to the growth and strength of our Nation in countless recorded and unrecorded ways; and Attachment number 1 \nPage 1

Whereas, these women have played and continue to play a critical economic, cultural, and social role in every sphere of the life by constituting a significant portion of the labor force working inside and outside of the home; and

Whereas, women have played a significant role throughout history by providing the majority of the volunteer labor force of the Nation; and

Whereas, American women were particularly important in the establishment of early charitable, philanthropic, and cultural institutions in our Nation; and

Whereas, American women of every race, class, and ethnic background served as early leaders in the forefront of every major progressive social change movement; and

Whereas, American women have been leaders, not only in securing their own rights of suffrage and equal opportunity, but also in the abolitionist movement, the emancipation movement, the industrial labor movement, the civil rights movement, and other movements, especially the peace movement, which create a more fair and just society for all; and

Whereas, despite these contributions, the role of American women in history has been consistently overlooked and undervalued, in the literature, teaching and study of American history; and

Whereas, the City of Kyle has benefited from the contributions, generosity and leadership of women throughout our history and continue to receive these benefits today,

NOW, THEREFORE, be it resolved that March is designated as

"Women's History Month"

in Kyle, Texas and call upon all citizens to observe March as Women's History Month with appropriate programs, ceremonies, and activities.

SIGNED AND ENTERED THIS 20TH DAY OF MARCH, 2012

Lucy Johnson, Mayor

Diane Hervol, Council District 1

David Wilson, Mayor Pro Tem

Becky Selbera, Council District 2

Brad Pickett, Council District 3

Jaime Sanchez, Council District 5

Russ Huebner, Council District 6



CITY OF KYLE, TEXAS

Appointment to the Community Relations Committee

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation:

Consideration of Nomination(s) for Appointment to the Community Relations
Committee ~ *Jerry Hendrix, Director of Community Development*

- *Jerold Terry*

Other Information:

Budget Information:

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[Jerold Terry Committee App](#)



Grace Nino <gracenino@cityofkyle.com>

City of Kyle Texas Website submission: Committee Volunteer Application

City of Kyle Texas <webmaster@cityofkyle.com>

Wed, Mar 14, 2012 at 7:38 AM

To: gracenino@cityofkyle.com

Submitted on Wednesday, March 14, 2012 - 07:38

Submitted by anonymous user: [\[12.162.143.162\]](#)

Submitted values are:

Name: Jerold M Terry JR

Address: 4925 Cromwell Drive, # 4206

E-Mail: jeroldtjr@gmail.comBest Phone Number to Reach You: [512-268-9359](tel:512-268-9359)

Sub Division: Vantage at Plum Creek

Committees you are interested in: Open. I was referred by a member of the Mobility Committee.

Professional, Education and Work Background: Bachelor's degree in Organizational Psychology; Master's degree in Rehabilitation Counselor Education; Post-Master's degree in Leadership/Education. Currently the Human Resources Administrator-Generalist for Pedernales Electric Cooperative Southern Region (Kyle, Oak Hill, Canyon Lake). Have also served the State of Texas through work as a Vocational Rehabilitation Counselor and Disability Advocate.

Previous or Current Community/Committee Involvements: Currently serve on the Program Advisory Board for ACC (Power Technology Program) and Northwest Lineman College. Serve and served on various committees for PEC and at the Denton State School.

Special Knowledge or Experience: Policy development; disability issues; employment; and public relations.

How long have you been a Kyle resident? 14 years. Was a homeowner in the Meadow Woods subdivision from February 1998 until we sold in May 2011. Still residing in Kyle

Today's Date: 2012-03-13

Other Comments: This is my first foray into city committee volunteerism. I look forward to the opportunity to serve.

Item # 4



CITY OF KYLE, TEXAS

Depot Board

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation:

Consideration of Nomination(s) for Appointment to the Depot Board ~ *Lucy Johnson, Mayor*

- *James Adkins*

Other Information:

Budget Information:

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CITY OF KYLE, TEXAS

Monarch Rates

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation:

(Second Reading) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, REVIEWING THE REQUEST BY MONARCH UTILITIES I, L.P. TO INCREASE WATER RATES ON A SYSTEMWIDE BASIS BY 62.3 PERCENT AFTER CONSOLIDATING SEVEN STAND-ALONE UTILITIES WITH MONARCH; ADOPTING A FINAL DETERMINATION THAT THE REQUEST TO INCREASE RATES IS REJECTED AND DISMISSED; ORDERING MONARCH NOT TO IMPOSE LATE FEES ON BILLS THAT ARE PAID WITHIN 30 DAYS OF ISSUANCE; ORDERING MONARCH TO RESOLVE ALL SERVICE QUALITY COMPLAINTS PROMPTLY, REQUIRING ALL FIRE HYDRANTS TO BE PAINTED RED (SUBJECT TO STATE LAW); ORDERING MONARCH NOT TO FILE ANY REQUESTS TO INCREASE RATES THAT INCLUDE COSTS FROM OTHER UTILITIES; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE ~
Jerry Hendrix, Director of Community Development

Other Information:

Budget Information:

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Attachments / click to download

[Ordinance to deny Monarch rates](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, REVIEWING THE REQUEST BY MONARCH UTILITIES I, L.P. TO INCREASE WATER RATES ON A SYSTEMWIDE BASIS BY 62.3 PERCENT AFTER CONSOLIDATING SEVEN STAND-ALONE UTILITIES WITH MONARCH; ADOPTING A FINAL DETERMINATION THAT THE REQUEST TO INCREASE RATES IS REJECTED AND DISMISSED; ORDERING MONARCH NOT TO IMPOSE LATE FEES ON BILLS THAT ARE PAID WITHIN 30 DAYS OF ISSUANCE; ORDERING MONARCH TO RESOLVE ALL SERVICE QUALITY COMPLAINTS PROMPTLY, REQUIRING ALL FIRE HYDRANTS TO BE PAINTED RED (SUBJECT TO STATE LAW); ORDERING MONARCH NOT TO FILE ANY REQUESTS TO INCREASE RATES THAT INCLUDE COSTS FROM OTHER UTILITIES; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, on November 10, 2011 Monarch Utilities I, L.P. (“Monarch”) filed a Statement of Intent with the City Secretary for the City of Kyle, Texas to increase water rates on a system-wide basis by 62.3%; and

WHEREAS, a residential customer would experience very substantial increases in rates if Monarch’s rate request were granted, as follows:

<u>CHARGES</u>	<u>CURRENT</u>	<u>REQUESTED</u>	<u>INCREASE</u>
TAP FEE	\$365.00	\$700.00	92%
MIN.CHARGE (no water)	\$43.47/mo.	\$59.82/mo.	38%
TOTAL WATER CHARGE (10,000 gallons)	\$89.59/mo.	\$129.82/mo.	45%

WHEREAS, on January 3, 2012 the Council conducted a public hearing on Monarch’s request to increase rates, which was attended by an overflow crowd in the Council’s chambers at City Hall. Customers of Monarch testified to poor service, poor billing practices, poor water quality and to the effect that the increase in rates would have on families being able to meet their

basic needs. Some customers indicated they would have to leave the City of Kyle if the requested rate increase were adopted; and

WHEREAS, customers have received bills from Monarch which request that payments for water service be made within 16 days of issuance or late charges will be imposed; and

WHEREAS, late charges may not be imposed by Monarch if a bill is paid within 30 days of issuance; and

WHEREAS, the Council met on January 9, 2012 after giving notice to Monarch, and suspended the effective date for the requested increase in rates for a period of 90 days in order to more fully examine the 1700 page filing by Monarch; and

WHEREAS, Monarch's request to increase rates includes costs and expenses for seven utilities located outside City of Kyle. Monarch is asking that ratepayers in Kyle pay a substantial charge for a water pipeline that does not serve any customers located within the service territory of Monarch. Ratepayers in Kyle are being asked to subsidize two utilities located near San Antonio which are located outside of Monarch's service territory; and

WHEREAS, Monarch has commingled the costs, expenses and revenues of seven utilities located outside its service territory with its own costs, expenses and revenues. The seven utilities are: Diamond Water Company, Water Services Inc., SW Utility, Mid-Tex Utilities, Hornsby Bend Utility Company, Huntington Utility Company and Windermere Utility Company; and

WHEREAS, by commingling the costs, expenses and revenues of seven utilities with its own, Monarch has requested an increase in rates for a utility that does not exist; and

WHEREAS, the City of Kyle is without jurisdiction to consider the cost, expenses and revenues of utilities located outside its municipal boundaries.

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

Section 1. The facts contained in the Preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. Monarch did not properly invoke the jurisdiction of the City of Kyle in connection with the filing of its Statement of Intent to increase rates.

Section 3. The Statement of Intent to increase rates filed by Monarch with the City Secretary on November 10, 2012 is REJECTED in all respects and DISMISSED.

Section 4. Monarch is ordered not to request an increase in rates within the City of Kyle unless it only includes costs, expenses and revenues of Monarch.

Section 5. Monarch is ordered not to impose late fees or penalties if invoices or billings are paid within 30 days of issuance.

Section 6. Monarch is ordered to respond to customer service complaints promptly.

Section 7. Monarch, to the extent consistent with state law, is ordered to paint all fire hydrants red and meet the fire flow requirements related thereto.

Section 8. A copy of this resolution will be sent to Mr. George Freitag, Rate Manager, Monarch Utilities I, L.P. , 12535 Reed Road, Sugar Land, Texas 77478 and to Mr. Jim Boyle, Herrera & Boyle, PLLP, 816 Congress, Suite 1250, Austin, Texas 78701.

Section 7. The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 9. This resolution shall be effective immediately upon passage.

PASSED AND APPROVED this 6th day of March, 2012.

Mayor, Lucy Johnson

ATTEST:

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Texas Gas Service

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation:

(Second Reading) AN ORDINANCE SUSPENDING THE IMPLEMENTATION OF THE INTERIM RATE ADJUSTMENT UNDER SECTION 104.301 OF THE TEXAS UTILITIES CODE BY TEXAS GAS SERVICE COMPANY WITHIN THE CITY OF KYLE, TEXAS; REQUESTING REIMBURSEMENT FOR THE CITY'S EXPENSES FOR HIRING CONSULTANTS TO ASSIST THE CITY IN ITS REVIEW AND CONSIDERATION OF THE RATE ADJUSTMENT; AND PROVIDING FOR AN EFFECTIVE DATE ~ *Jerry Hendrix, Director of Community Development*

Other Information:

This is part of the annual process by which the utility is allowed by state law to recover costs for infrastructure construction and maintenance. We are again partnering with the City of Austin and several other cities in the utility's service area in the review of the costs. We will be using the City of Austin's consultant and the City of Austin will bear the costs of the consultant.

Budget Information:

n/a

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 [TGS Suspension Ord](#)

ORDINANCE NO.

