



AGENDA
ELGIN CITY COUNCIL
REGULAR MEETING
TUESDAY, FEBRUARY 21, 2023
ELGIN PUBLIC LIBRARY ANNEX COUNCIL CHAMBERS
404 NORTH MAIN STREET
6:30 PM

Members of the public may watch the meeting at:

https://www.youtube.com/channel/UC3OGBV_loV0Nr3AqM1jTzA

- I. CALL TO ORDER
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE
- V. PUBLIC HEARING

- 1. Public Hearing To Review Performance And Obtain Comments Regarding Its 2021 Texas CDBG Program Community Development Contract #7220042

Documents:

[EXSUMMARYPUBLICHEARINGCDBGSIDEWALK22123.PDF](#)

VI. PUBLIC COMMENT

The "PUBLIC COMMENT" item posted on the agenda is reserved for members of the public who would like to address the City Council regarding posted agenda items or non-agenda items. Individuals requesting to speak or address the City Council during the meeting shall do so under the "PUBLIC COMMENT" agenda item. Speakers shall be required to fill out a "PUBLIC COMMENT FORM" and present it, along with any material, handouts, or information for Council, to the City Secretary prior to commencement of the Council meeting. **As of May 1, 2022, all such public comments will be done IN PERSON. You may email public comments and they will be distributed to each of the Council Members but not read out loud.**

Speaker comments are limited to three (3) minutes. No formal action can be taken by the City Council on items not posted on the agenda. Items requiring a PUBLIC HEARING will allow a member of the public an opportunity to speak during the Public Hearing and does not require a "PUBLIC COMMENT FORM".

Speakers must address their comments to the Mayor or Presiding Officer rather than to an individual Council Member or Staff Member. All speakers must limit their comments to the specific subject matter noted on the "PUBLIC COMMENT FORM" and refrain from any personal attacks or derogatory comments directed at any Council Member, Staff Member, other individual, or group.

VII. PRESENTATION

1. A PROCLAMATION DECLARING FEBRUARY 26, 2023, AS SCOUT DAY IN THE CITY OF ELGIN

Documents:

[SCOUT DAY PROCLAMATION.PDF](#)

VIII. CITY MANAGERS REPORT

1. Elgin Economic Development Corporation Quarterly Report

Elgin Economic Development Corporation Quarterly Report

Documents:

[FEBRUARY 2023 REPORT \(002\).PDF](#)

2. MAIN STREET ADVISORY BOARD QUARTERLY REPORT.

Documents:

[EXSUMMARYMSBQUARTERLYREP.PDF](#)

3. General Activity Report And/Or Project Update

Documents:

[EXSUMMARY - GENERAL ACTIVITY REPORT.PDF](#)

IX. CONSENT AGENDA

The Consent Agenda includes non-controversial and routine items that are considered to be self-explanatory by the City Council and will be enacted with one motion, one second, and one vote. Any member of the City Council may pull any item from the Consent Agenda in order that the City Council discuss and act upon it individually as a part of the Regular Agenda.

1. City Council Regular Meeting Minutes -February 7, 2023

Documents:

[EX SUMMARY- FEBRUARY 7, 2023 REGULAR MEETING MINUTES.PDF](#)
[2-7-2023 CITY COUNCIL REGULAR MEETING MINUTES.PDF](#)

2. CONSIDER REQUEST TO CLOSE STREETS FOR THE JUNETEENTH FESTIVAL AND PARADE ON SATURDAY JUNE 10, 2023 FROM 8:00AM TO NOON.

Documents:

[EXSUMMARYJUNETEENTHSTREETCLOSURES.PDF](#)
[ELGIN JUNETEENTH CELEBRATIONREQUEST.PDF](#)

3. **CONSIDER REQUEST TO WAIVE OPEN CONTAINER ORDINANCE FOR THE JUNETEENTH FESTIVAL STREET DANCE, PARADE AND FESTIVAL ON FRIDAY JUNE 9 2023 FROM 6:00 PM TO MIDNIGHT AND ON SATURDAY JUNE 10 2023 FROM 8:00AM TO 6:00PM IN VETERANS MEMORIAL PARK AND ON DEPOT STREET FROM MAIN STREET TO AVENUE B.**

Documents:

[EXSUMMARYJUNETEENTHOPENCTRWAIVER.PDF](#)
[ELGIN JUNETEENTH CELEBRATIONREQUEST.PDF](#)

4. **CONSIDER REQUEST TO WAIVE FEES FOR JUNETEENTH STREET DANCE PARADE AND FESTIVAL.**

Documents:

[EXSUMMARYJUNETEENTHFEewaIVERREQ.PDF](#)
[ELGIN JUNETEENTH CELEBRATIONREQUEST.PDF](#)

5. **CONSIDER REQUEST TO CLOSE STREETS FOR THE WESTERN DAYS PARADE ON SATURDAY JUNE 24, 2023.**

Documents:

[EXSUMMARYWESTERNDAYSPARADE.PDF](#)
[WESTERNDAYSREQUEST.PDF](#)
[WD PARADE ROUTE 2023.PDF](#)

6. **CONSIDER REQUEST TO WAIVE OPEN CONTAINER ORDINANCE FOR WESTERN DAYS IN ELGIN MEMORIAL PARK THURSDAY, JUNE 22ND 6:00 PM – 10:00 PM FOR YELLOW BRICK ROAD FASHION SHOW, FRIDAY, JUNE 23RD FROM 4:00 PM – MIDNIGHT FOR TOTO'S TENNIS COURT DANCE, SATURDAY, JUNE 24TH 6:00 AM- 7:00 PM FOR THE WESTERN DAYS FESTIVAL.**

Documents:

[EXSUMMARYWESTERNDAYSOC.PDF](#)
[WESTERNDAYSREQUEST.PDF](#)

7. **CONSIDER REQUEST TO WAIVE FEES FOR WESTERN DAYS PARADE AND FESTIVAL.**

Documents:

[EXSUMMARYWESTERNDAYSFEewaIVERREQ.PDF](#)
[WESTERNDAYSREQUEST.PDF](#)

8. **CONSIDER REQUEST TO CLOSE STREETS FOR THE VETERANS APPRECIATION PARADE ON SATURDAY NOVEMBER 4, 2023.**

Documents:

[EXSUMMARYVETERANSAPPRECIATIONPARADE.PDF](#)
[VETERANSAPPRECIATIONPARADEREQUEST23.PDF](#)
[VETERANSAPPRECIATIONPARADEROUTE.PDF](#)

9. CONSIDER REQUEST TO WAIVE FEES FOR THE VETERANS APPRECIATION PARADE ON SATURDAY NOVEMBER 4, 2023.

Documents:

[EXSUMMARYVETERANSAPPRECIATIONPARADEFEewaiver.PDF](#)
[VETERANSAPPRECIATIONPARADEREQUEST23.PDF](#)

10. CONSIDER REQUEST TO CLOSE STREETS FOR THE LIGHTED CHRISTMAS PARADE ON SATURDAY DECEMBER 2, 2023 FROM 5:00PM To 8:00PM.

Documents:

[EXSUMMARYLIGHTEDCHRISTMASPARADESTREETCLOSURE.PDF](#)
[ELGINLIGHTEDCHRISTMASPARADEROUTE.PDF](#)

11. CONSIDER REQUEST TO WAIVE FEES FOR THE LIGHTED CHRISTMAS PARADE ON SATURDAY DECEMBER 2, 2023 FROM 5:00PM To 8:00PM.

Documents:

[EXSUMMARYLIGHTEDCHRISTMASPARADEWAIVEFEES.PDF](#)

12. CONSIDER REQUEST TO WAIVE OPEN CONTAINER FOR MUSIC IN THE PARK EVERY FRIDAY IN APRIL AND MAY IN VETERANS MEMORIAL PARK AND ON DEPOT STREET FROM 6:00PM To 10:00PM.

Documents:

[EXSUMMARYMUSICPARKOPENCTRWAIVER.PDF](#)

13. CONSIDER REQUEST FOR RESERVATION OF CITY HALL AND LIBRARY COMPLEX INCLUDING BOTH PARKING LOTS ON SATURDAY APRIL 22, 2023 FROM 10 AM – MIDNIGHT FOR ELGIN RELAY FOR LIFE AND WAIVE ALL ASSOCIATED FEES.

Documents:

[EXSUMMARYRELAYFORLIFE23.PDF](#)
[RELAYLIFE2023REQUEST.PDF](#)

14. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE APPROVAL OF A CONTRACTING SERVICE PROVIDER CONTRACT FOR THE CITY OF ELGIN, TDA CITY WIDE SCADA IMPROVMENT PROJECT; AND MAKING CERTAIN FINDINGS RELATED THERETO.

Documents:

[EX SUMMARY - AWARD RECOMMENDATION.PDF](#)
[A RESOLUTION AUTHORIZING THE APPROVAL OF A CONTRACTING SERVICE PROVIDER CONTRACT FOR THE CITY OF ELGIN, SCADA IMPROVMENT PROJECT.PDF](#)
[WW SCADA - AWARD RECOMMENDATION PACKAGE.PDF](#)

15. AUTHORIZE CITY STAFF TO PROCEED WITH A CONTRACT WITH SPECTRUM FOR NETWORK SOLUTIONS FOR THE ELGIN PUBLIC LIBRARY.

Documents:

Documents:

[EXSUMMARYTECHNOLOGYLIBRARY.PDF](#)

X. NEW BUSINESS

- 1. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE PRIME AGREEMENT WITH BAIRD/WILLIAMS CONSTRUCTION TO PERFORM AS “CONSTRUCTION MANAGER AT RISK” FOR THE DESIGN AND CONSTRUCTION OF THE NEW CITY OF ELGIN POLICE DEPARTMENT STATION; AND MAKING CERTAIN FINDINGS RELATED THERETO**

Documents:

[EXSUMMARY - BWC PRIMECONTRACT223.PDF](#)
[RESAUTH BWCPRIMECONTRACT223.PDF](#)
[COELGIN BWC - A201-2017.PDF](#)
[COELGIN BWC - A133-2019.PDF](#)
[EPD STATION PROJECT223.PDF](#)

- 2. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AMENDMENT WITH BAIRD/WILLIAMS CONSTRUCTION FOR BID PACKAGE 1 GUARANTEED MAXIMUM PRICE FOR THE NEW CITY OF ELGIN POLICE DEPARTMENT STATION; AND MAKING CERTAIN FINDINGS RELATED THERETO.**

Documents:

[EXSUMMARY - BWC BID1_223.PDF](#)
[RESAUTH BWC BID1223.PDF](#)
[COELGIN BWC - A133 EXHIBIT A-2019 - BP1.PDF](#)
[EPD STATION PROJECT223.PDF](#)

- 3. RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ROY D. RIVERS III FOR THE INSTALATION AND DONATION OF GIGAFFE, SCUPLTURE, IN MORRIS MEMORIAL PARK; AND MAKING CERTAIN FINDINGS RELATED THERETO.**

Documents:

[EXSUMMARYGIGAFFEMORRISPARK.PDF](#)
[RESAUTHGIGAFFEMORRISPARK.PDF](#)

- 4. PRESENTATION OF THE TDA FORM A1024 CDBG SECTION 3 PROGRAM GOALS FOR THE TXCDBG PROJECT CDV21-0026.**

Documents:

[ESSUMMARYSECTION3.PDF](#)

XI. EXECUTIVE SESSION

The City Council may announce that it will adjourn the public meeting at any time during the meeting and convene in Executive Session pursuant to Chapter 551 of the Texas Government Code to discuss any matter as specifically listed on the agenda and/or as permitted by Chapter 551 of the Texas Government Code.

XII. RECONVENE

The City Council will return to open session for possible discussion and action as a result of the Executive Session

XIII. ANNOUNCEMENTS

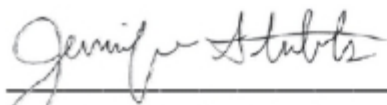
XIV. ADJOURNMENT

The City Council may retire to executive session any time between the meeting's opening and adjournment for the purpose of consultation with legal counsel pursuant to Chapter 551.071 of the Texas Government Code; discussion of personnel matters pursuant to Chapter 551.074 of the Texas Government Code; deliberation regarding real property pursuant to Chapter 551.072 of the Texas Government Code; deliberation regarding economic development negotiations pursuant to Chapter 551.087 of the Texas Government Code; and/or deliberation regarding the deployment, or specific occasions for implementation of security personnel or devices pursuant to Chapter 551.076 of the Texas Government Code. Action, if any, will be taken in open session.

Attendance By Other Elected or Appointed Officials: It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

Notice of Assistance at Public Meetings, the City of Elgin is committed to compliance with the Americans with Disabilities Act. Elgin City Hall and Council Chambers are wheelchair accessible and special marked parking is available. Persons with Disabilities who plan to attend this meeting and who may need assistance are requested to contact the City Secretary's Office at (512)229-3222. Please provide forty-eight hours notice when feasible.

I, Jennifer Stubbs, City Secretary for the City of Elgin, hereby certify this notice was posted at the City Hall Annex of the City of Elgin, Texas on or before Friday, February 17, 2023, in accordance with Chapter 551 of the Texas Government Code.

A handwritten signature in cursive script, reading "Jennifer Stubbs", written in black ink.

Jennifer Stubbs, City Secretary



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: Public Hearing to review performance and obtain comments regarding its 2021 Texas CDBG Program Community Development Contract #7220042

DEPARTMENT: Community Services

PROPOSED ACTION: Conduct Public Hearing

BACKGROUND: GrantWorks the contractor providing administration services for the 2021 Texas CDBG Program Community Development Contract #7220042 will provide performance review for this project which included building sidewalks on Central Avenue from Main Street to Avenue A, on Depot Street from Avenue A to Avenue B and on Avenue A, B, and C from Central Avenue to Depot Street.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget { } N/A

RECOMMENDATION: Hold Public Hearing.

ATTACHMENTS:

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- {X} Staff will provide brief comments and answer questions on this item at the meeting.
- { } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

A PROCLAMATION DECLARING FEBRUARY 26, 2023, AS SCOUT DAY IN THE CITY OF ELGIN

Whereas, the Boys Scouts of America (BSA, colloquially the Boy Scouts) is one of the largest scouting organizations and one of the largest youth organizations in the United States with about 1.2 million youth participants; and

Whereas, the mission of the Boys Scouts of America is to train youth in responsible citizenship, character development, and self-reliance through participation in a wide range of outdoor activities, educational programs, and at older age levels, career-oriented programs in partnership with community organizations; and

Whereas, on February 8th, the Boy Scouts of America will celebrate 112 years of scouting. This date is officially known as Scouting Anniversary Date and scouts are asked to publicly demonstrate the 12th point of the Scout Law: A Scout is Reverent. Scout Sunday-a faith-based celebration allows scouts to give back to their chartered organizations. Acts of giving back might include simply wearing the full field uniform to worship services, participating in services by doing a reading, singing a song, or presenting religious emblems and awards to Scouts and Scouters. Or it might be something as grand as a service project to benefit a religious organization in the community; and

Whereas, the scouts of Elgin, Texas in the Colorado River District being Cub Scout Packs 182 and 471 and Troops 182, 472, and 473 will collectively participate in the Blue and Gold Banquet, the Arrow of Light and Crossover Ceremony, and the BSA Birthday on February 26, 2023, from 4:00 p.m. to 7:00 p.m. at the Elgin VFW located at 118 Old Sayers Road in Elgin, Texas. This event marks a historical milestone in the life of these five scouting programs.

Now, Therefore, be it resolved that I, Theresa Y. McShan, Mayor of Elgin, Texas, do hereby proclaim February 26, 2023 as Scout Day in the City of Elgin, Texas and applaud the commitment Boy Scouts of America has made to prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law and encourage all citizens to support the Boys Scouts of America in Elgin, Texas and to celebrate their legacy.

Theresa McShan, Mayor
City of Elgin, Texas



Elgin City Council Meeting
Elgin Economic Development Corporation Quarterly Report
October 2022 – January 2023

- In November of 2022 we celebrated Mr. McShan's retirement from the EDC board after nearly 20 years of service
- Assisted with the filming of Walker TV show to explode the EDC ranch house and subsequently demolish the house and inground pool. This saved the taxpayers approximately \$80k in demolition costs
- Attended the Carr Lane Ribbon Cutting
- Met with Smithville Workforce, EISD, ACC, Mayor & City Directors to discuss a workforce grant for communities in Bastrop County. Continue to follow up on the grant and how to implement it in Elgin.
- Held a predevelopment meeting with Sykes Industries.
- Closed on the land for the Aviators Project and had a preconstruction meeting
- Began the Utility Extension along Innovation Way in the Business Park to connect to Carr Lane and other new businesses in the park
- Met with Lloyd Armbrust to work through survey challenges
- Weekly Development Services meetings to discuss progression for commercial projects
- Met with Precinct 4 County Commissioner to discuss several businesses that need assistance outside of the City.
- Met with Bluebonnet to discuss a business located outside the City
- Assisted Chick-Fil-A with securing a location and getting a permit.
- Partnered with Community Services to assist with the 150th City celebration

- Approved a letter of intent for a company that is interested in 20 acres in the business park. We are continuing discussions with the company.
- Rejected a letter of intent for a company that was interested in 5 acres in the business park. The EDC decided not to move forward on this project as they felt it was not the right fit for the park.
- Met with the new owner of the Butler Brick property.
- Had a Board Retreat in January 2023 and adopted a Plan of Work
- Approved an extension for CBRE to continue to market and sell the Elgin Business Park
- Approved an extension to Cullen Health to purchase property in the Business Park while they apply for their State License.
- Attended the Texas Municipal League Conference in October
- Attended a three-day Supervisor Training Class in October hosted by City of Elgin Human Resources Department.
- Attended the BEST Breakfast
- Appointed a new board member Anna Rau in December



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: MAIN STREET ADVISORY BOARD QUARTERLY REPORT.

DEPARTMENT: Community Services

PROPOSED ACTION: Receive quarterly report for the Main Street Advisory Board.

BACKGROUND: The Main Street Advisory Board is appointed to support the implementation of downtown revitalization utilizing the Main Street Four Point Approach. With a focus on economic development in the context of historic preservation, the board works in four areas: Business Retention and Recruitment, Design, Organization and Promotion Tourism.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget {} N/A

RECOMMENDATION: Receive report

ATTACHMENTS:

- { X } Staff will be making a detailed presentation on this agenda item at the meeting.
- { } Staff will provide brief comments and answer questions on this item at the meeting.
- { } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: General Activity Report and/or Project Update

DEPARTMENT: City Manager/Staff

PROPOSED ACTION:

No Council action proposed or requested; This item is to allow for general update and/or activities report relating to various on-going city projects or issues.

BACKGROUND:

This item is to provide opportunities for miscellaneous updates and comments by the staff; and general Q&A with the City Council relative to on-going projects and/or issues.

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included { } not included in the current-year budget {X}
N/A

RECOMMENDATION:

N/A

ATTACHMENTS:

None.

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} Staff will provide brief comments and answer questions on this item at the meeting.

{ } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: City Council Regular Meeting Minutes – February 7, 2023

DEPARTMENT: Administration

PROPOSED ACTION: Approval of the City Council Regular Meeting Minutes- February 7, 2023

BACKGROUND: N/A

BUDGET/FINANCIAL IMPACT:

Funding for this item was ☐ included ☐ not included in the current-year budget ☒ N/A

Finance Approval:

Signature: _____ Date: _____

RECOMMENDATION: Approval of the City Council Regular Meeting Minutes- February 7, 2023

ATTACHMENTS: Minutes

☐ Staff will be making a detailed presentation on this agenda item at the meeting.

☐ Staff will provide brief comments and answer questions on this item at the meeting.