AN ORDINANCE SUSPENDING THE IMPLEMENTATION OF THE INTERIM RATE ADJUSTMENT UNDER SECTION 104.301 OF THE TEXAS UTILITIES CODE BY TEXAS GAS SERVICE COMPANY WITHIN THE CITY OF KYLE, TEXAS; REQUESTING REIMBURSEMENT FOR THE CITY'S EXPENSES FOR HIRING CONSULTANTS TO ASSIST THE CITY IN ITS REVIEW AND CONSIDERATION OF THE RATE ADJUSTMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. On February 10, 2012, Texas Gas Service Company ("TGS") filed with the City of Austin, Texas (the "City") an interim rate adjustment and associated Rate Schedule IRA that would allow the Company to recover the incremental costs of the new investment it has made within its Central Texas Service Area ("CTXSA"). Parallel requests were filed by TGS that same day with all six municipalities (Austin, Cedar Park, Kyle, Rollingwood, Sunset Valley and West Lake Hills) in the CTXSA. If applied on a total system basis for the entire CTSA (all six municipalities and their environs), the proposed rate and tariff changes would allow TGS to recover its capital invested in the CTXSA from January 1, 2011, through December 31, 2011, in the amount of \$3,775,205.00.

PART 2. TGS proposed an effective date of April 10, 2012 for the interim rate adjustment and Rate Schedule IRA.

PART 3. In support of the interim rate adjustment and Rate Schedule IRA, TGS has submitted the requisite supporting documentation, including Schedules, Earnings Report, and Investment Reports.

PART 4. Pursuant to Texas Utilities Code § 104.301(a), the City is authorized to suspend the implementation of the interim rate adjustment and Rate Schedule IRA for a period not to exceed 45 days beyond the effective date proposed by the Company.

PART 5. The City Council finds that it requires additional time to review and consider the IRA tariff and supporting documentation filed by the Company.

PART 6. The City requests that TGS reimburse the City for its reasonable and necessary costs to engage rate consultants, accountants, auditors, attorneys, and engineers to conduct investigations, present evidence, advise, and represent the City regarding the interim rate adjustment and Rate Schedule IRA.

PART 7. The implementation of the interim rate adjustment and associated Rate Schedule IRA filed by TGS and the Company’s proposed effective date of April 10, 2012, shall be and hereby are suspended within the City of Austin pursuant to Section 104.301(a) the Texas Utilities Code for 45 days (that is, through May 25, 2012), or until adoption by the City Council of a final ordinance addressing the implementation of TGS’s interim rate adjustment and IRA tariff, whichever shall first occur.

PART 8. This ordinance takes effect on _____, 2012.

PASSED AND APPROVED

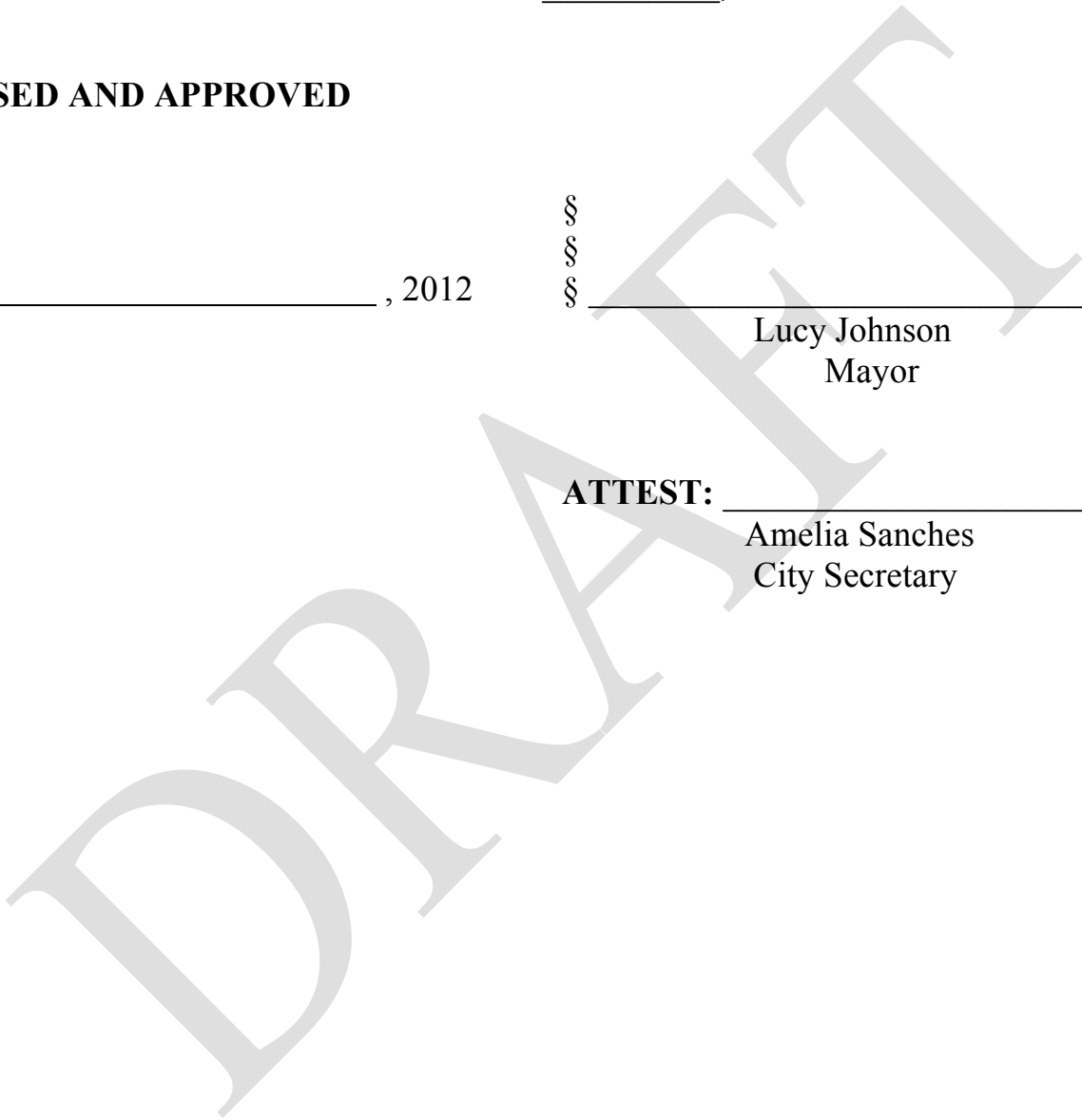
_____, 2012

§
§
§

Lucy Johnson
Mayor

ATTEST: _____

Amelia Sanches
City Secretary





CITY OF KYLE, TEXAS

Economic Development Executive Session

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation:

Convene into Executive Session pursuant to Section 551.087, Tex. Gov't Code, to deliberate offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City (Crossing at Plum Creek)

Other Information:

Budget Information:

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Attachments / click to download



CITY OF KYLE, TEXAS

Economic Development Executive Session

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation:

Convene into Executive Session pursuant to Section 551.087, Tex. Gov't Code, to deliberate offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City (Bordeaux's Prime Steakhouse)

Other Information:

Budget Information:

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CITY OF KYLE, TEXAS

Economic Development Reconvene into Open Session

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation:

Reconvene into Open Session to take any and all actions as deemed appropriate in the City Council's discretion regarding offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City (Crossing at Plum Creek)

Other Information:

Budget Information:

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Attachments / click to download



CITY OF KYLE, TEXAS

Economic Development Reconvene into Open Session

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation:

Reconvene into Open Session to take any and all actions as deemed appropriate in the City Council's discretion regarding offers of financial or other incentives and economic development negotiations with business prospects that the City seeks to have locate, stay or expand in or near the City (Bordeaux's Prime Steakhouse)

Other Information:

Budget Information:

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Attachments / click to download



CITY OF KYLE, TEXAS

Authorize Award & Execution of a Purchase Order for Library Moving Services

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation:

Authorize award and execution of a Purchase Order to LITTLE GUYS MOVERS, INC., of San Marcos, Texas, to provide moving services to transport and deliver library books, files, and other items from the old library to the new Kyle Public Library and authorize the City Manager to make a bid exception by reducing the cargo insurance requirement to \$100,000 per occurrence ~ *Connie Brooks, Director of Public Library*

Other Information:

On February 22, 2012, the City of Kyle issued an Invitation to Bid (IFB) No. 2012-01-PM to solicit bids from interested vendors for moving services to organize, pack, transport, and deliver library books, files, piano, and other items from the old Library to the new Kyle Public Library. The bid submission deadline was at 2:00 p.m. on Friday, March 9, 2012.

A solicitation notice for the IFB was published in the Hays Free Press and was posted on the City's website. A total of eight (8) bids were received in response to the City's IFB for Library moving services. Only two of the eight bids received (numbers 5 and 7) met the cargo insurance requirement as recommended by the Texas Municipal League and included in the bid specifications as a requirement.

The bids received are as follows:

1. Little Guys Movers:	\$ 5,200.00
2. Library Design Systems:	\$ 7,144.00
3. Apple Moving:	\$ 7,892.00
4. ABC Moving:	\$ 8,599.00
5. Move Solutions, Ltd:	\$ 8,642.26
6. A-1 Freeman Moving & Storage:	\$ 8,955.42
7. Graebel San Antonio Movers, Inc:	\$ 12,870.00
8. Ace Relocation Systems, Inc:	\$ 15,470.00

The following documents are attached to provide detailed information regarding this solicitation:

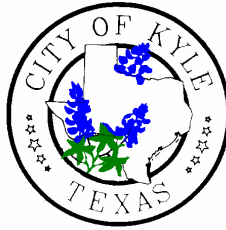
1. Solicitation Notice
2. Invitation for Bid No. 2012-01-PM
3. Bid Tabulation
4. Fiscal Note

Budget Information:

A Fiscal Note is attached.

Attachments / click to download

- [Bid Tabulation - Library Moving Services](#)
 - [Invitation for Bid No.2012-01-PM & Addendum](#)
 - [Solicitation Notice - Library Moving Services](#)
 - [Fiscal Note - Library Moving Services 3-20-2012](#)
-



CITY OF KYLE, TEXAS
INVITATION FOR BID (IFB) NO: 2012-01-PM

Solicitation For: Moving Services for Kyle Public Library

Solicitation Number: IFB 2012-01-PM

Date Issued: February 22, 2012

Description: The City of Kyle, Texas is soliciting bids for moving services to organize, pack, transport, and deliver library books, files, piano, and other items from the old library to the new Kyle Public Library.

Bid Submission
Deadline: Must Be Received By: March 9, 2012 by 2:00 p.m.

Bid Submission: By Email Send to: pmoheet@cityofkyle.com
By Mail Send to: Mr. Perwez A. Moheet, CPA
Director of Finance
City of Kyle
100 W. Center Street
Kyle, Texas 78640

Bid Opening Date: March 13, 2012 at 9:00 a.m.
Finance Conference Room, Kyle City Hall
100 W. Center Street
Kyle, Texas 78640

Bid Contact: Andy Alejandro, email: talejandro@cityofkyle.com

Technical Contact: Connie Brooks, Library Director, email:
cbrooks@cityofkyle.com

Bid Requirements: Available on City of Kyle's website at:
<http://www.cityofkyle.com/rfps>



CITY OF KYLE, TEXAS
INVITATION FOR BID (IFB) NO: 2012-01-PM

Solicitation For: Moving Services for Kyle Public Library

Solicitation Number: IFB 2012-01-PM

Date Issued: February 22, 2012

Description: The City of Kyle, Texas is soliciting bids for moving services to organize, pack, transport, and deliver library books, files, piano, and other items from the old library to the new Kyle Public Library.

Bid Submission
Deadline: Must Be Received By: March 9, 2012 by 2:00 p.m.