☒ This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

MINUTES
ELGIN CITY COUNCIL REGULAR MEETING
ELGIN PUBLIC LIBRARY ANNEX CITY COUNCIL CHAMBERS
404 NORTH MAIN STREET
FEBRUARY 7, 2023

CALL TO ORDER

Mayor McShan called the meeting to order at 6:30 p.m.

Roll Call

Present:

Theresa McShan, Mayor
Sue Brashar, Mayor Pro Tem
Joy Casnovsky, Council Member
Arthur Gibson III, Council Member
Chuck Swain, Council Member
Matthew Callahan, Council Member
Forest Dennis, Council Member
Al Rodriguez, Council Member.

Absent:

Skyler Maldonado, Council Member

Mayor McShan called roll call. Mayor Pro Tem Brashar made a motion to excuse Mr. Maldonado. Mr. Gibson seconded the motion. All voted in favor. The motion carried.

Staff:

Thomas L. Mattis, City Manager
Jennifer Stubbs, City Secretary
Amy Miller, Community Services Director
Michael Gonzalez, Public Works Director
Belen Pena, Finance Director
Kaley Frye, Assistant Director EDC
Pam Sanders, HR Director
Sonia Browder, Media Specialist

INVOCATION

Mayor McShan provided the invocation.

PLEDGE OF ALLEGIANCE

Mayor McShan led those in attendance in reciting the Pledge of Allegiance to the Flag of the United States of America and Pledge of Allegiance to the Texas Flag.

PUBLIC HEARING

1. Public Hearing On An Ordinance Amending Ch. 16, Art. II Weeds, Wild Growth, & Unsanitary Conditions; Revised Code Of Ordinances, City Of Elgin, Texas; Repealing All Other Ordinances In Conflict Therewith; And Provide For A Savings Clause.

Mr. Mattis stated this item is for minor code amendments. He stated that those who violate the ordinance will have the option to appeal to the Board of Adjustments and that this item has been reviewed by the Planning & Zoning Commission.

2. Public Hearing To Review Performance And Obtain Comments Regarding Its 2021 Texas CDBG Program Community Development Contract #7220042.

Melinda Kapelka, Grant Works, provided a presentation over Section 3 and answered questions of the Council. She stated that the City has been awarded a grant for \$350,000 that will be used to build a SCADA system that will be installed in different locations around the city. She stated that this grant comes from the Texas Department of Agriculture and the money is coming from Housing and Urban Development (HUD). Ms. Kapelka provided information about Section 3 qualifications and answered questions of the Council.

PUBLIC COMMENT

Grant Hennig, 1116 Robin Road, stated that his concern is for the future of Elgin. He stated that Elgin is behind in keeping up with the grid demands. Mr. Hennig stated that the building of new homes hurts the electricity grid. He stated that he is tired of the infrastructure not keeping up with the growth and that this can be controlled by growth and site plans. Mr. Hennig recommended slowing down on projects to allow for catching up. He stated that he was blown away that residents were turned away for not paying \$5 to pay for showers.

Hallie Rock, 827 Savannah Cove, stated that she is the owner of Murphy's Mollows and invited the public to her business's ribbon cutting tomorrow at 3:30 p.m. located at 127 Roy Davis Road.

Courtenay Paris, 506 Lexington Road, stated that she is here tonight to raise awareness of something important to her. She stated the Accessory Dwelling Units are a huge, missed opportunity for this community and that these units provide an affordable and accessible solution for families with aging parents or disabled family members. Ms. Paris stated that the cost of long-term care is astronomical and these ADUs would offer an alternative.

Nick Whitfield, 210 MLK Drive, stated that he is here to discuss the lack of access to Accessory Dwelling Units. He stated that this is a great solution for aging parents to have independence. Mr.

Whitfield stated that in the 2016 comp plan, it was recommended that ADUs were allowed with some regulations in place. He asked to work together to make ADUs a reality for families in Elgin.

Christi Sanchez, 446 Roemer Road, stated that she moved to a little piece of land off of Roemer Road about three years ago, and was here tonight to discuss the response from the weather from last week and offer her thoughts as a newcomer. Ms. Sanchez thanked the citizens for all their help. She stated that the Mayor began her address with a statement about complaints posted on social media and the acknowledgment set a bitter tone for the entire conversation. Ms. Sanchez suggested the leaders of this community acknowledge and improve the culture that has existed over the years and singling out detractors as malcontents is not only offensive to those who are trying to help but gives the impression that there is no respect for the constituents. She stated that she spent her days at Girl Scouts of Central Texas inspiring young people to make mistakes and learn from them and is hopeful that this team of leaders will be inspired to do the same.

PRESENTATION

1. A PROCLAMATION DECLARING FEBRUARY 2023 AS NATIONAL BLACK HISTORY MONTH IN THE CITY OF ELGIN

Mayor McShan read the proclamation and presented it to Ms. Miller who would deliver the proclamation to the appropriate person.

CITY MANAGER'S REPORT

1. Report On City Of Elgin Response To Impacts Of Winter Storm Mara

Mr. Mattis stated that Emergency Management is when the staff and the Council are constantly working together to manage these operations to make sure the City can confirm all obligations before these events. He stated that the Mayor and Council have control over virtually everything but during an emergency, rely heavily on the staff. Mr. Mattis stated that the City had an appropriate response and during an emergency event, costs are never an issue or concern. Mr. Mattis stated that Oncor and Bluebonnet Electric Cooperative are the main electric providers in the city limits. He stated that there is some confusion about what the Emergency Shelter is supposed to be used for. He stated that inclement weather or power outages are not considered appropriate usage for the shelter. Mr. Mattis stated that an Emergency Shelter is different from a Warming Center. He stated that many calls took place but there were no requests made for shelter.

Chief Noble stated that 209.5 hours were devoted to the storm and that there were no crashes related to the storm. Chief Noble stated that officers went door to door to deliver flyers and conduct welfare checks. He stated that Mayor could make a disaster declaration in a City.

Michael Gonzalez thanked the entire Public Works crew for their hard work. He stated that staff is prioritizing the needs of the city like roadways, alleyways, and city parks. Mr. Gonzalez stated

that residential brush pickup is not a typical service provided by the city but is being offered to the citizens. Texas A&M Forest Service is out working on the parks.

Amy Miller stated that news was posted on the website and social media platforms. She stated that there was direct communication with individual citizens. Ms. Miller stated that the Recreation Center was open Thursday-Sunday for free coffee, charging stations, Wi-Fi, and craft activities in the lobby.

Mr. Mattis stated that moving forward, the City will focus on city facilities to catch up. He stated that the City will pick up all debris. Mr. Mattis stated that permit fees and inspections typically required for electrical services installation or repairs will be waived. Mr. Mattis answered questions of the Council and thanked the staff for all their hard work.

2. Planning & Zoning Commission (PZC) Quarterly Report

Mr. Mattis stated that this item is in response to the Boards & Commissions Ordinance. There were no comments from the Council.

3. Quarterly Investment Report- 1st Quarter

Mr. Mattis stated that the Finance Director is here to answer any questions. There were no questions of the Council.

4. General Activity Report and/or Project Update

Mr. Mattis stated that the ESD is contemplating this evening approving a sales tax to apply all around the city limits to the ESD and provided additional information. He answered questions of the Council.

Ms. Miller stated that the City of Elgin is receiving a public art piece at Morris Memorial Park via donation. She stated that there will be more updates to come.

CONSENT AGENDA

1. City Council Regular Meeting Minutes January 17, 2023

The minutes passed on the consent agenda.

2. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO APPROVE PROFESSIONAL SERVICES FEES WITH FGM ARCHITECTS INC. RELATED TO THE ELGIN POLICE DEPARTMENT STATION PROJECT; AND MAKING CERTAIN FINDINGS RELATED THERETO.

The resolution passed on the consent agenda.

3. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO APPROVE DESIGN PLANS RELATED TO THE PISTOL HILL WATER TANKS AND SCADA PROJECT; AND MAKING CERTAIN FINDINGS RELATED THERETO.

The resolution passed on the consent agenda.

Mayor Pro Tem Brashar made a motion to approve the consent agenda. Mr. Callahan seconded the motion. All voted in favor. The motion carried.

NEW BUSINESS

1. A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT BETWEEN THE CITY OF ELGIN, TEXAS (CITY) AND ST. DAVID'S FOUNDATION FOR A GRANT TO SUPPORT THE EXPANSION OF VETERANS MEMORIAL PARK.

Ms. Miller introduced Abena Asante with St. David's and thanked Elizabeth Marzec for all her hard work in building a relationship with St. David's. Ms. Miller stated that last year, the city was invited to apply for a grant with St. David's for the Veterans Memorial Park Expansion. She stated St. David's is funding the park with a \$300,000 grant for Block A. She stated that with this grant and other funds, the City can renovate the entire block. Ms. Miller invited Ms. Asante up to the podium. Ms. Asante stated that St. David's has given 7 million dollars to Bastrop County and about \$600,000 to the City of Elgin. She stated that their mission is to invest in actions that help promote and advance health equity. Ms. Casnovsky made a motion to approve the resolution as presented. Mayor Pro Tem Brashar seconded the motion. All voted in favor. The motion carried. The Council left the dais to take a photo.

2. AN ORDINANCE AMENDING CHAPTER 16, ARTICLE II WEEDS, WILD GROWTH, AND UNSANITARY CONDITIONS; REVISED CODE OF ORDINANCES, CITY OF ELGIN, TEXAS; REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR A SAVINGS CLAUSE.

The Council returned to the dais. Mr. Mattis stated that this item is amending the ordinance with minor updates. Mr. Gibson and Mr. Swain returned to the dais at 8:23 p.m. He stated that the one significant update is that if a citizen receives a violation, they can appeal the decision by going before the Board of Adjustments. Discussion followed. Mayor Pro Tem Brashar made a motion to adopt the ordinance recommended by the P&Z. Mr. Swain seconded the motion. All voted in favor. The motion carried.