Bid Submission: By Email Send to: pmoheet@cityofkyle.com
By Mail Send to: Mr. Perwez A. Moheet, CPA
Director of Finance
City of Kyle
100 W. Center Street
Kyle, Texas 78640

Bid Opening Date: March 13, 2012 at 9:00 a.m.
Finance Conference Room, Kyle City Hall
100 W. Center Street
Kyle, Texas 78640

Bid Contact: Andy Alejandro, email: talejandro@cityofkyle.com

Technical Contact: Connie Brooks, Library Director, email:
cbrooks@cityofkyle.com

Bid Requirements: Please refer to page 2.

Item # 12



CITY OF KYLE, TEXAS
INVITATION FOR BID (IFB) NO: 2012-01-PM

SPECIFICATIONS AND GENERAL BID REQUIREMENTS

SCOPE:

The City of Kyle, Texas is soliciting bids for moving services to organize, pack, transport, and deliver materials to the new Kyle Public Library. Collection materials, consisting mainly of books, will be moved from the old library to the new library and returned to the shelves in the same order by the movers according to instructions provided by Library staff. It is recommended that specially-designed library move carts be used for this purpose.

The moving services contract will require the successful vendor to move items from two separate locations; old Library and Storage to the new Kyle Public Library. The address of each location is as follows:

Old Library: 409 West Blanco Street
Kyle, Texas 78640

Storage: 103 Front Street
Kyle, Texas 78640

New Library: 550 Scott Street
Kyle, Texas 78640

GENERAL DESCRIPTION OF ITEMS TO BE MOVED:

The moving services are required to organize, pack, transport, and deliver, including but not limited to, the following types of items to the new Kyle Public Library:

1. Book collection
2. Magazine and other soft cover subscription collection
3. Audio and video collection
4. Electronic game collection
5. Television set(s)

6. Furniture
7. Display cabinets
8. Piano
9. Office file cabinets and files
10. Office copier
11. Refrigerator
12. Microfilm Reader

PRE BID WALK-THROUGH AND INSPECTION REQUIRED

All prospective bidders are required to conduct a walk-through and physical inspection with the Library Director of the old Library, storage, and the new Library to obtain a clear understanding of the type and quantity of items to be moved from each location.

Please contact Ms. Connie Brooks, Library Director to schedule a date and time to conduct the required walk-through and physical inspection.

A bid submitted without conducting the walk-through and physical inspection will be considered incomplete and accordingly, will be rejected.

DATE OF MOVE:

The City's Library Department expects the successful bidder/vendor to organize, pack, transport, and deliver all items to be moved from the old Library and the storage to the new Kyle Public Library as follows:

Start Date & Time: Thursday, March 29, 2012, by 8:30 a.m.

Completion Date & Time: Saturday, March 31, 2012, by 5:00 p.m.

PRE-MOVE PREPARATIONS REQUIRED:

The successful bidder//vendor will be required to provide and place temporary floor and wall protection in the buildings including corners and doorways prior to the move date. The floor and wall protections can be secured only by tape (no screws, nails, or other similar article is allowed).

The successful bidder//vendor will also be required to provide moving boxes for office contents, supply closets, staff effects, and other miscellaneous items at least three days prior to the move date.

INSURANCE REQUIREMENTS:

A Certificate of Insurance must be included with the bid response to show the following coverage:

1. General liability insurance for personal Injury (including death) and property damage with a minimum of \$500,000 per occurrence and \$1 million aggregate coverage.
2. Automobile/truck liability Insurance with a minimum of \$500,000 per occurrence.
3. Transportation coverage such as motor truck cargo insurance with a minimum of \$500,000 per occurrence.
4. Workers compensation insurance as required by state law.

BID RESPONSE FORMAT:

All response to this Invitation for Bids (IFB) must be on the vendor or firm's letterhead and must include the following minimum information. Incomplete bids submitted will be considered unacceptable and will be rejected.

1. Responder company's name.
2. Physical and mailing address
3. Contact person's name, title, telephone number, and email address.
4. Completed Form W-9 (attached)
5. Certificate of Insurance
6. Certificate of Understanding (attached)
7. Lump Sum Total Not To Exceed Bid Amount

BID AMOUNT GUARANTY

All vendors responding to this IFB issued by the City of Kyle, fully understand and unequivocally accept that by submitting a written bid, are unconditionally accepting the City's requirement that the lump sum bid amount submitted in response to this IFB will be good for a minimum of sixty (60) days from the date of City's bid opening.

CONTACT INFORMATION:

For City's bid requirements and purchasing related information, please contact Andy Alejandro at: talejandro@cityofkyle.com

For technical information related to the Library moving service required, please contact Connie Brooks at: cbrooks@cityofkyle.com and please copy Andy Alejandro at talejandro@cityofkyle.com



CITY OF KYLE, TEXAS
INVITATION FOR BID (IFB) NO: 2012-01-PM

CERTIFICATE OF UNDERSTANDING

Item # 12

Date: _____

To City of Kyle:

On behalf of our moving services company, _____
(name of company), I do hereby certify that we have completed a walk-through and
physical inspection of all locations and items to be moved under this solicitation with the
City of Kyle's Library Director.

We further certify that we fully understand the City's requirements under this solicitation
to organize, pack, transport, and deliver all items to be moved from the old Library and
storage to the new Kyle Public Library. Our total lump sum not to exceed bid amount is
based on this understanding.

Signature

Name

Title



CITY OF KYLE, TEXAS
INVITATION FOR BID (IFB) NO: 2012-01-PM

ADDENDUM NO. 1

Solicitation For: Moving Services for Kyle Public Library
Solicitation Number: IFB 2012-01-PM
Date Issued: February 29, 2012
Description of:
Addendum: To provide additional information and clarification to potential bidders/vendors concerning required pre-move preparations and the daily hours available for the actual move.

**PRE-MOVE
PREPARATIONS:**

The specifications for IFB No: 2012-01-PM requires the successful bidder/vendor is required to provide and place temporary floor and wall protection in the buildings including corners and doorways prior to the move date. The floor and wall protections can be secured only by tape (no screws, nails, or other similar article is allowed).

After the bidder/vendor has been selected and awarded the contract by the City Council, the successful bidder or vendor can make arrangements with the Director of Kyle Public Library to gain access to the new Library for placing temporary floor and wall protection in the buildings including corners and doorways in advance of the move date.

**HOURS AVAILABLE
DAILY FOR MOVE:**

The specifications for IFB No: 2012-01-PM requires the successful bidder/vendor to start the actual move at 8:30

Item # 12

a.m. on Thursday, March 29, 2012 and complete by 5:00 p.m. on Saturday, March 31, 2012.

In an effort to provide flexibility, increase efficiency, and reduce moving costs, the City will allow for successful bidder or vendor to start moving at 8:30 a.m. on March 29 (Thursday) and March 30, 2012 (Friday) and stop by 10:00 p.m.

On March 31, 2012 (Saturday), the move can begin at 7:00 a.m. and stop by 10:00 p.m.

If absolutely necessary, any items remaining can be moved and the job fully completed on April 1, 2012 (Sunday). If moving of remaining items does become necessary to occur on April 1, 2012 (Sunday), then the move can begin at 7:00 a.m. and must be completed by no later than 4:00 p.m.

Item # 12



CITY OF KYLE, TEXAS
INVITATION FOR BID (IFB) NO: 2012-01-PM

ADDENDUM NO. 2

Solicitation For: Moving Services for Kyle Public Library

Solicitation Number: IFB 2012-01-PM

Date Issued: March 1, 2012

Description of:
Addendum: Questions from potential bidders/vendors and City staff's response.

Note: Please review all questions received from potential bidders and the City's response because it may have an impact on your bid.

Attachment: Bidder questions & City's response.

Bid Contact: Andy Alejandro, email: talejandro@cityofkyle.com

Technical Contact: Connie Brooks, Library Director, email: cbrooks@cityofkyle.com

City of Kyle, Texas
 Bid Tabulation for:
 IFB #2012-01-PM for Library Moving Services
 March 13, 2012 at 9:00 a.m.

	<u>Name of Firm Responding</u>	<u>Not to Exceed Bid Amount</u>	<u>\$500K/\$500K Cargo Insurance</u>	<u>Signed COU</u>	<u>Signed W-9</u>	<u>Located in</u>	<u>Comments</u>
1	** Little Guys Movers	\$ 5,200.00	\$50K/\$100K	Yes	Yes	San Marcos	
2	** Library Design Systems, Inc.	\$ 7,144.00	No	Yes	Yes	Houston	Additional work @\$55.00 per hour plus expenses
3	** Apple Moving	\$ 7,892.00	\$100K/\$200K	Yes	Yes	Austin	
4	* ABC Moving	\$ 8,599.00	\$50K/\$100K	Yes	Yes	Austin	Listed items, waiting time \$35.00 per man hour
5	** Move Solutions, Ltd.	\$ 8,642.26	\$500K/\$500K	Yes	Yes	Austin	
6	** A-1 Freeman Moving & Storage	\$ 8,955.42	No	Yes	Yes	Round Rock	
7	** Graebel San Antonio Movers, Inc.	\$ 12,870.00	\$1,000K/\$2,000K	Yes	Yes	Shertz	
8	* ACE Relocation Systems, Inc.	\$ 15,470.00	No	Yes	Yes	Kyle	Cargo insurance optional and available

* Submitted by mail/courier service
 ** Submitted by email

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: March 20, 2012
 CONTACT CITY DEPARTMENT: Kyle Public Library
 CONTACT CITY STAFF: Connie Brooks, Director

SUBJECT: Authorize award and execution of a Purchase Order to LITTLE GUYS MOVERS, INC., of San Marcos, Texas, in an amount not to exceed \$5,200.00 to provide moving services to transport and deliver library books, files, and other items from the old library to the new Kyle Public Library and authorize City Manager to make a bid exception by reducing the cargo insurance requirement to \$100,000 per occurrence.

CURRENT YEAR FISCAL IMPACT:

This service contract with LITTLE GUYS MOVERS, INC., will require expenditure of funds from the approved budget of the Library Department.

1. City Department:	Kyle Public Library
2. Project Name:	Library Moving Services
3. Budget/Accounting Code(s):	110-141-55329
4. Funding Source:	FY 2011-12 Approved Budget (General Fund)
5. Current Appropriation:	\$ 10,745.00
6. Unencumbered Balance:	\$ 10,480.00
7. Amount of This Action:	<u>\$(5,200.00)</u>
8. Remaining Balance:	<u>\$ 5,280.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this moving services contract in the amount of \$5,200.00 is provided from the FY 2011-12 approved budget of the Kyle Public Library Department.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.



CITY OF KYLE, TEXAS

Consideration and Adoption of Budget Development Timeline for FY 2012-13

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation: Consideration and Possible Action on the timeline for the Development and Adoption of the City's annual budget for Fiscal Year 2012-13 including special called City Council meetings for budget workshops and public hearings ~ *Perwez A. Moheet, CPA, Director of Finance*

Other Information: The following documents are attached to provide additional information:

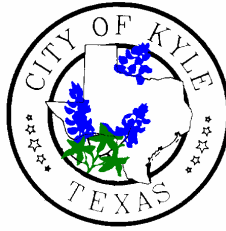
1. City Council's Budget Policy Directives for FY 2012-13
2. Budget Development Timeline for FY 2012-13

Budget Information: A Fiscal Note is not required.

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

Attachments / click to download

- [City Council's Budget Policy Directives for FY 2013](#)
 - [Timeline for FY 2013 Budget Development](#)
-



City Council's Budget Policy Directives For Fiscal Year 2012-13

January 16, 2012

The following Budget Policy Directives were developed for Fiscal Year 2012-13 resulting from the City Council's Workshop held on January 16, 2012:

1. Utility Rates

- a. Minimize increase for water and sewer rates.
- b. Reduce transfer to the General Fund.

2. Property Tax Rate

- a. Council will consider increase in Maintenance & Operations (M&O) rate component from the FY 2011-12 level to pay for needed City services and for increased operating costs for existing City services.
- b. The Interest & Sinking (I&S) rate component can increase to adjust for the increased debt service due in FY 2013.
- c. Council will consider increasing Property Tax rates to offset the reduction in the amount of the General Fund transfer reduction.

3. Bond Election

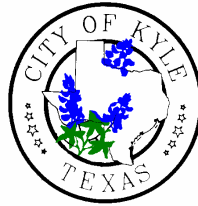
- a. City Manager will develop and present a plan for City Council's consideration for a City bond election in November 2012 to include the following:
 - i. Public involvement in the development of the plan
 - ii. Input by the City's Mobility Committee
 - iii. Identification and prioritization of roadway projects
 - iv. Review of roadway cost estimates
 - v. Identification of other high priority capital projects
 - vi. Property tax impact

4. Compensation & Benefits for City Employees

- a. City Council wants to take care of its employees and improve employee morale.
- b. Consideration of a cost of living adjustment for all City employees.
- c. Maintain all benefits at the current levels.
- d. No changes to any employee benefit plans including life, medical, health, and retirement (TMRS).

5. New Positions

- a. City Council will consider proposal for new positions from the City Manager rather than individual Department Directors.
- b. City Manager's proposal for new positions should be based on goals and priorities for City services as established by the City Council and funding availability.



City of Kyle, Texas
FY 2012-13 Budget Development Timeline

JANUARY 2012

Tuesday, January 03, 2012	4th Quarter Financial Performance Report - City Council Meeting
Monday, January 16, 2012	City Council Budget Policy - Workshop

FEBRUARY 2012

Tuesday, February 07, 2012	Independent Auditor's Report Issued
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MARCH 2012

Tuesday, March 06, 2012	1st Quarter Financial Performance Report - City Council Meeting
Monday, March 12, 2012	Compilation of Current Year Estimates as of February 29, 2012
Tuesday, March 20, 2012	Review & Adoption of Budget Development Calendar

APRIL 2012

Monday, April 09, 2012	Distribution of 2012 CYEs, Fee Schedules, and Instructions to Departments for the Development of FY 2012-13 Operating & Capital Budgets
Tuesday, April 17, 2012	2nd Quarter Financial Performance Report - City Council Meeting
Monday, April 30, 2012	Deadline for Departments to Submit FY 2011-12 Current Year Estimates and Fee Schedules to Financial Services Department for Review & Compilation

MAY 2012

Tuesday, May 01, 2012	Begin Compilation of Current Year Estimates and Determination if Budget Amendment is Necessary
Wednesday, May 23, 2012	Deadline for Departments to Submit FY 2012-13 Proposed Budget to Financial Services for Review & Compilation
Thursday, May 24, 2012	Begin Compilation and Review of Departmental Proposed Budgets by Financial Services Department staff.

JUNE 2012

Friday, June 15, 2012	Completion of Compilation and Review of Departmental Proposed Budgets by Financial Services Department staff.
Monday, June 18, 2012	Proposed Budget Review by City Manager (Group #1) <ul style="list-style-type: none"> - Administration - Communications - Human Resources - Parks and Recreation
Tuesday, June 19, 2012	Proposed Budget Review by City Manager (Group #2) <ul style="list-style-type: none"> - Economic Development - Public Library - Municipal Court - Police Department
Wednesday, June 20, 2012	Proposed Budget Review by City Manager (Group #3) <ul style="list-style-type: none"> - Building Inspection - Planning - Financial Services - Information Technology - Public Works
Thursday, June 21, 2012	Proposed Budget Review by City Manager (Group #4) <ul style="list-style-type: none"> - Revenue Estimates - Personnel Support Costs - Capital Improvement Projects by Fund - Debt Service - Property Tax Rates

JULY 2012

Thursday, July 19, 2012	City Manager's Preliminary Review & Discussion on Proposed Budget
Wednesday, July 25, 2012	Last Day for Chief Appraiser to Certify Tax Roll to Taxing Unit
Wednesday, July 25, 2012	Publish Budget Notice #1: Public Hearings on Budget, Rates & Fees
Friday, July 27, 2012	City Manager's Final Review of Proposed Budget

AUGUST 2012

Wednesday, August 01, 2012	City Council Budget Work Session #1
(Special Called Meeting)	City Manager Presents FY 2013 Budget to Council as Required by City Charter (No later than 60 days prior to October 1st) <ul style="list-style-type: none"> Public Hearing #1 - Proposed Budget Public Hearing #2 - Proposed Fees & Charges Public Hearing #3 - Proposed Water/Wastewater Rates Public Hearing #4 - Proposed Property Tax Rates Council Vote on Proposal to Consider Tax Increase

Thursday, August 02, 2012
(Special Called Meeting)

City Council Budget Work Session #2

Public Hearing #5 - Proposed Budget
Public Hearing #6 - Proposed Fees & Charges
Public Hearing #7 - Proposed Water/Wastewater Rates
Public Hearing #8 - Proposed Property Tax Rates

Discussion/Action on Proposed Budget:

- Revenue Estimates & Fund Balances
- Mayor & Council
- Administration
- Communications
- Human Resources
- Information Technology
- Parks and Recreation
- Police

Wednesday, August 08, 2012

Publish Budget Notice #2: Effective and Rollback Tax Rates, Unencumbered Fund Balances, Debt Obligation Schedule, and Other Applicable Items.

Wednesday, August 08, 2012
(Special Called Meeting)

City Council Budget Work Session #3

Public Hearing #9 - Proposed Budget
Public Hearing #10 - Proposed Fees & Charges
Public Hearing #11 - Proposed Water/Wastewater Rates
Public Hearing #12 - Proposed Property Tax Rates

Discussion/Action on Proposed Budget:

- Building Inspection
- Planning
- Economic Development
- Financial Services
- Municipal Court
- Public Library
- Public Works

Wednesday, August 08, 2012

Publish Budget Notice #3: Public Hearings on Tax Increase

Wednesday, August 15, 2012
(Special Called Meeting)

City Council Budget Work Session #4

Public Hearing #13 - Proposed Budget
Public Hearing #14 - Proposed Fees & Charges
Public Hearing #15 - Proposed Water/Wastewater Rates
Public Hearing #16 - Proposed Property Tax Rates

Discussion/Action on Proposed Budget:

- Capital Improvement Projects by Fund
- Debt Service
- Property Tax Rates

Thursday, August 23, 2012
(Special Called Meeting)

City Council Budget Work Session #5

Public Hearing #17 - Proposed Budget
Public Hearing #18 - Proposed Fees & Charges
Public Hearing #19 - Proposed Water/Wastewater Rates
Public Hearing #20 - Proposed Property Tax Rates

Discussion/Action on Proposed Budget:
- Discussion/Action on All Remaining Budget Items

Wednesday, August 29, 2012

Publish Budget Notice #4: Tax Revenue Increase

SEPTEMBER 2012

Tuesday, September 04, 2012

City Council Budget Work Session #6

Public Hearing #21 - Proposed Budget
Public Hearing #22 - Proposed Fees & Charges
Public Hearing #23 - Proposed Water/Wastewater Rates
Public Hearing #24 - Proposed Property Tax Rates

1st Reading - Budget Adoption Ordinance (Including Fees & Charges, and Water/Wastewater Rates)

1st Reading - Property Tax Rate Adoption Ordinance

Wednesday, September 05, 2012
(Special Called Meeting)

City Council Budget Work Session #7

2nd Reading - Budget Adoption Ordinance (Including Fees & Charges, and Water/Wastewater Rates)

2nd Reading - Property Tax Rate Adoption Ordinance

Thursday, September 20, 2012

Charter Deadline for City Council to Adopt Budget by Ordinance. (No later than 3rd Thursday of September)

Monday, September 24, 2012

Last Day for Taxing Units to Adopt 2012 Property Tax Rate or No Later Than 60th Day After the Chief Appraiser Certifies Appraisal Roll to the Taxing Unit.

Monday, October 01, 2012

1st Day of Fiscal Year 2012-13



CITY OF KYLE, TEXAS

Cops Hiring Grant Program

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation:

Consideration and Possible Action to authorize the City Manager to submit grant application to U.S. Department of Justice requesting funding under the COPS Hiring grant program to fund 75% (up to \$125,000) of one police officer position in the Kyle Police Department for a period of 3 years ~ *Raquel Garcia, Grants Administrator*

Other Information:

The U.S. Department of Justice has released a call for applications from applicants who were not funded under the COPS Hiring Program in FY11. The Hiring Program is soliciting applications to fund 75%, up to \$125,000 for three years per officer position requested. Funds exceeding the \$125,000 and 25% match must be a cash match by the applicant. Applicants are limited to funding the position to a military veteran who has served between September 11, 2001 to present and served for a period of at least 6 months. The City of Kyle must continue officer's employment for 12 months and assume all financial obligations after the grant period has ended in order to be eligible for this application.

Budget Information:

The proposed budget is based off a beginning salary of \$43,250 for year 1, \$44,331 for year 2, and \$45,440 for year 3 and all benefits, excluding overtime, language incentive, certification incentive and longevity. The total budget for this 3 year position is \$199,566, with US DOJ funding up to \$125,000. The remaining pay of \$74,566 will be paid by the City of Kyle, in increasing increments as shown in federal cost share attachment.

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

Attachments / click to download

- [Cops Budget Sheet](#)
- [Federal Local Cost Share](#)
- [Memo](#)

A. Full-Time Entry-Level Sworn Officer Base Salary Information

Part I: *Instructions:* Please complete the questions below based on your agency's entry-level salary and benefits package for one locally-funded officer position. As applicable per the program specific Application Guide, you may also be required to project Year 2 and Year 3 salaries. To learn more about what types of officer fringe benefit costs are allowable, please click [here](#).

A. Base Salary Information

Year 1 Salary
Enter the current first year entry level base salary for one sworn officer position.

Year 2 Salary
Enter the current second year entry level base salary for one sworn officer position.

Year 3 Salary
Enter the current third year entry level base salary for one sworn officer position.