3. AN ORDINANCE OF THE CITY OF ELGIN, TEXAS, CALLING A GENERAL ELECTION ON MAY 6, 2023 FOR THE PURPOSE OF ELECTING CERTAIN CITY OFFICIALS; DESIGNATING ELECTION PRECINCTS AND POLLING PLACES; PROVIDING FOR EARLY VOTING AND ELECTION DAY VOTING; PROVIDING FOR PERFORMANCE OF REQUIRED ADMINISTRATIVE DUTIES; MAKING PROVISIONS FOR THE CONDUCT OF SUCH ELECTION; CERTIFYING PROVISION OF REQUIRED ACCESSIBLE VOTING SYSTEMS AT EACH POLLING PLACE; AND PROVIDING FOR OTHER MATTERS RELATING TO SUCH CITY ELECTION

Mr. Mattis stated this is a routine formality. Ms. Casnovsky stated that having to close the Rec Center for two weeks is not her first choice and asked if the elections could take place in the Council Chambers. Mr. Mattis stated that it is too late to change locations for this election, but staff will engage in a conversation with Council for the future elections. Mr. Callahan made a motion to approve the Ordinance. Discussion followed. Mr. Swain seconded the motion. All voted in favor. The motion was carried.

4. Home Town Heroes

Charlotte Thomas provided information on the Home Town Heroes program. She displayed a banner and stated that the families would order these and then would be placed on Main Street, North Ae. C, and Lee Dildy. She stated that the cost is less than \$100 and is based on a labor cost from the City. Ms. Thomas stated that there will be an option to accept donations for those who are unable to pay for the banners. Mr. Rodriguez made a motion to direct city staff to work with Ms. Thomas. Mr. Swain seconded the motion. All voted in favor. The motion was carried.

5. A Request Of Council To Begin Discussion On Revising And Amending The Current City Code Of Ordinances Pertaining To Accessory Dwelling Units (ADUs) Or Garage Apartments - Councilmember Gibson

Mr. Gibson stated that he requested this item to be placed on the agenda. Mr. Mattis provided information. Mr. Gibson made a motion to direct staff to begin researching and compiling some recommendations to Council in regard to Accessory Dwelling Units. Mayor Pro Tem Brashar seconded the motion. All voted in favor. The motion was carried.

EXECUTIVE SESSION

The City Council may announce that it will adjourn the public meeting at any time during the meeting and convene in Executive Session pursuant to Chapter 551 of the Texas Government Code to discuss any matter as specifically listed on the agenda and/or as permitted by Chapter 551 of the Texas Government Code

The City Council did not retire into Executive Session.

ANNOUNCEMENTS

Ms. Miller stated that there is a TDEM survey for those who have had damage from the storm. Ms. Miller invited the public to Sip, Shop, and Stroll. Mayor Pro Tem Brashar stated that the 11th is the Project Celebration Dinner Dance and they have some tickets left for sale.

ADJOURNMENT

Mayor McShan adjourned the meeting at 8:56 p.m.

Theresa Y. McShan, Mayor

ATTEST:

Jennifer Stubbs, City Secretary



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO CLOSE STREETS FOR THE JUNETEENTH FESTIVAL AND PARADE ON SATURDAY JUNE 10, 2023 FROM 8:00AM TO NOON.

DEPARTMENT: Community Services

PROPOSED ACTION: Consider approval for requests.

BACKGROUND: The Juneteenth Festival committee requests street closures for the Juneteenth Festival Parade on Saturday June 10 from 8am to noon as follows: The Parade route will start from Booker T. Washington Elementary school on M.L.K Blvd, turning left on Alamo and continuing down Alamo to Main Street. At Main Street making a right and travel north on Main Street to traffic signal at West 2nd, making a left at West 2nd and Main and traveling to stop sign at West 2nd and North Ave. C. The parade will make a left onto North Ave. C. and travel across the tracks to Alamo where the Parade will disperse.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget {} N/A

RECOMMENDATION: Approval of the request.

ATTACHMENTS:

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- { } Staff will provide brief comments and answer questions on this item at the meeting.
- { X } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



Elgin Juneteenth Organization
P.O. Box 763
Elgin, Texas 78621
Mrs. Bettye Lofton President

To: City Manager - City of Elgin
From: Bettye Lofton, President - Elgin Juneteenth Organization
Re: Juneteenth Celebration (June 9th – 10th, 2023)
Date: February 7, 2023
Cc: Chief Chris Nobles

The Elgin Juneteenth Organization is happy and excited to celebrate our 24th year of Celebration. With that being said we will start with the annual street dance on Friday, June 9th from 8:00 pm to 12:00 midnight. The grand parade will be held on Saturday June 10th in downtown Elgin beginning at 10:00 am. Parade participants will line up at Booker T. Washington Elementary school on M.L.K. Blvd. The Organization is requesting street closures and assistance in accordance with the parade route.

The Parade route will start from Booker T. Washington Elementary school, turning left on Alamo and continuing down Alamo to Main Street. At Main Street making a right and travel up North Main to traffic signal at West 2nd, making a left at West 2nd and Main and traveling to stop sign at West 2nd and North Ave. C. The parade will make a left onto North Ave. C. and travel across the tracks to Alamo where the Parade will disperse.

The Veterans Memorial Park has been secured for all day activities following the Grand Parade. No alcoholic beverages will be sold, but the Organization request that the open container permit be waived during the event from 6:00 pm until 12 mid-night on Friday June 9th and from 8:00 am until 6:00 pm on Saturday June 10th. No glass containers will be allowed in the area due to the danger of such usage. The Juneteenth Organization is also requesting that all fees be reduced or waived for this event.

A complete schedule of activities will be made available to the council at a later day when everything is finalized. Please place this request on the City Council agenda for March.

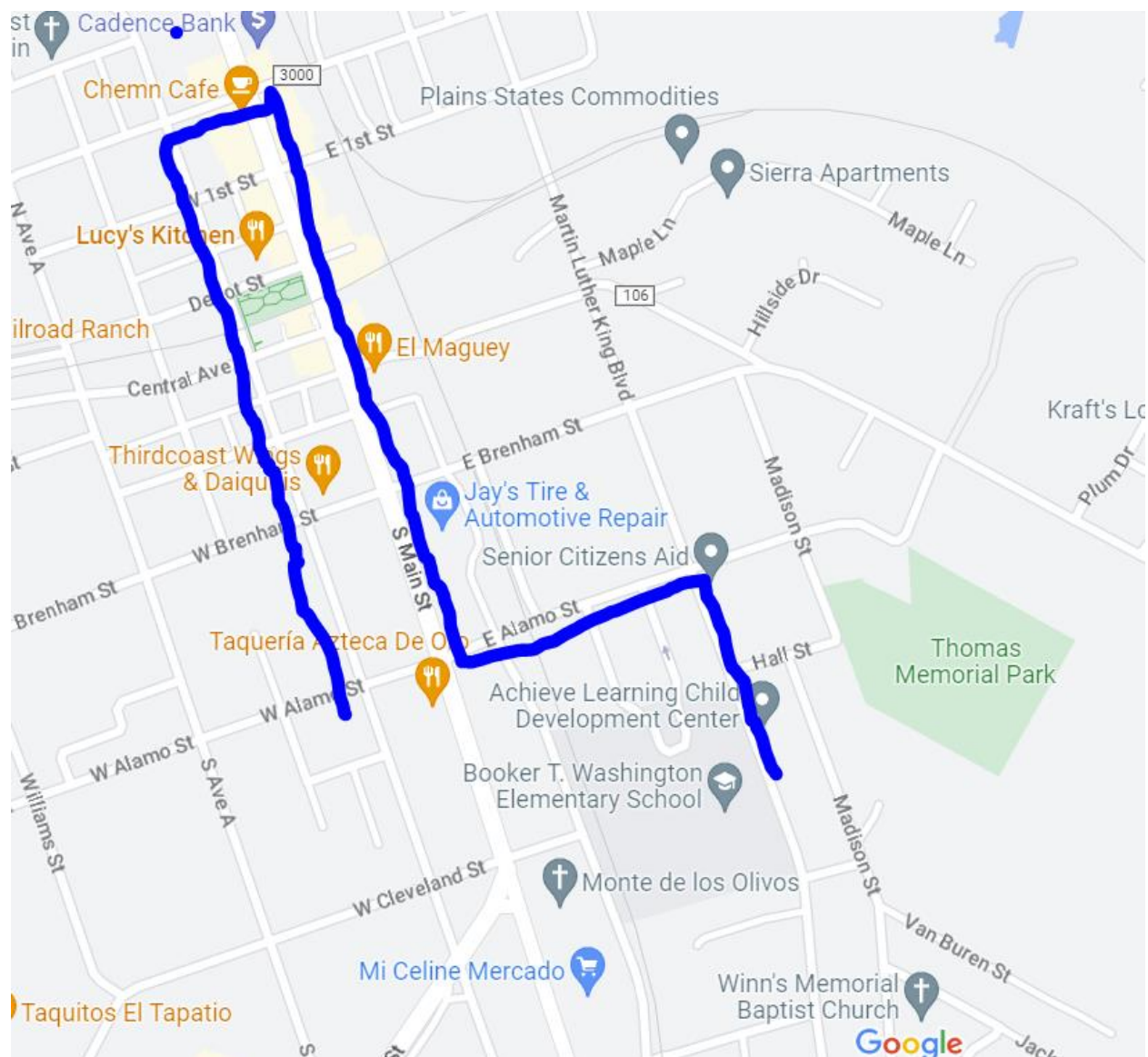
I, Bettye Lofton, President of the Organization or a designee will attend the Council meeting to answer any questions or concerns. Thanks in advance for your consideration.

Elgin Juneteenth Organization
Mrs. Bettye Lofton, President

Juneteenth Parade Route Map

Line up at Booker T Washington Elementary School on Martin Luther King Boulevard

Route: will start from Booker T. Washington Elementary school on M.L.K Blvd, turning left on Alamo and continuing down Alamo to Main Street. At Main Street making a right and travel north on Main Street to traffic signal at West 2nd, making a left at West 2nd and Main and traveling to stop sign at West 2nd and North Ave. C. The parade will make a left onto North Ave. C. and travel across the tracks to Alamo where the Parade will disperse.





Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO WAIVE OPEN CONTAINER ORDINANCE FOR THE JUNETEENTH FESTIVAL STREET DANCE ON FRIDAY JUNE 9 2023 FROM 6:00 PM TO MIDNIGHT AND ON SATURDAY JUNE 10 2023 FOR THE JUNETEENTH FESTIVAL FROM 8:00AM TO 6:00PM IN VETERANS MEMORIAL PARK AND ON DEPOT STREET FROM MAIN STREET TO AVENUE B.

DEPARTMENT: Community Services

PROPOSED ACTION: Consider approval for requests.

BACKGROUND: The Juneteenth Festival committee requests open container waiver for Depot Street and Veterans Memorial Park for the Friday night Street dance and the festival on Saturday. No glass containers will be allowed. The street dance, parade and festival are the 24th annual celebration for the community.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {} not included in the current-year budget {X} N/A

RECOMMENDATION: Approval of the request.

ATTACHMENTS:

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
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The Parade route will start from Booker T. Washington Elementary school, turning left on Alamo and continuing down Alamo to Main Street. At Main Street making a right and travel up North Main to traffic signal at West 2nd, making a left at West 2nd and Main and traveling to stop sign at West 2nd and North Ave. C. The parade will make a left onto North Ave. C. and travel across the tracks to Alamo where the Parade will disperse.

The Veterans Memorial Park has been secured for all day activities following the Grand Parade. No alcoholic beverages will be sold, but the Organization request that the open container permit be waived during the event from 6:00 pm until 12 mid-night on Friday June 9th and from 8:00 am until 6:00 pm on Saturday June 10th. No glass containers will be allowed in the area due to the danger of such usage. The Juneteenth Organization is also requesting that all fees be reduced or waived for this event.

A complete schedule of activities will be made available to the council at a later day when everything is finalized. Please place this request on the City Council agenda for March.

I, Bettye Lofton, President of the Organization or a designee will attend the Council meeting to answer any questions or concerns. Thanks in advance for your consideration.

Elgin Juneteenth Organization
Mrs. Bettye Lofton, President



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO WAIVE FEES FOR JUNETEENTH STREET DANCE, PARADE AND FESTIVAL.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve request.

BACKGROUND: Juneteenth Festival Committee plans the annual Juneteenth Street dance, parade and festival for Elgin in Veterans Memorial Park and on Depot Street. 24th Annual celebration to commemorate emancipation of African American slaves. In 2021 Juneteenth (June 19th) was recognized as a National Holiday, Elgin celebrates on the second weekend of June and in 2022 that will be June 9 and 10. The fees for park rental, street closures, police and public works are \$1,320.00. The Juneteenth Festival committee requests that fees be waived for this free community event.

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BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget {} N/A

RECOMMENDATION: Approve Request.

ATTACHMENTS:

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Elgin Juneteenth Organization
Mrs. Bettye Lofton, President



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO CLOSE STREETS FOR THE WESTERN DAYS PARADE ON SATURDAY JUNE 24, 2023.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve request.

BACKGROUND: The Elgin Chamber of Commerce is hosting Western Days Thursday June 22, Friday June 23 and Saturday June 24, 2023 in Elgin Memorial Park. Free annual community event includes a carnival, fashion show, tennis court dance, vendors, kids activities, food, contests and parade. The parade will be Saturday June 24, 2023 at 10am. Chamber requests the following street closures. Parade line up will be on 11th street from Main Street to 2nd Street and on 2nd Street. Parade begins at 10am at Main Street and 11th Street and proceeds south on Main Street through downtown to Brenham Street. Requests closure of streets and related side streets for the parade 8:00a.m. to 12:00 noon.

BUDGET/FINANCIAL IMPACT:

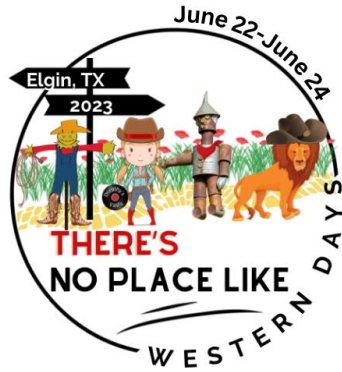
Funding for this item was {X} included {} not included in the current-year budget {} N/A

RECOMMENDATION: Approve Request.

ATTACHMENTS:

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Tuesday, February 14, 2023

Dear Mayor McShan and Elgin City Council,

The Elgin Chamber of Commerce would like the consideration of waived fees for the 54th Annual Western Days Festival to be held on June 22-June 24, 2023. These fees would include park reservations, street closures, parade fees and open container waiver fees.

We ask to have the Elgin Memorial Park reserved all three days of this event with an open container waiver for all three days. Thursday, June 22nd will be the Yellow Brick Road Fashion Show with vendors and the park will be used from 2 PM - 10 PM. (Event is 7-10 PM) Friday, June 23rd we will host Toto's Tennis Court Dance that will also have vendors and will be used from 4 PM – Midnight. (Event is 7- 11 PM, but with clean-up we added an hour.) The Memorial Park will also be used on Saturday, June 24th and the park will be needed from 6 AM- 7 PM.

Additionally, we ask that on Saturday, June 24, 2023, we are allowed to close Main Street for the Wicked Western Days Parade that will take place from 10 AM- 11 AM. (Or until the parade is over) We would also need 11th Street and potentially part of 2nd street to be closed starting at 8 AM for the parade lineup.

As partners of this community, we appreciate the consideration of park use, waived fees, and street closures. We cannot wait to celebrate with our hometown because there truly is "No Place Like Western Days!"

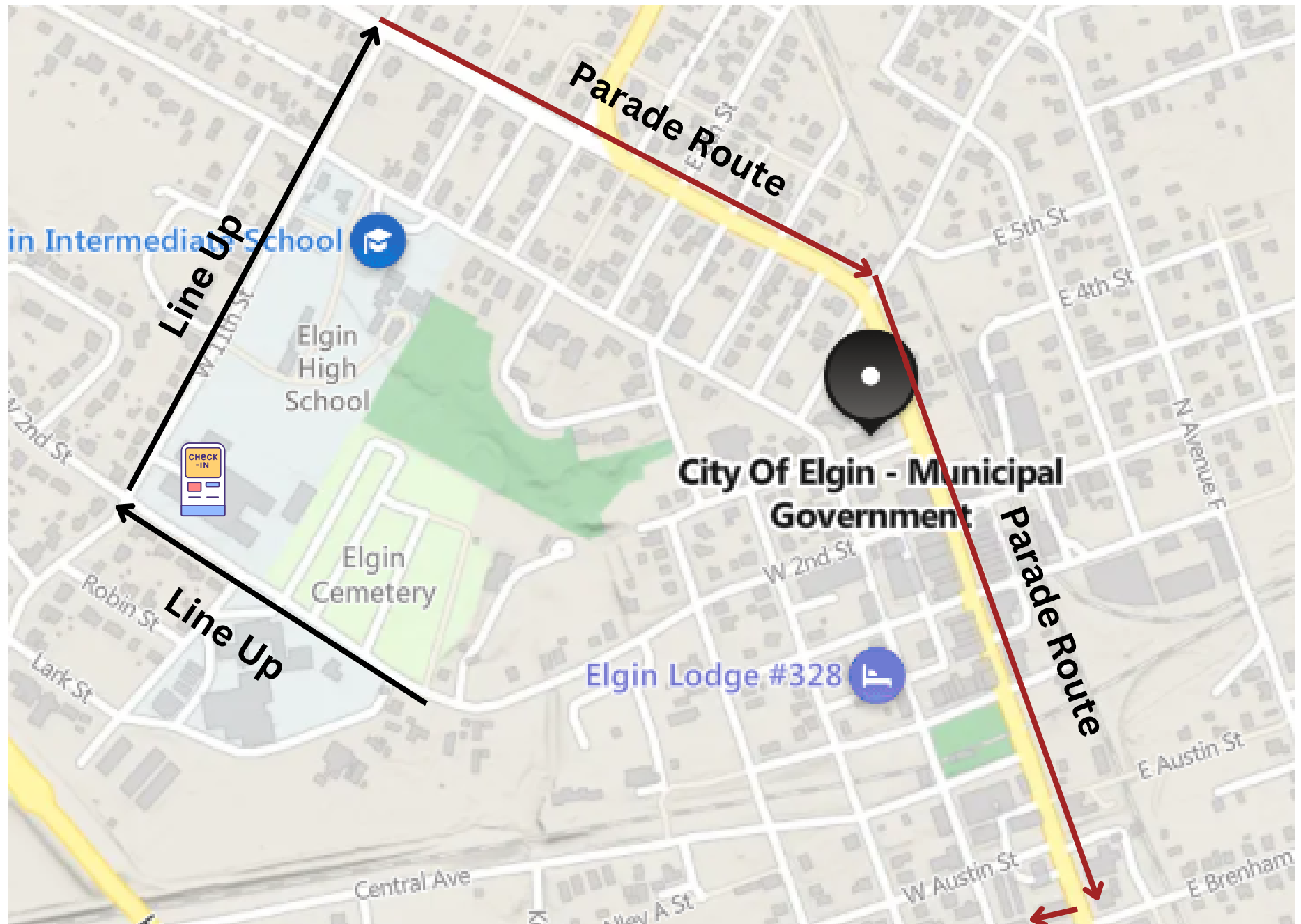
Veronica Seever

President

Elgin Chamber of Commerce

2023 Western Days Parade Route

Line up will run down 2nd Street and turn down W. 11th.
Parade will start at W.1 1th and Main and continue until
Brenham. Entries will take a right at Brenham and disperse at
Ave. C.





Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO WAIVE OPEN CONTAINER ORDINANCE FOR WESTERN DAYS IN ELGIN MEMORIAL PARK THURSDAY, JUNE 22ND 6:00 PM – 10:00 PM FOR YELLOW BRICK ROAD FASHION SHOW, FRIDAY, JUNE 23RD FROM 4:00 PM – MIDNIGHT FOR TOTO'S TENNIS COURT DANCE, SATURDAY, JUNE 24TH 6:00 AM- 7:00 PM FOR THE WESTERN DAYS FESTIVAL.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve request.

BACKGROUND: The Elgin Chamber of Commerce is hosting Western Days Thursday June 22, Friday June 23 and Saturday June 24, 2023 in Elgin Memorial Park. Free annual community event includes a carnival, fashion show, tennis court dance, vendors, kids activities, food, contests and parade.

BUDGET/FINANCIAL IMPACT:

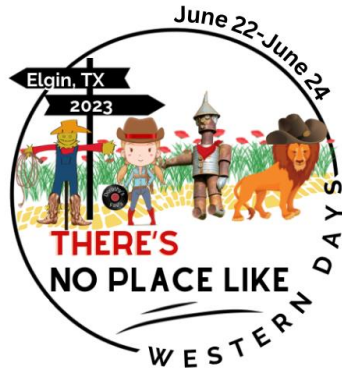
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Additionally, we ask that on Saturday, June 24, 2023, we are allowed to close Main Street for the Wicked Western Days Parade that will take place from 10 AM- 11 AM. (Or until the parade is over) We would also need 11th Street and potentially part of 2nd street to be closed starting at 8 AM for the parade lineup.

As partners of this community, we appreciate the consideration of park use, waived fees, and street closures. We cannot wait to celebrate with our hometown because there truly is "No Place Like Western Days!"

Veronica Seever

President

Elgin Chamber of Commerce



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO WAIVE FEES FOR WESTERN DAYS PARADE AND FESTIVAL.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve request.

BACKGROUND: The Elgin Chamber of Commerce organizes the annual Western Days Festival and Parade. Western Days is a free festival with carnival and parade to celebrate our history and community and will be June 22 through June 24. The fees for park rental, street closures, police and public works are \$1,710.00. The Elgin Chamber of Commerce requests that fees be waived for this free community event.

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BUDGET/FINANCIAL IMPACT:

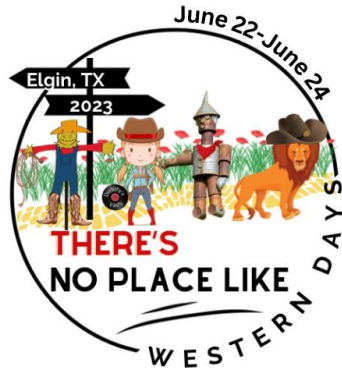
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RECOMMENDATION: Approve Request.

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Veronica Seever

President

Elgin Chamber of Commerce



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO CLOSE STREETS FOR THE VETERANS APPRECIATION PARADE ON SATURDAY NOVEMBER 4, 2023.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve request.

BACKGROUND: The Elgin VFW is organizing a Veterans Appreciation parade. Lineup will be in Elgin Memorial Park and the parade will proceed on Main Street from the parking lot at 11th Street south on Main through downtown to Veterans Park where it will disperse. Parade will begin at 10:00 AM. Community is invited to participate in the parade, to enjoy watching the parade and sharing appreciation for Veterans on Saturday November 4, 2023.

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BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget {} N/A

RECOMMENDATION: Approve Request.

ATTACHMENTS:

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February 13, 2023

Each year the VFW has hosted a Veterans Appreciation Day Parade for the City of Elgin. With this in mind we plan on a parade for 2023.

This year we have scheduled the parade for Saturday November 4th, to start at 10am. The parade line up will start at 9am at Elgin Memorial Park, we will march from Elgin Memorial Park down Main Street to Central Ave. where the parade makes a right and ends.

The check in time will be from 9am till 10am at Elgin Memorial Park. During line up restrooms will be available at Elgin Memorial Park. The duration of the parade will be approximately 45 minutes.

We plan on marketing this year's parade through Facebook, Elgin Courier, local radio community service announcements and various other internet services. Along with these marketing plans we intend to print up fliers in English and Spanish to be given out to the grade and middle schools.

Fort Hood has been invited to be in this year's parade, as always the horse detachment is always last and they clean up after themselves. VFW Post 6115 requests that the fees associated with the parade, street closures, park rental be waived.

--

John Quagliani, Commander

VFW Post 6115

P.O. Box 188, 118 Old Sayers Road
Elgin, Texas 78621

o (512) 285-2300

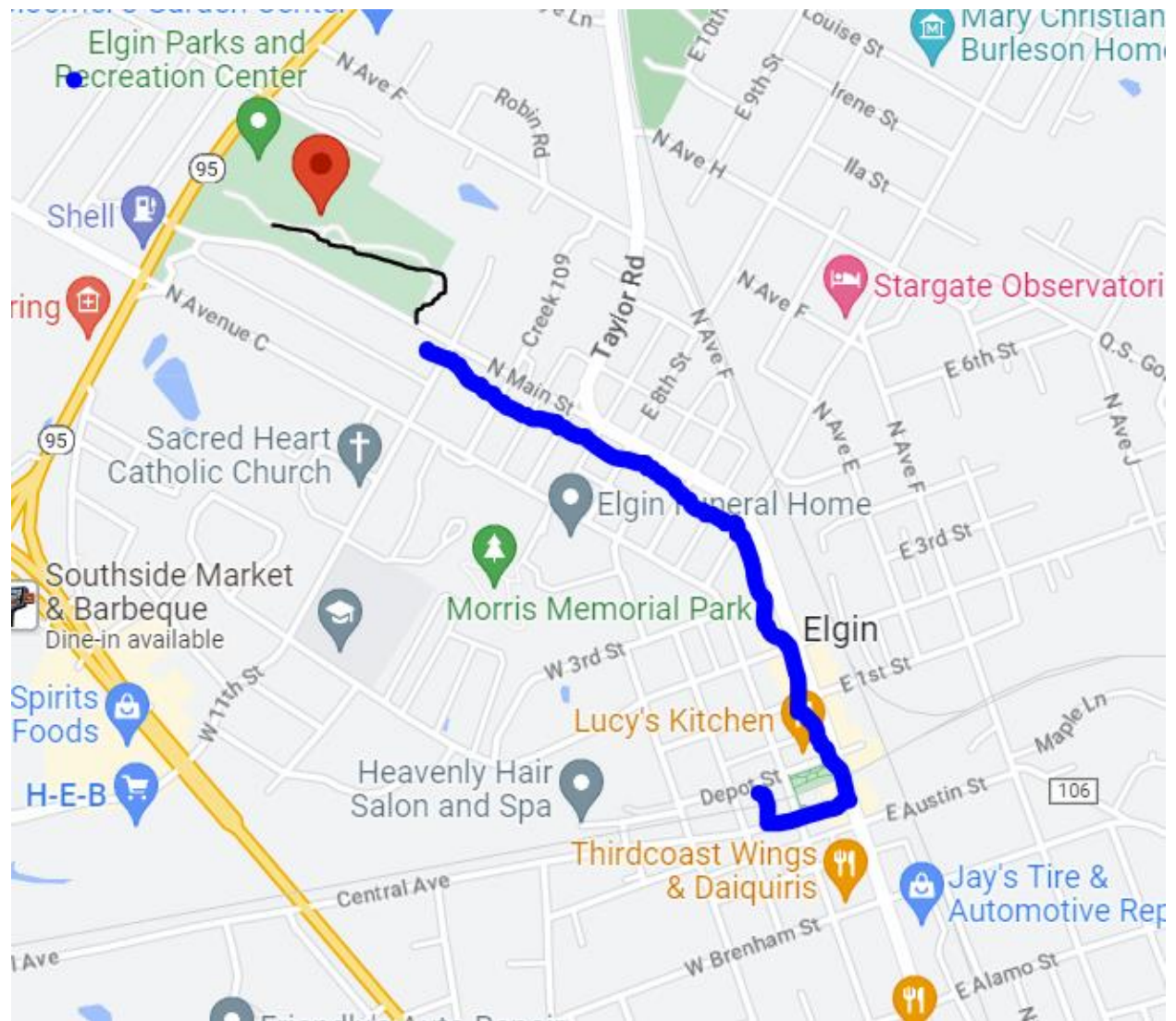
c (714) 618-7017

www.VFW6115.org

Veterans Appreciation Parade

Lineup will be in Elgin Memorial Park (shown in black)

parade route (shown in blue) will proceed on Main Street from the parking lot at 11th Street south on Main through downtown to Veterans Park where it will disperse. Parade will begin at 10:00 AM





Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO WAIVE FEES FOR THE VETERANS APPRECIATION PARADE ON SATURDAY NOVEMBER 4, 2023.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve request.

BACKGROUND: Veterans Foreign Wars Post 6115 is organizing the Veterans Appreciation parade for Saturday November 4, 2023 at 10am. The fees for park rental, street closures, police and public works are \$1887.50. They request that fees be waived for this free community event. Saturday November 4, 2023.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget {} N/A

RECOMMENDATION: Approve Request.

ATTACHMENTS:

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Elgin, Texas 78621

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c (714) 618-7017

www.VFW6115.org



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO CLOSE STREETS FOR THE LIGHTED CHRISTMAS PARADE ON SATURDAY DECEMBER 2, 2023 FROM 5:00PM to 8:00PM.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve request.

BACKGROUND: The City of Elgin and North Bastrop County Fire and Rescue are organizing the Lighted Christmas parade for Saturday December 2, 2023. Lineup will be on 11th Street from Main Street to 2nd Street and on 2nd Street from 11th to Avenue A, and the parade will proceed on Main Street from 11th Street south on Main through downtown to Brenham Street where it will disperse. Free community event to celebrate the holiday season.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget {} N/A

RECOMMENDATION: Approve Request.

ATTACHMENTS:

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- { } Staff will provide brief comments and answer questions on this item at the meeting.
- { X } This is a routine procedural item and no presentation is planned for the meeting.

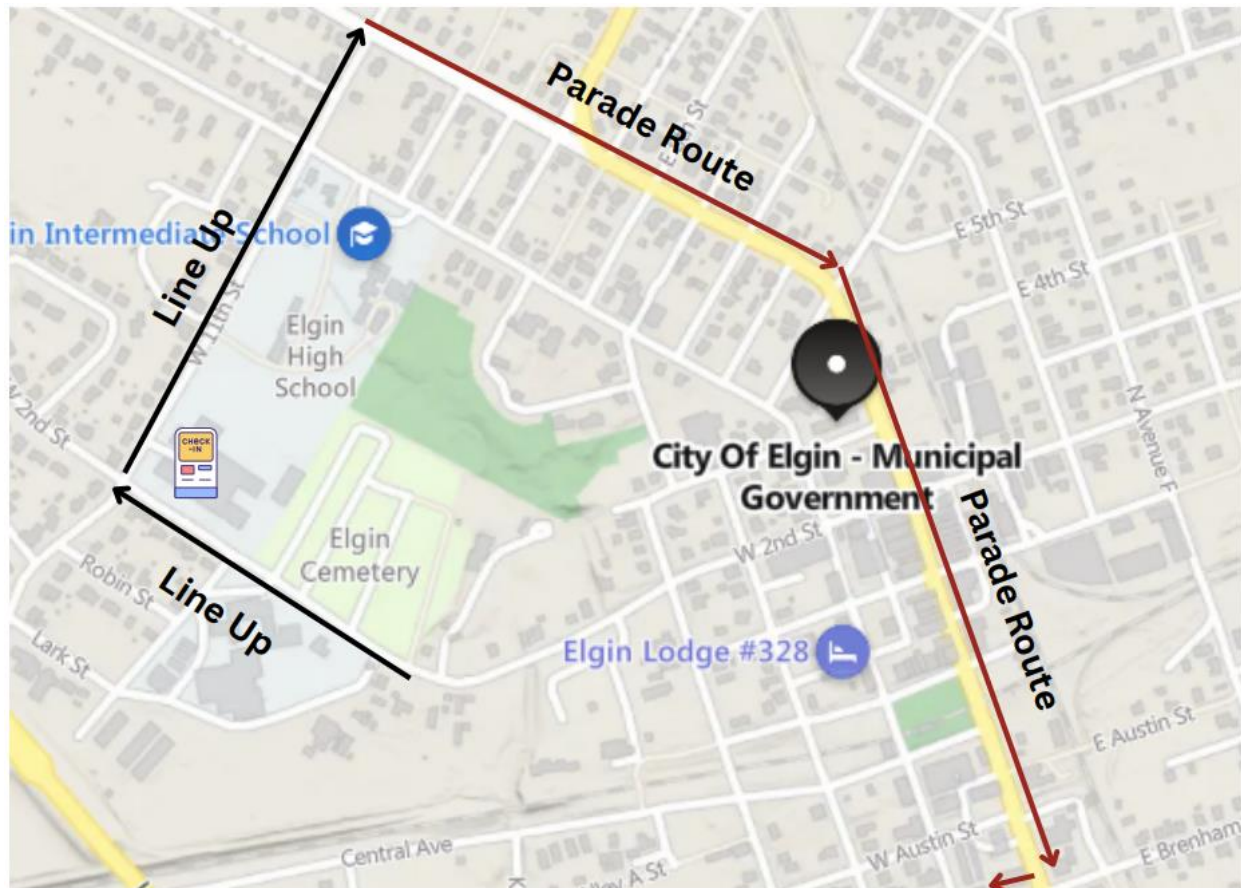
Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

Elgin Lighted Christmas Parade

Sponsored by City of Elgin and North Bastrop County Fire and Rescue

Lineup: 11th Street from Main Street to 2nd Street and on 2nd Street from 11th to Avenue A

Parade Route: Main Street from 11th Street south on Main through downtown to Brenham Street where it will disperse.





Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO WAIVE FEES FOR THE LIGHTED CHRISTMAS PARADE ON SATURDAY DECEMBER 2, 2023 FROM 5:00PM to 8:00PM.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve request.

BACKGROUND: The City of Elgin and North Bastrop County Fire and Rescue are organizing the Lighted Christmas parade for Saturday December 2, 2023. Lineup will be on 11th Street from Main Street to 2nd Street and on 2nd Street from 11th to Avenue A, and the parade will proceed on Main Street from 11th Street south on Main through downtown to Brenham Street where it will disperse. Free community event to celebrate the holiday season. Fees for street closures, police and public works are \$780 for this free community event.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget {} N/A

RECOMMENDATION: Approve Request.

ATTACHMENTS:

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- { } Staff will provide brief comments and answer questions on this item at the meeting.
- { X } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST TO WAIVE OPEN CONTAINER FOR MUSIC IN THE PARK EVERY FRIDAY IN APRIL AND MAY IN VETERANS MEMORIAL PARK AND ON DEPOT STREET FROM 6:00PM to 10:00PM.

DEPARTMENT: Community Services

PROPOSED ACTION: Approve request.

BACKGROUND: Music in the Park is sponsored by the City of Elgin, Elgin Main Street program, Downtown Elgin Inc. Friends of Elgin Parks, Elgin Chamber of Commerce. The event provides music, games and activities for the kids, food trucks, and live bands from the Elgin area every Friday in April and May free for the community.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {X} included {} not included in the current-year budget {} N/A

RECOMMENDATION: Approve Request.

ATTACHMENTS:

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- { } Staff will provide brief comments and answer questions on this item at the meeting.
- { X } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: CONSIDER REQUEST FOR RESERVATION OF CITY HALL AND LIBRARY COMPLEX INCLUDING BOTH PARKING LOTS ON SATURDAY APRIL 22, 22023 FROM 10 AM – MIDNIGHT FOR ELGIN RELAY FOR LIFE AND WAIVE ALL ASSOCIATED FEES.

DEPARTMENT: Community Services

PROPOSED ACTION: Consider approval for requests.

BACKGROUND: Relay For Life of Elgin has a long-standing tradition in our community as an opportunity to not only raise funds in the fight against stupid cancer via the American Cancer Society, but to also - and most importantly - stand together as we support friends, family, and neighbors who are fighting, celebrate with the survivors, honor the caregivers, and remember those stolen from our lives too soon.

BUDGET/FINANCIAL IMPACT:

Funding for this item was {} included {} not included in the current-year budget {X} N/A

RECOMMENDATION: Approval of the requests.

ATTACHMENTS:

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- { } Staff will provide brief comments and answer questions on this item at the meeting.
- { } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

January, 2023

Elgin Relay for Life requests the reservation of City Hall and Library complex including both parking lots on Saturday April 22, 2023 from 10 am – midnight. Relay for Life will provide port-o-lets and all other items related to the event. City of Elgin to provide barricades to close the parking lots. Relay for Life to use the dumpster located in the city hall parking lot. We request the waiver of any fees associated with the use / event and a waiver of the noise ordinance, if it is pertinent to do so given the timeframe of the event.

Elgin Relay for Life will be held downtown at City Hall Saturday, April 22, 2023, with live music and ceremonies from 6 pm - 10 pm.

Relay For Life of Elgin has a long-standing tradition in our community as an opportunity to not only raise funds in the fight against stupid cancer via the American Cancer Society, but to also - and most importantly - stand together as we support friends, family, and neighbors who are fighting, celebrate with the survivors, honor the caregivers, and remember those stolen from our lives too soon.

With the exception of the pandemic years, Relay For Life has taken place in Elgin annually since 2005. After 2 years of canceled plans, Relay For Life of Elgin 2022 was held on the grounds of City Hall on Saturday, April 23 of last year. Live music and an evening of both fun and reflection played out beautifully in this maiden voyage downtown and we thank the Council for this opportunity.

With great appreciation for the many years and countless ways that the City of Elgin has supported this heartwarming, life changing event, we, the 2023 Relay leads, hereby submit this request. You can reach Krista Lee Marx, Event Lead at kristalee316@gmail.com or 512-632-2342 with any questions. Updates on Relay For Life of Elgin are available at www.relayforlife.org/elgintx

Thank you.

Krista Lee Marx
Monica Kylberg
Stephen Kylberg
Karen Peace
Christina Howard
Ruth Hyatt
Mimi Klemm
Johnny Klemm



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: City of Elgin TDA SCADA Improvements - Bid Award Recommendation

SUMMARY: Approval of recommendation letter for award.

DEPARTMENT: Finance - Grants

PROPOSED ACTION: N/A

BACKGROUND: The bid opening for the above referenced project was held on February 7, 2023. A total of two (2) bids were submitted. The bids ranged from a low of \$597,019.00 from General Control Systems, Inc from Albany, New York, to a high of \$939,800.00 from Control Panels USA, from Austin. The project consists of installing SCADA packages that include sensors, electrical panels, and means of electronic communication to 11 Lift Stations and the existing Wastewater Treatment Plant, and all necessary appurtenances for the construction project. The low bidder, General Control Systems, has successfully completed similar work in the past. It is recommended that the above-named contract be awarded to General Control Systems for the total bid amount of \$597,019.00. The contractor has provided a bid bond and will be required to furnish a Performance Bond and Payment Bond to the City.

BUDGET/FINANCIAL IMPACT:

Funding for this item was ☒ included ☐ not included in the current-year budget ☐ N/A

Finance Approval: N/A

Signature: Rebekah Grimm Date: 02/16/2023

RECOMMENDATION:

ATTACHMENTS:

- ☐ Staff will be making a detailed presentation on this agenda item at the meeting.
- ☐ Staff will provide brief comments and answer questions on this item at the meeting.
- ☒ This is a routine procedural item, and no presentation is planned for the meeting.

Council members who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE APPROVAL OF A CONTRACTING SERVICE PROVIDER CONTRACT FOR THE CITY OF ELGIN, TDA CITY WIDE SCADA IMPROVMENT PROJECT; AND MAKING CERTAIN FINDINGS RELATED THERETO.