\$43,250.00

\$44,331.00

\$45,440.00

FRINGE BENEFITS

Year 1 Fringe Benefits
COST BASE: % OF

Year 2 Fringe Benefits
COST BASE: % OF

Year 3 Fringe Benefits
COST BASE: % OF

Social Security

\$2,682.00

6.00 %

\$2,749.00

6.00 %

\$2,817.00

6.00 %

Exempt

Fixed Rate

Medicare

\$627.00

1.40 %

\$643.00

1.50 %

\$659.00

1.50 %

Exempt

Fixed Rate

Health Insurance

\$5,000.00

11.60 %

\$5,500.00

12.40 %

\$6,600.00

14.50 %

Life Insurance

\$300.00

0.70 %

\$300.00

0.70 %

\$300.00

0.70 %

Vacation

\$1,100.00

2.50 %

\$1,100.00

2.50 %

\$1,100.00

2.40 %

Annual Hours 48

Sick Leave

\$1,100.00

2.50 %

\$1,100.00

2.50 %

\$1,100.00

2.40 %

Annual Hours 50

Retirement

\$3,755.00

8.70 %

\$3,850.00

8.70 %

\$3,945.00

8.70 %

Worker's Compensation

\$1,513.00

3.50 %

\$1,551.00

3.50 %

\$1,591.00

3.50 %

Exempt

Fixed Rate

Unemployment Insurance

\$1,500.00

3.50 %

\$1,463.00

3.30 %

\$1,500.00

3.30 %

Exempt

Fixed Rate

Disability Insurance

\$1,000.00

2.30 %

\$1,000.00

2.30 %

\$1,000.00

2.20 %

Dental Insurance

\$500.00

1.20 %

\$500.00

1.10 %

\$500.00

1.10 %

SHIFT Differential

\$2,200.00

5.10 %

\$2,200.00

5.00 %

\$2,200.00

4.80 %

Benefits Sub-Total Per Year (1 Position)

\$21,277.00

\$21,956.00

\$23,312.00

C. Total Year Salary and Benefits (1 Position)

\$64,527.00

\$66,287.00

\$68,752.00

Total Salary and Benefits for Years 1, 2, and 3 ((1 Position)

\$199,566.00

X 1

Positions

\$199,566.00

Item # 14

Federal/Local Share Costs for Hiring Grants				
	Year 1	Year 2	Year 3	Total Costs for 1 Position @ 3 Years
Federal Share	\$ 43,339	\$ 41,490	\$ 40,171	\$ 125,000
Local Share	\$ 21,188	\$ 24,797	\$ 28,581	\$ 74,566
Total Costs	\$ 64,527	\$ 66,287	\$ 68,752	\$ 199,566



CITY OF KYLE

Memorandum

To: Mayor and Council
Re: COPS Hiring Grant Program
From: Lanny Lambert
Date: March 20, 2012

There is no Fiscal Note attached at this time. This item is not budget anticipated or funded. If Council wants to apply for our matching portion it must be funded by a tax rate increase.



CITY OF KYLE, TEXAS

Canceling the Election

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation:

(First Reading) AN ORDINANCE DECLARING THE UNOPPOSED CANDIDATES FOR THE POSITIONS OF COUNCILMEMBER PLACE FIVE AND COUNCILMEMBER PLACE SIX TO BE ELECTED, CANCELING THE GENERAL ELECTION SCHEDULED FOR MAY 12, 2012, PROCEEDING WITH THE SPECIAL LOCAL OPTION ELECTION TO LEGALIZE THE SALE OF ALCOHOLIC BEVERAGES, AND PROVIDING FOR THE NECESSARY POSTING OF THIS ORDINANCE ~ *Frank Garza, City Attorney*

Other Information:

Budget Information:

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

Attachments / click to download

- [Ordinance Canceling Election 1st Reading](#)
 - [Unopposed Candidates Certificate](#)
-

ORDINANCE NO. _____

AN ORDINANCE DECLARING THE UNOPPOSED CANDIDATES FOR THE POSITIONS OF COUNCILMEMBER PLACE FIVE AND COUNCILMEMBER PLACE SIX TO BE ELECTED, CANCELING THE GENERAL ELECTION SCHEDULED FOR MAY 12, 2012, PROCEEDING WITH THE SPECIAL LOCAL OPTION ELECTION TO LEGALIZE THE SALE OF ALCOHOLIC BEVERAGES, AND PROVIDING FOR THE NECESSARY POSTING OF THIS ORDINANCE

WHEREAS, a General election was scheduled for May 12, 2012 for the purpose of electing Council members Places 5 and 6 for the City of Kyle; and

WHEREAS, the registered voters of the City of Kyle submitted a petition having the minimum number of required signatures to the City Secretary to hold a local option election to determine whether or not to permit the legal sale of alcoholic beverages, including mixed beverages; and

WHEREAS, in accordance with Chapter 501 of the Election Code, a Special election was scheduled for May 12, 2012 for the purpose of holding a local option election to determine whether or not to permit the legal sale of alcoholic beverages, including mixed beverages within the city limits of Kyle; and

WHEREAS, the City Secretary, the person responsible for having the official ballot prepared, certifies that the following candidates are unopposed for election to office for the election scheduled to be held on May 12, 2012:

FOR COUNCILMEMBER PLACE 5:
FOR COUNCILMEMBER PLACE 6:

SAMANTHA BELLOWS
RAY BRYANT

WHEREAS, Election Code Sections 2.051 and 2.053 provide authority for the City Council to declare the unopposed candidates as elected to office and cancel the general election, and provide that the order or ordinance so declaring must be posted on election day; and

WHEREAS, since the City will still be conducting a Special Election for the purpose of holding a local option election to determine whether or not to permit the legal sale of alcoholic beverages, Election Code Section 2.051 requires that the uncontested names appear on the ballot under the category "Unopposed Candidates Declared Elected;"

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

Section 1. That, **Samantha Bellows** be declared elected Councilmember Place Five; and **Ray Bryant** be declared elected Councilmember Place Six.

Section 2. That the General election scheduled for May 12, 2012 is canceled but the names of the candidates still appear on the ballot under the category “Unopposed Candidates Declared Elected.”

Section 3. That the Special election scheduled for May 12, 2012 for the purpose of holding a local option election to determine whether or not to permit the legal sale of alcoholic beverages, including mixed beverages within the city limits of Kyle, will proceed as scheduled.

Section 4. That a copy of this ordinance be posted at the polling places listed below:

**Kyle City Hall
100 W. Center Street
Kyle, Texas 78640**

**Hays CISD Performing Arts Center
979 Kohler’s Crossing
Kyle, Texas 78640**

**Chapa Middle School
3311 Dacy Lane
Kyle, Texas 78640**

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the 20th day of March, 2012, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this 20th day of March, 2012.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the 3rd day of April 2012, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this _____ day of April, 2012.

Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary

**CERTIFICATION OF UNOPPOSED CANDIDATES
FOR OTHER POLITICAL SUBDIVISIONS (NOT COUNTY)
CERTIFICACIÓN DE CANDIDATOS ÚNICOS
PARA OTRAS SUBDIVISIONES POLITICAS (NO EL CONDADO)**

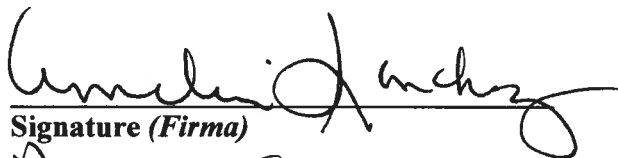
To: Presiding Officer of Governing Body
Al: Presidente de la entidad gobernante

As the authority responsible for having the official ballot prepared, I hereby certify that the following candidates are unopposed for election to office for the election scheduled to be held on May 12, 2012.

Como autoridad a cargo de la preparación de la boleta de votación oficial, por la presente certifico que los siguientes candidatos son candidatos únicos para elección para un cargo en la elección que se llevará a cabo el 12 de Mayo, 2012.

List offices and names of candidates:
Lista de cargos y nombres de los candidatos:

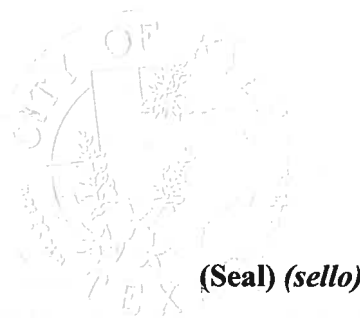
Office(s) Cargo(s)	Candidate(s) Candidato(s)
City Council District 5 (At Large)	Samantha Bellows
City Council District 6	Ray Bryant


Signature (*Firma*)

Aurelia Sanchez
Printed name (*Nombre en letra de molde*)

City Secretary
Title (*Puesto*)

March 7, 2012
Date of signing (*Fecha de firma*)



Item # 15



CITY OF KYLE, TEXAS

Local Bidders

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation:

RESOLUTION OF THE KYLE CITY COUNCIL TO PROVIDE PREFERENCE TO LOCAL BIDDERS OF CITY CONTRACTS IN ACCORDANCE WITH CHAPTER 271 OF THE LOCAL GOVERNMENT CODE; ESTABLISHING A SEVERABILITY PROVISION AND AN EFFECTIVE DATE ~ *Frank Garza, City Attorney*

Other Information:

Budget Information:

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

Attachments / click to download

[Local Preference Statute](#)

RESOLUTION NO.**RESOLUTION OF THE KYLE CITY COUNCIL TO PROVIDE PREFERENCE TO LOCAL BIDDERS OF CITY CONTRACTS IN ACCORDANCE WITH CHAPTER 271 OF THE LOCAL GOVERNMENT CODE; ESTABLISHING A SEVERABILITY PROVISION AND AN EFFECTIVE DATE.**

* * * * *

WHEREAS, Texas state law requires competitive bidding of all contracts greater than \$50,000 that are for goods, services and construction contracts in accordance with Chapters 252 and 271 of the Local Government Code; and

WHEREAS, the City of Kyle wishes to have local companies compete for contracts for goods, services and construction projects because the local bidder offers the best combination of price and additional economic development opportunities for the city, including the employment of local residents; and

WHEREAS, the Local Government Code allows a municipality to give local preference to a bidder who is not the low bid if the local bidder meets the conditions of Section 271.9051;

NOW, THEREFORE BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF KYLE, THAT:

SECTION 1. City of Kyle City Council hereby authorizes city staff when evaluation competitive bids to give local preference if the contractor meets the following requirements of Section 271.9051:

- The local bidder's principal place of business is in the city limits of Kyle; and
- The solicitation for bids or proposals for goods or services states that local preference may be considered in awarding the contract; and
- Construction contract is for less than \$100,000 and a contracts for goods and services is less than \$500,000; and
- The local bidder is within ten percent (10%) of the lowest price received; and
- City Council determines in either the Resolution awarding the contract or in the minutes of the council meeting that the local bidder offers the best combination of price and additional economic development opportunities for the City, including the employment of local residents.

SECTION 2. This ordinance does not prohibit the City from rejecting all bids and proposals.

SECTION 3. Resolution shall take effect upon passage.

PASSED AND APPROVED THIS ____ DAY OF FEBRUARY 2012..

Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Committee Ordinance

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation:

(First Reading) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING PART II, CHAPTER 2, ARTICLE III, DIVISION 4, SUBDIVISION I & II OF THE CITY OF KYLE MUNICIPAL CODE DEALING WITH THE STRATEGIC PLANNING AND FINANCE COMMITTEE, THE COMMUNITY RELATIONS COMMITTEE, THE PUBLIC WORKS & SERVICE COMMITTEE, THE MOBILITY COMMITTEE, THE PARKS AND RECREATION COMMITTEE, THE SAFETY & EMERGENCY SERVICES COMMITTEE, AND THE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE; REVISING MEMBERS OF OFFICE; REVISING DUTIES, MEMBERSHIP, TERMS, APPOINTMENTS; AND PROVIDING FOR RELATED MATTERS ~ *James Earp, Assistant City Manager*

Other Information:

Budget Information:

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Attachments / click to download

[12.03.20 Council Committees Amended - Updated](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING PART II, CHAPTER 2, ARTICLE III, DIVISION 4, SUBDIVISION I & II OF THE CITY OF KYLE MUNICIPAL CODE DEALING WITH THE STRATEGIC PLANNING AND FINANCE COMMITTEE, THE COMMUNITY RELATIONS COMMITTEE, THE PUBLIC WORKS & SERVICE COMMITTEE, THE MOBILITY COMMITTEE, THE PARKS AND RECREATION COMMITTEE, THE SAFETY & EMERGENCY SERVICES COMMITTEE, AND THE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE; REVISING MEMBERS OF OFFICE; REVISING DUTIES, MEMBERSHIP, TERMS, APPOINTMENTS; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City Council of the City of Kyle desires to establish committees to promote efficient governmental operations and involvement of citizens in community issues;

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

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Part II, Chapter 2, Article III, Division 4, Subdivision I. The following paragraphs are hereby amended in their entirety as follows:

Sec. 2-103. - Membership and appointments; term of office and vacancy.

(a) *Membership and appointment.* Each committee shall be composed of seven members: seven residents of the city (the "citizen members"), with one citizen member chosen from each single member voting district and four citizen members chosen from the city at large (the "citizen members"). The city council shall appoint the members of the committees upon the recommendation of the mayor. In making citizen member appointments, preference shall be given to persons who do not already serve on one of the committees or another city board or commission.

(b) *Citizen members' terms and vacancy.* The citizen members of each Committee shall serve for a two-year term; The places occupied by the citizen members of each committee shall be identified by place numbers one through seven. The citizen members from district 2, district 4, and district 6 shall hold place number 2, place number 4, and place number 6, respectively. Places 1, 3, 5 and 7 shall be held by the at large appointees. The term of the odd-numbered places shall expire on September 30 of odd-numbered years; the term of the even-numbered places shall expire on September 30 of even-numbered years. Citizen members may be appointed to succeed themselves; provided that citizen members shall be limited to serving two consecutive terms on each committee. Vacancies shall be filled for unexpired terms by appointment by the city council upon the recommendation of the Mayor in accordance with subsection 2-103(a), but no member shall be appointed for a term in excess of two years. Newly appointed members shall be installed at the first regular committee meeting after their appointment. Members shall be eligible for re-appointment at any time following the termination of their two-year term, subject to term

limitations.

- (g) *Chairperson and vice-chairperson.* The committee shall determine the chairperson and the vice-chairperson. The vice-chairperson shall serve as chairperson in the absence of the chairperson.

Section 3. Part II, Chapter 2, Article III, Division 4, Subdivision II. The following paragraphs are hereby amended as follows:

Sec. 2-113. - Membership and appointments; term of office and vacancy.

- (a) *Membership and appointment.* Each committee shall be composed of seven members: seven residents of the city (the "citizen members"), with one citizen member chosen from each single member voting district and four citizen members chosen from the city at large (the "citizen members"). The city council shall appoint the members of the committees upon the recommendation of the mayor. In making citizen member appointments, preference shall be given to persons who do not already serve on one of the committees or another city board or commission.
- (b) *Citizen members' terms and vacancy.* The citizen members of each Committee shall serve for a two-year term; The places occupied by the citizen members of each committee shall be identified by place numbers one through seven. The citizen members from district 2, district 4, and district 6 shall hold place number 2, place number 4, and place number 6, respectively. Places 1, 3, 5 and 7 shall be held by the at large appointees. The term of the odd-numbered places shall expire on September 30 of odd-numbered years; the term of the even-numbered places shall expire on September 30 of even-numbered years. Citizen members may be appointed to succeed themselves; provided that citizen members shall be limited to serving two consecutive terms on each committee. Vacancies shall be filled for unexpired terms by appointment by the city council upon the recommendation of the Mayor in accordance with subsection 2-103(a), but no member shall be appointed for a term in excess of two years. Newly appointed members shall be installed at the first regular committee meeting after their appointment. Members shall be eligible for re-appointment at any time following the termination of their two-year term, subject to term limitations.
- (g) *Chairperson and vice-chairperson.* The committee shall determine the chairperson and the vice-chairperson. The vice-chairperson shall serve as chairperson in the absence of the chairperson.

Section 7. Repeal of Conflicting Ordinances. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

Section 8. 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, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on this the _____ day of _____, 2012.

FINALLY PASSED AND APPROVED on this the _____ day of _____, 2012.

ATTEST:

THE CITY OF KYLE, TEXAS

Amelia Sanchez, City Secretary

Lucy Johnson, Mayor



CITY OF KYLE, TEXAS

Traffic conditions in Southlake Ranch

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation: Consideration and Possible Action regarding resolutions submitted by the Southlake Ranch Homeowners Association requesting stop signs and speed limit reductions ~
Jerry Hendrix, Director of Community Development

Other Information:

Budget Information:

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

Attachments / click to download

- [Resolution stop signs](#)
 - [Resolution speed limit](#)
-

SOUTHLAKE RANCH HOMEOWNERS ASSOCIATION
RESOLUTION OF BOARD OF DIRECTORS
FOR INSTALLATION OF STOP SIGN

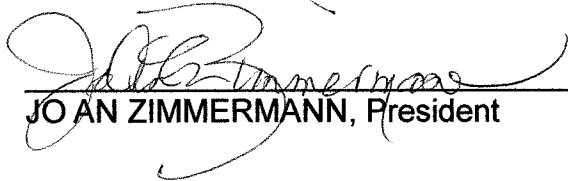
WHEREAS, the Southlake Ranch Homeowners Association Board of Directors, in accordance with the Declaration of Covenants, Conditions and Restrictions for Southlake Ranch, Phase One, Article IV, Section 2, in part as follows: . . . and doing any other thing necessary or desirable in the opinion the Board of Directors of the Association . . . which they consider of general benefit to the Owners or occupants of the Subdivision . . . "; and

WHEREAS, many homeowners and residents have complained of motorists speeding on Lake Washington Drive, and as a result of which speeding a serious accident occurred on September 19, 2011,

NOW, THEREFORE, BE IT RESOLVED: That the Board shall request the City Council of the City of Kyle to cause a stop sign to be installed on Lake Washington Drive at Town Lake Bend in each direction, making that intersection a four-way stop; and, in addition, to cause a stop sign to be installed on Lake Washington Drive at Mansfield Lake Trail in each direction, making that intersection a three-way stop.

DATED this 18 day of October, 2011.

SOUTHLAKE RANCH HOMEOWNERS ASSOCIATION



JOAN ZIMMERMANN, President

Item # 18

SOUTHLAKE RANCH HOMEOWNERS ASSOCIATION
RESOLUTION OF BOARD OF DIRECTORS
FOR REDUCTION OF SPEED LIMIT TO 25 MPH


WHEREAS, the Southlake Ranch Homeowners Association Article Board of Directors, in accordance with the Declaration of Covenants, Conditions and Restrictions for Southlake Ranch, Phase One, Article IV, Section 2, in part as follows: . . . and doing any other thing necessary or desirable in the opinion the Board of Directors of the Association . . . which they consider of general benefit to the Owners or occupants of the Subdivision . . ."; and

WHEREAS, many homeowners and residents have complained of motorists speeding on Lake Washington Drive, and as a result of which speeding a serious accident occurred on September 19, 2011,

NOW, THEREFORE, BE IT RESOLVED: That the Board shall request the City Council of the City of Kyle to reduce the speed limit throughout the neighborhood known as Southlake Ranch from 30 mph to 25 mph and replace the 30 mph signs with 25 mph signs.

DATED this 18 day of October, 2011.

SOUTHLAKE RANCH HOMEOWNERS ASSOCIATION



JOAN ZIMMERMANN, President

Item # 18



CITY OF KYLE, TEXAS

Historic Kyle Depot

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation:

Consideration and Possible Action on Approval of Contract with SpawGlass Contractor's, Inc., of Austin, Texas, in the amount of \$222,225.00 for the construction of Phase 1 of the Historic Kyle Depot ~ *Jerry Hendrix, Director of Community Development*

Other Information:

Budget Information:

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

Attachments / click to download

- [Train Depot Contract](#)
 - [Train Depot General Conditions](#)
 - [Fiscal Note - Train Depot SpawGlass 3-20-2012](#)
 - [Kyle Depot Bid Summary 1.31.12.](#)
 - [Kyle Depot Bid Summary rev 3.16.12](#)
 - [kyle depot bid notification 12-9.8.11](#)
-



AIA[®] Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 20 day of February in the year 2012
(In words, indicate day, month and year.)

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

The City of Kyle
100 West Center Street
Kyle, TX. 78640

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

SpawGlass Contractor's, Inc.
1111 Smith Road
Austin, TX. 78721
Telephone Number: 512.719.5251
Fax Number: 512.719.5255

for the following Project:
(Name, location and detailed description)

The Historic Kyle Depot
100 N. Front Street
Kyle, TX. 78640
Phase I of a Historic Restoration to the existing building.

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

Clayton & Little Architects
1001 E. 8th Street
Austin, TX. 78702
Telephone Number: 512.477.1727
Fax Number: 512.477.9876

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. There are no Contract Documents other than those listed above in this Article 1. The Contract Documents may only be altered, amended or repealed by an Amendment/Modification in writing and agreed to by both parties.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The commencement date will be fixed in a notice to proceed.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

Phase I - 63 Calendar days

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Sixty-three (63) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Init.

Portion of Work

Phase I work

Substantial Completion Date

63 days from Notice to Proceed

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Phase I contract \$222,225 (\$ Phase I contract \$222,225), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item

None

Units and Limitations**Price Per Unit (\$0.00)**

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item

None

Price**ARTICLE 5 PAYMENTS****§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that a properly executed Application for Payment is received by the Architect not later than the 5th day of a month and the Architect transmits the properly executed Application for Payment to the Owner by the 10th day of the month, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Twenty (20) days after the Owner receives the properly executed Application for Payment from the Architect.

(Federal, state or local laws may require payment within a certain period of time.)

Init.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten percent (10.00 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Ten percent (10.00 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Init.

ARTICLE 6 DISPUTE RESOLUTION**§ 6.1 INITIAL DECISION MAKER**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

2.00 % monthly

§ 8.3 The Owner's representative:
(Name, address and other information)

Jerry Hendrix
100 West Center Street
Kyle, TX. 78640

§ 8.4 The Contractor's representative:

Init.

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User Notes:

(1144475499)

(Name, address and other information)

Mr. Mark Harrington
 1111 Smith Road
 Austin, TX. 78721
 Telephone Number: 512.719.5251
 Fax Number: 512.719.5255
 Mobile Number: 512.848.4135
 Email Address: mark.harrington@spawglass.com

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Per specifications from Clayton & Little dated December 9, 2011

Section	Title	Date	Pages
---------	-------	------	-------

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
G1.0	Cover Sheet	12.9.11
G1.1	Specifications	12.9.11
A1.0	Site Plan	12.9.11
A1.1	Floor Plans – Demo	12.9.11
A1.2	Floor Plan	12.9.11
A1.3	Reflected Ceiling / Finish	12.9.11
A2.0	Exterior Elevation	12.9.11
A2.1	Exterior Elevation	12.9.11
A3.0	Wall Section	12.9.11
A4.0	Interior Elevation	12.9.11
A4.1	Interior Elevation	12.9.11
A5.0	Details	12.9.11
S1.0	Foundation Plan	12.9.11
S1.1	Ceiling Plan	12.9.11

Init.

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User Notes:

(1144475499)

S1.2	Roof Framing Plan	12.9.11
S2.0	Foundation Details	12.9.11
S2.1	Foundation Details	12.9.11
S3.0	Framing Details	12.9.11
S4.0	Structural Notes	12.9.11
M-0	Overall Mechanical	10.27.11
M-1	HVAC Plan	10.27.11
M-2	Refrigerant Plan	10.27.11
M-3	Mechanical Sections	10.27.11
M-4	Mechanical Details	10.27.11
E-1	Electrical Power Plan	10.27.11
E-2	Lighting Plan	10.27.11
E-3	Electrical Panel Sched.	10.27.11
P-1	Water Piping Plan	10.27.11
P-2	Attic Waste Piping Vent	10.27.11
P-3	Plumbing Waste Piping	10.27.11
P-4	Plumbing Details	10.27.11

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Addendum #1	December 21, 2011	
Addendum #2	January 27, 2011	

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Insurance requirement shall meet spec section 00 06 00 and as outlined:	
Workers Compensation:	
Employer’s Liability	\$2,000,000 each occurrence
Commercial Liability	
Bodily Liability	\$2,000,000 each occurrence
Property Liability	\$1,000,000 each occurrence

Init.

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User Notes:

(1144475499)

Personal Liability	\$2,000,000 each occurrence
Bodily Injury	\$2,000,000 each person and occurrence
Property Damage	\$1,000,000 each occurrence

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

OWNER *(Signature)*

(Printed name and title)

CONTRACTOR *(Signature)*

Patrick Williams, President - Austin Region
(Printed name and title)



Init.

/

Additions and Deletions Report for **AIA® Document A101™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the 20 day of February in the year 2012

...

The City of Kyle
100 West Center Street
Kyle, TX. 78640

...

SpawGlass Contractor's, Inc.
1111 Smith Road
Austin, TX. 78721
Telephone Number: 512.719.5251
Fax Number: 512.719.5255

...

The Historic Kyle Depot
100 N. Front Street
Kyle, TX. 78640
Phase I of a Historic Restoration to the existing building.

...

Clayton & Little Architects
1001 E. 8th Street
Austin, TX. 78702
Telephone Number: 512.477.1727
Fax Number: 512.477.9876

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The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. There are no Contract Documents other than those listed above in this Article 1. The Contract Documents may only be altered, amended or repealed by an Amendment/Modification in writing and agreed to by both parties.

...

The commencement date will be fixed in a notice to proceed.

...

Phase I - 63 Calendar days

...

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Sixty-three (63) days from the date of commencement, or as follows:

PAGE 3

Phase I work

63 days from Notice to Proceed

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Phase I contract \$222,225 (\$ Phase I contract \$222,225), subject to additions and deductions as provided in the Contract Documents.

...

None

...

None

...

§ 5.1.3 Provided that ~~an~~ a properly executed Application for Payment is received by the Architect not later than the 5th day of a month and the Architect transmits the properly executed Application for Payment to the Owner by the 10th day of the month, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~(—)~~ days after the Architect receives the Application for Payment. Twenty (20) days after the Owner receives the properly executed Application for Payment from the Architect.

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- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten percent (10.00 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Ten percent (10.00 %);

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Litigation in a court of competent jurisdiction

...

2.00 % monthly

...

Jerry Hendrix
100 West Center Street
Kyle, TX. 78640

PAGE 6

Mr. Mark Harrington
1111 Smith Road
Austin, TX. 78721
Telephone Number: 512.719.5251
Fax Number: 512.719.5255
Mobile Number: 512.848.4135
Email Address: mark.harrington@spawglass.com

...

Per specifications from Clayton & Little dated December 9, 2011

...

<u>G1.0</u>	<u>Cover Sheet</u>	<u>12.9.11</u>
<u>G1.1</u>	<u>Specifications</u>	<u>12.9.11</u>
<u>A1.0</u>	<u>Site Plan</u>	<u>12.9.11</u>
<u>A1.1</u>	<u>Floor Plans – Demo</u>	<u>12.9.11</u>
<u>A1.2</u>	<u>Floor Plan</u>	<u>12.9.11</u>
<u>A1.3</u>	<u>Reflected Ceiling / Finish</u>	<u>12.9.11</u>
<u>A2.0</u>	<u>Exterior Elevation</u>	<u>12.9.11</u>
<u>A2.1</u>	<u>Exterior Elevation</u>	<u>12.9.11</u>
<u>A3.0</u>	<u>Wall Section</u>	<u>12.9.11</u>
<u>A4.0</u>	<u>Interior Elevation</u>	<u>12.9.11</u>
<u>A4.1</u>	<u>Interior Elevation</u>	<u>12.9.11</u>
<u>A5.0</u>	<u>Details</u>	<u>12.9.11</u>
<u>S1.0</u>	<u>Foundation Plan</u>	<u>12.9.11</u>
<u>S1.1</u>	<u>Ceiling Plan</u>	<u>12.9.11</u>
<u>S1.2</u>	<u>Roof Framing Plan</u>	<u>12.9.11</u>
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<u>S3.0</u>	<u>Framing Details</u>	<u>12.9.11</u>
<u>S4.0</u>	<u>Structural Notes</u>	<u>12.9.11</u>
<u>M-0</u>	<u>Overall Mechanical</u>	<u>10.27.11</u>
<u>M-1</u>	<u>HVAC Plan</u>	<u>10.27.11</u>
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<u>P-2</u>	<u>Attic Waste Piping Vent</u>	<u>10.27.11</u>
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<u>P-4</u>	<u>Plumbing Details</u>	<u>10.27.11</u>

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Addendum #1
Addendum #2

December 21, 2011
January 27, 2011

...

Insurance requirement shall meet spec
section 00 06 00 and as outlined:

Workers Compensation:

<u>Employer's Liability</u>	<u>\$2,000,000 each occurrence</u>
<u>Commercial Liability</u>	
<u>Bodily Liability</u>	<u>\$2,000,000 each occurrence</u>
<u>Property Liability</u>	<u>\$1,000,000 each occurrence</u>
<u>Personal Liability</u>	<u>\$2,000,000 each occurrence</u>
<u>Bodily Injury</u>	<u>\$2,000,000 each person and occurrence</u>
<u>Property Damage</u>	<u>\$1,000,000 each occurrence</u>

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Patrick Williams, President - Austin Region

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Patrick Williams, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:01:54 on 03/12/2012 under Order No. 1141968692_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

The Historic Kyle Depot
100 N. Front Street
Kyle, TX. 78640

THE OWNER:

(Name, legal status and address)

The City of Kyle
100 West Center Street
Kyle, TX. 78640

THE ARCHITECT:

(Name, legal status and address)

Clayton & Little Architects
1001 E. 8th Street
Austin, TX. 78702

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11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES

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(1697334836)

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(1697334836)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. All Work must be performed in accordance with any and all City, State, and/or Federal laws, Industry and Trade practices and procedures for this respective Work. Contractor represents and warrants to Owner that (i) Contractor is authorized and qualified to conduct business in the State of Texas, (ii) Contractor has all requisite power, authority and financial backing to conduct its business and perform its obligations hereunder in accordance with the terms hereof, (iii) the execution, delivery and performance of the Contract has been duly authorized by corporate action and this Contract constitutes the legal, valid and binding obligations of Contractor, enforceable against Contractor in accordance with its terms, and (iv) Contractor is the holder of all governmental consents, licenses, permissions and other authorizations

and permits required to operate and conduct its business now and as contemplated in this Contract, and no additional consents of any person are required for Contractor to execute this Contract.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to

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provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design 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 the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents, directors, officers and employees of any of them from and against claims,

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damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), arising out of or resulting from the negligent performance of construction or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

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- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any,

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provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location

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agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 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 all Work for which Certificates for Payment have been previously issued and payments received from the Owner 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.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor

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knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part

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by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

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§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the

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date of execution of the Contract. Specifically, Contractor shall furnish, in a form acceptable to the Owner, a Performance and Payment Bond for the Project. Specifically, 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 Contractor's obligations to furnish, provide and pay for Construction and related materials under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. 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 current list of "Companies Holding Certificates as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in U.S. Treasury Circular 570 (as periodically amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

Contractor and Owner agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Hays County, Texas.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect

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timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 SEVERABILITY

If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

Init.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

| *(Paragraphs deleted)*

Additions and Deletions Report for AIA® Document A201™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:03:37 on 03/12/2012.

PAGE 1

The Historic Kyle Depot
100 N. Front Street
Kyle, TX. 78640

...

The City of Kyle
100 West Center Street
Kyle, TX. 78640

...

(Name, legal status and address)
Clayton & Little Architects
1001 E. 8th Street
Austin, TX. 78702

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§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. All Work must be performed in accordance with any and all City, State, and/or Federal laws, Industry and Trade practices and procedures for this respective Work. Contractor represents and warrants to Owner that (i) Contractor is authorized and qualified to conduct business in the State of Texas, (ii) Contractor has all requisite power, authority and financial backing to conduct its business and perform its obligations hereunder in accordance with the terms hereof, (iii) the execution, delivery and performance of the Contract has been duly authorized by corporate action and this Contract constitutes the legal, valid and binding obligations of Contractor, enforceable against Contractor in accordance with its terms, and (iv) Contractor is the holder of all governmental consents, licenses, permissions and other authorizations and permits required to operate and conduct its business now and as contemplated in this Contract, and no additional consents of any person are required for Contractor to execute this Contract.

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§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and ~~agents-agents, directors, officers~~ and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), ~~but only to the extent caused by the negligent acts arising out of or resulting from the negligent performance of construction or omissions of~~ the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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§ 11.4.1 The Owner shall have the right to require the Contractor to Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Specifically, Contractor shall furnish, in a form acceptable to the Owner, a Performance and Payment Bond for the Project. Specifically, 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 Contractor's obligations to furnish, provide and pay for Construction and related materials under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. 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 current list of "Companies Holding Certificates as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in U.S. Treasury Circular 570 (as periodically amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

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The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. Contractor and Owner agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Hays County, Texas.

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§ 13.8 SEVERABILITY

If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable

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§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Patrick Williams, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:03:37 on 03/12/2012 under Order No. 1141968692_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: March 20, 2012
 CONTACT CITY DEPARTMENT: Community Development
 CONTACT CITY STAFF: Jerry Hendrix, Director

SUBJECT: Consideration and possible action on approval of contract with SPAWGLASS CONTRACTOR'S, INC., of Austin, Texas, in the amount of \$222,225.00 for the construction of phase one of the Historical Kyle Depot.

CURRENT YEAR FISCAL IMPACT:

This construction contract with SPAWGLASS CONTRACTOR'S, INC., will require expenditure of funds from two sources; accumulated grant/contributions and from the City's 2009 Tax Notes Fund.

1. City Department:	Community Development
2. Project Name:	Historic Kyle Depot Construction, Phase I
3. Budget/Accounting Code(s):	412-675-57222
4. Funding Source:	Train Depot Donation Fund
5. Unencumbered Balance:	\$ 90,350.00
6. Budget/Accounting Code(s):	185-675-57222
7. Funding Source:	2009 Tax Notes Fund
8. Unencumbered Balance:	\$ 139,405.39
9. Total Funds Available:	\$ 229,755.39
10. Amount of This Action:	<u>\$(222,225.00)</u>
11. Remaining Balance:	<u>\$ 7,530.39</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this construction contract in the amount of \$222,225.00 is provided from two sources as shown in the Fiscal Note; accumulated grant/contributions and from the City's 2009 Tax Notes Fund.

The City Council's approval of this item will also authorize staff to appropriate and apply accumulated funds in the amount of \$90,350.00 from the Train Depot Donation Fund and \$131,875.00 from the 2009 Tax Notes Fund.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A.

Kyle Depot Restoration/ Renovation

Bid Summary Bids received on 1.31.12, 2:00 pm

Summarized by George Wilcox, Clayton&Little Architects

<u>Bid Form Line</u>	<u>Bidding Contractors</u>		Note:
	<u>SpawGlass</u>	<u>G. Creek Construction</u>	
Phase 1	\$237,000.00	\$348,000.00	Stabilization with Dry-in Exterior Restoration Interior Finish Out, Ramps and Decking Site Improvements & Caboose Relocation
Phase 2	\$173,000.00	\$142,000.00	
Phase 3A	\$417,000.00	\$372,000.00	
Phase 3B	<u>\$99,000.00</u>	<u>\$135,000.00</u>	
Total	\$926,000.00	\$997,000.00	
<u>Alternates</u>			
Alternate #1	\$10,000.00	\$7,500.00	Thermally modified wood decking
Alternate #2a	\$17 per square foot	\$24 per square foot	Square foot cost to replace wood flooring above the 10% replacement stipulated
Alternate #2b	\$31,500.00	\$42,000.00	Cost to replace entire historic wood floor
Alternate #3	(\$13,000.00)	(\$12,000.00)	Deduct if all phases performed consecutively
Alternate #4	\$33.60 per brick	\$20 per brick	Inscribed brick pavers for fundraising (approx. 2,000 bricks available for fundraising)
Contract Time	210	240	Calendar Days

Kyle Depot Restoration/ Renovation

Bid Summary Bids received on 1.31.12, 2:00 pm

Summarized by George Wilcox, Clayton&Little Architects

Revised per Value Engineering options approved by the Depot Board on 3.11.12

<u>Bid Form Line</u>	<u>Bidding Contractors</u>		Note:
	<u>SpawGlass</u>	<u>G. Creek Construction</u>	
Phase 1	\$222,025.00	\$348,000.00	Stabilization with Dry-in
Phase 2	\$173,000.00	\$142,000.00	Exterior Restoration
Phase 3A	\$417,000.00	\$372,000.00	Interior Finish Out, Ramps and Decking
<u>Phase 3B</u>	<u>\$99,000.00</u>	<u>\$135,000.00</u>	Site Improvements & Caboose Relocation
Total	\$911,025.00	\$997,000.00	
<u>Alternates</u>			
Alternate #1	\$10,000.00	\$7,500.00	Thermally modified wood decking
Alternate #2a	\$17 per square foot	\$24 per square foot	Square foot cost to replace wood flooring above the 10% replacement stipulated
Alternate #2b	\$31,500.00	\$42,000.00	Cost to replace entire historic wood floor
Alternate #3	(\$13,000.00)	(\$12,000.00)	Deduct if all phases performed consecutively
Alternate #4	\$33.60 per brick	\$20 per brick	Inscribed brick pavers for fundraising (approx. 2,000 bricks available for fundraising)
Contract Time	210	240	Calendar Days



CITY OF KYLE, TEXAS

INVITATION FOR BID (IFB) NO: 2011-JH01

Solicitation For: Restoration of the Historic Kyle Depot

Solicitation Number: 2011-JH01

Date Issued: December 8, 2011

Description: The City of Kyle, Texas is soliciting bids for the restoration of the Historic Kyle Depot.

Bid documents will be available on Monday, December 12, 2011. Bid Documents will be available for download at the City of Kyle website below, or contact George Wilcox.
George@ClaytonandLittle.com

Mandatory Pre-Bid Conference: December 20, 2011, 2:00 pm.

At Project site

Bid Submission Deadline: Must Be Received By: January 5, 2012 by 2:00 pm.

Finance Conference Room, Kyle City Hall
100 W. Center Street
Kyle, Texas 78640

Bid Opening Date: January 5, 2012 at 2:15 pm.

Finance Conference Room, Kyle City Hall
100 W. Center Street
Kyle, Texas 78640

Specifications and Other Bid Requirements: To view the specifications for this solicitation and other bid requirements, please go to <http://www.cityofkyle.com/rfps>

Contact Person: City of Kyle Finance - Andy Alejandro, email: talejandro@cityofkyle.com

Technical Information - George Wilcox, email: george@claytonandlittle.com

Contractor Qualifications:

This project is a restoration and renovation of a historic building. Bidding contractors must include qualifications (with references) demonstrating the successful completion of at least three (3) similar historic restoration/renovation projects in the last five (5) years. Owner intends to obtain listing for this project on the National Register of Historic Places. Bidding contractors must be knowledgeable of compliance with *The Secretary the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.



CITY OF KYLE, TEXAS

Catalyst Commercial

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation: Authorize Amendment of Contract with Catalyst Commercial, Inc., of Dallas, TX, in an amount Not to Exceed \$7,650.00 to provide Retail Recruitment Services for an additional six (6) months ~ *Diana Blank, Director of Economic Development*

Other Information: See attached price quotation from Catalyst Commercial, Inc.

Budget Information: A Fiscal Note is attached.

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

Attachments / click to download

[Fiscal Note - Contract Amendment Catalyst Commercial, Inc.](#)

[Kyle - Implementation Extension 2012_V1](#)

Opportunity Name Merchandising Plan - Kyle
 Quote Name Kyle - Implementation Extension 2012



Company Address 4307 McKinney Ave
 Suite 13
 Dallas, TX 75205
 US

Created Date 3/7/2012
 Expiration Date 3/31/2012
 Quote Number 00000072

Prepared By Jason Claunch
 Phone (972) 999-0081
 E-mail jason@catalystcommercial.net
 Fax (972) 999-0082

Contact Name Diana Blank
 Phone (512) 262-3926
 Email diana@cityofkyle.com
 Fax (512) 262-3987

Bill To Name City of Kyle
 Bill To 100 West Center St
 P.O. Box 40
 Kyle, Texas 78640

Ship To Name City of Kyle

Product	List Price	Sales Price	Quantity	Discount	Total Price
Implementation (monthly)	\$1,500.00	\$1,500.00	6.00	15.00%	\$7,650.00
		Subtotal	\$9,000.00		
		Discount	15.00%		
		Total Price	\$7,650.00		
		Grand Total	\$7,650.00		

Notes

Notes Term: April 1, 2012 - September 31, 2012.

Approved by: _____

Date: _____

Print: _____

Title: _____

Item # 20

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: March 20, 2012
 CONTACT CITY DEPARTMENT: Economic Development
 CONTACT CITY STAFF: Diana Blank, Director

SUBJECT: Authorize amendment of contract with Catalyst Commercial, Inc., of Dallas, Texas, in an amount not to exceed \$7,650.00 to provide retail recruitment services for an additional six (6) months.

CURRENT YEAR FISCAL IMPACT:

This contract amendment with Catalyst Commercial, Inc., will require additional expenditure of funds from the General Fund allocated to the City's Economic Development Department. An internal line item transfer within the Economic Development Department's budget from Outside Printing in the amount of \$1,800.00 was necessary in order to make a total of \$7,650.00 available for this contract amendment. Budget details are as follows:

1. City Department::	Economic Development
2. Project Name:	Retail Recruitment Services
3. Budget/Accounting Code(s):	110-119-55322
4. Funding Source:	General Fund
5. Current Appropriation:	\$ 7,650.00
6. Unencumbered Balance:	\$ 7,650.00
7. Amount of This Action:	<u>\$(7,650.00)</u>
8. Remaining Balance:	<u>\$ 0.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this contract amendment in the amount of \$7,650.00 for an additional six (6) months of retail recruitment services will be provided from funds included in the approved budget of the City's Economic Development Department (General Fund).

In order to provide unencumbered funds totaling \$7,650.00 for this contract amendment, an internal line item transfer within the Economic Development Department's budget from Outside Printing to Economic Development Consultant Services in the amount of \$1,800.00 was necessary.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A



CITY OF KYLE, TEXAS

Crossing at Plum Creek

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation:

Consideration and Possible Action on the Economic Development Agreement between the City of Kyle and the Crossing at Plum Creek ~ *Diana Blank, Director of Economic Development*

Other Information:

Budget Information:

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

Attachments / click to download



CITY OF KYLE, TEXAS

Bordeaux's

Meeting Date: 3/20/2012
Date time: 7:00 PM

Subject/Recommendation:

Consideration and Possible Action on the Economic Development Agreement between the City of Kyle and Bordeaux's Prime Steakhouse ~ *Diana Blank, Director of Economic Development*

Other Information:

Budget Information:

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

Attachments / click to download



CITY OF KYLE, TEXAS

City Managers Report

Meeting Date: 3/20/2012

Date time: 7:00 PM

Subject/Recommendation:

Update on Various Capital Improvement Projects, Road Projects, Building Program, and/or General Operational Activities ~ *Lanny Lambert, City Manager*

- Discuss summer water consumption

Other Information:

Budget Information:

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

Attachments / click to download

[Analysis Water Usage Summer 3-Year Comparisons](#)

City of Kyle, Texas
 3-Year Comparison of Water Usage Versus System Pumpage
 2009, 2010 & 2011

	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>	<u>Total</u>	<u>5-Month Average</u>
<u>Water System Pumpage</u>							
2011 Water Pumped (in Gallons):	78,405,303	109,699,000	108,488,592	118,612,242	88,234,000	503,439,137	100,687,827
2010 Water Pumped (in Gallons):	65,430,628	77,578,840	87,272,120	96,045,670	62,643,543	388,970,801	77,794,160
2009 Water Pumped (in Gallons):	77,572,050	81,036,208	93,426,271	90,573,692	62,643,543	405,251,764	81,050,353
3-Year Average for Selected Months:	<u>73,802,660</u>	<u>89,438,016</u>	<u>96,395,661</u>	<u>101,743,868</u>	<u>71,173,695</u>	<u>432,553,901</u>	<u>86,510,780</u>
<u>Water Usage Billed:</u>							
2011 Water Usage (in Gallons):	72,248,600	92,713,100	93,731,900	107,168,600	79,069,600	444,931,800	88,986,360
2010 Water Usage (in Gallons):	58,966,600	69,977,800	74,659,500	77,943,500	58,960,000	340,507,400	68,101,480
2009 Water Usage (in Gallons):	66,857,500	79,799,370	81,620,770	78,985,370	51,735,680	358,998,690	71,799,738
3-Year Average for Selected Months:	<u>66,024,233</u>	<u>80,830,090</u>	<u>83,337,390</u>	<u>88,032,490</u>	<u>63,255,093</u>	<u>381,479,297</u>	<u>76,295,859</u>
<u>Pumpage Versus Usage Variance:</u>							
2011 Water Usage (in Gallons):	6,156,703	16,985,900	14,756,692	11,443,642	9,164,400	58,507,337	11,701,467
2010 Water Usage (in Gallons):	6,464,028	7,601,040	12,612,620	18,102,170	3,683,543	48,463,401	9,692,680
2009 Water Usage (in Gallons):	10,714,550	1,236,838	11,805,501	11,588,322	10,907,863	46,253,074	9,250,615
3-Year Average for Selected Months:	<u>7,778,427</u>	<u>8,607,926</u>	<u>13,058,271</u>	<u>13,711,378</u>	<u>7,918,602</u>	<u>51,074,604</u>	<u>10,214,921</u>