WHEREAS, the City has approved the replacement and upgrade of existing ground water storage tank and associated booster pump facilities; project includes demolition of existing 437,000-gallon concrete ground storage and construction of a new 1,000,000-gallon steel ground storage tank and replacement of all existing booster pumps; this project has supported funds from the Texas Department of Agriculture (TDA) grant; and

WHEREAS, the City has approved the Installation of a central communications/server SCADA, and the installation of monitoring, control, and communications equipment at thirteen (13) remote facilities; this project has supported funds from the Texas Department of Agriculture (TDA) grant; and

WHEREAS, the bid opening for the above referenced project was held on February 7, 2023. A total of two (2) bids were submitted. The bids ranged from a low of \$597,019.00 from General Control Systems, Inc from Albany, New York, to a high of \$939,800.00 from Control Panels USA, from Austin; and

WHEREAS, it is recommended that the above-named contract be awarded to General Control Systems for the total bid amount of \$597,019.00. The contractor has provided a bid bond and will be required to furnish a Performance Bond and Payment Bond to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, BASTROP COUNTY, TEXAS, THAT:

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

Section 2. Authorization. The City Manager is hereby authorized to sign a contract to be awarded by General Control Systems for the installation of the City of Elgin SCADA project, grant funded by TDA, for \$597,019.00.

Section 3. Open Meetings. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Section 4. This Resolution shall be in full force and effective immediately from and after its passage.

APPROVED this 21st day of February 2023.

THERESA Y. MCSHAN, Mayor
City of Elgin, Texas

ATTEST:

JENNIFER STUBBS, City Secretary



505 East Huntland Drive
Suite 250
Austin, Texas 78752

T 512.454.8716
TRCcompanies.com
T.B.P.E. #F-8632

February 14, 2023

Ms. Theresa McShan, Mayor and City Council
City of Elgin
310 N. Main Street
Elgin, Texas 78621

ATTN: Thomas Mattis, City Manager

**RE: City of Elgin TDA SCADA Improvements
Bid Award Recommendation**

Dear Ms. McShan:

The bid opening for the above referenced project was held on February 7, 2023. A total of two (2) bids were submitted. The bids ranged from a low of \$597,019.00 from General Control Systems, Inc from Albany, New York, to a high of \$939,800.00 from Control Panels USA, from Austin.

The project consists of installing SCADA packages that include sensors, electrical panels, and means of electronic communication to 11 Lift Stations and the existing Wastewater Treatment Plant, and all necessary appurtenances for the construction project.

The low bidder, General Control Systems, has successfully completed similar work in the past.

It is recommended that the above-named contract be awarded to General Control Systems for the total bid amount of \$597,019.00. The contractor has provided a bid bond and will be required to furnish a Performance Bond and Payment Bond to the City.

If you have any questions regarding this information, please feel free to contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Beau Perry'.

K. Beau Perry, PE
Regional Vice President – DMS

Attachment: Bid Tabulation

CITY OF ELGIN
CDBG Wastewater SCADA Project
TxCDBG Contract No. CDV21-0026
Bid Tabulation
February 7, 2023 - 11:00 AM



General Control Systems 17 Corporate Circle Albany, NY 12203	Control Panels USA 16340 Bratton Lane, Bldg 1 Austin, Texas 78728
--	---

Item	Description	Qty.	Unit	Unit Price	Total	Unit Price	Total
P.1	Performance/Payment Bonds	1	L.S.	\$8,576.34	\$8,576.34	\$15,000.00	\$15,000.00
P.2	Mobilization/Demobilization	1	L.S.	\$43,202.54	\$43,202.54	\$45,000.00	\$45,000.00
P.3	Elm Creek LS: New SCADA PLC Panel	1	L.S.	\$7,405.00	\$7,405.00	\$17,000.00	\$17,000.00
P.4	Elm Creek LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$22,300.00	\$22,300.00
P.5	Elm Creek LS: Conduit, cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$6,400.00	\$6,400.00
P.6	Westwind LS: New SCADA PLC Panel	1	L.S.	\$9,503.00	\$9,503.00	\$18,700.00	\$18,700.00
P.7	Westwind LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$24,500.00	\$24,500.00
P.8	Westwind LS: Conduit, cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$8,600.00	\$8,600.00
P.9	Westwind LS: New Level Transmitter	1	L.S.	\$7,866.07	\$7,866.07	\$9,000.00	\$9,000.00
P.10	Central LS: New SCADA PLC Panel	1	L.S.	\$9,503.00	\$9,503.00	\$18,700.00	\$18,700.00
P.11	Central LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$22,500.00	\$22,500.00
P.12	Central LS: Conduit, Cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$8,600.00	\$8,600.00
P.13	Savannah LS: New SCADA PLC Panel	1	L.S.	\$9,503.00	\$9,503.00	\$18,700.00	\$18,700.00
P.14	Savannah LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$22,500.00	\$22,500.00
P.15	Savannah LS: Conduit, cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$8,600.00	\$8,600.00
P.16	Savannah LS: New Level Transmitter	1	L.S.	\$7,866.07	\$7,866.07	\$9,000.00	\$9,000.00
P.17	Larson LS: New SCADA PLC Panel	1	L.S.	\$9,503.00	\$9,503.00	\$18,700.00	\$18,700.00
P.18	Larson LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$22,500.00	\$22,500.00
P.19	Larson LS: Conduit, cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$8,600.00	\$8,600.00
P.20	Larson LS: New Level Transmitter	1	L.S.	\$7,866.07	\$7,866.07	\$9,000.00	\$9,000.00
P.21	Louise LS: New SCADA PLC Panel	1	L.S.	\$9,503.00	\$9,503.00	\$18,700.00	\$18,700.00
P.22	Louise LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$22,500.00	\$22,500.00
P.23	Louise LS: New conduit, cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$8,600.00	\$8,600.00
P.24	Louise LS: New Level Transmitter	1	L.S.	\$7,866.07	\$7,866.07	\$9,000.00	\$9,000.00
P.25	Westbrook LS: New SCADA PLC Panel	1	L.S.	\$9,503.00	\$9,503.00	\$18,700.00	\$18,700.00
P.26	Westbrook LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$25,000.00	\$25,000.00
P.27	Westbrook LS: Conduit, cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$9,800.00	\$9,800.00
P.28	Saratoga LS: New SCADA PLC Panel	1	L.S.	\$9,503.00	\$9,503.00	\$18,700.00	\$18,700.00
P.29	Saratoga LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$22,500.00	\$22,500.00
P.30	Saratoga LS: Conduit, cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$18,600.00	\$8,600.00
P.31	Carver LS: New SCADA PLC Panel	1	L.S.	\$9,408.00	\$9,408.00	\$18,700.00	\$18,700.00
P.32	Carver LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$24,100.00	\$24,100.00
P.33	Carver LS: Conduit, cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$9,000.00	\$9,000.00
P.34	Carver LS: New Level Transmitter	1	L.S.	\$7,866.07	\$7,866.07	\$9,000.00	\$9,000.00
P.35	FM 1704 LS: New SCADA PLC Panel	1	L.S.	\$9,503.00	\$9,503.00	\$18,700.00	\$18,700.00
P.36	FM 1704 LS: WWTP SCADA PLC	1	L.S.	\$9,295.50	\$9,295.50	\$23,000.00	\$23,000.00
P.37	FM 1704 LS: Conduit, cable, panel rack	1	L.S.	\$5,625.00	\$5,625.00	\$9,800.00	\$9,800.00
P.38	WWTP Operations Bldg SCADA servers	1	L.S.	\$71,412.00	\$71,412.00	\$82,000.00	\$82,000.00
P.39	WWTP Chemical Bldg: radio/Antenna	1	L.S.	\$13,233.00	\$13,233.00	\$67,000.00	\$67,000.00
P.40	WWTP Chemical Bldg: SCADA Panel	1	L.S.	\$106,572.00	\$106,572.00	\$54,000.00	\$54,000.00
P.41	Integration to new WWTP SCADA	1	L.S.	\$20,229.77	\$20,229.77	\$105,500.00	\$105,500.00
P.42	All LS & WWTP: install cellular comm.	10	L.S.	\$5,242.10	\$52,421.00	\$2,300.00	\$23,000.00
	TOTAL BID				\$597,019.00		\$939,800.00

CONTRACTOR REFERENCE QUESTIONS

PROJECT NAME & NUMBER: 488727 Elgin CDBG Wastewater SCADA

CONTRACTOR: General Control Systems, Inc.

CONTACT INFO: Randall Powell (518-270-8045)

REFERENCE (NAME & COMPANY/CITY): Rob Cowin (Jersen Construction)

REFERENCE CONTACT INFO: 518-573-4189

DATE OF INTERVIEW: 2/9/2023

REFERENCE PROJECT AREA OF WORK:

☐ UTILITIES (WATER, SEWER, STORM, ETC.)

☐ PLANT WORK (WWTP or WTP EXPANSION)

☐ ROADWAY (STREET RECONSTRUCTION, PAVING, ETC)

☐ GENERAL CONSTRUCTION

☒ OTHER: Integration

REFERENCE PROJECT DESCRIPTION (LOCATION, SCOPE, YEAR OF COMPLETION, ANY UNIQUE DESIGN/CONSTRUCTION CHALLENGES, ETC.):

Includes the implementation of a new Ignition SCADA system, design and fabrication of 7+ new MCP/control panels, multiple E-stop stations, (2) 125HP VFD's, (3) 400HP VFD's, PLC/HMI/OIT programming and instrumentation.

1. Is the project that the contractor did for the reference similar in nature to the bid project (type of construction, depth of utilities, etc.).

Sewage pump station, seems to be of similar size to bid project

2. General:

- a. How much of the work was self performed versus sub contracted out?

Subcontractor for reference

- b. Did the contractor do the utilities or sub contract them out?

n/a

- c. Did the contractor do the roadway work or sub contract it out?

n/a

3. Project Time:

- b. Was the construction started and completed on time?

yes

- c. Did the contractor reach substantial completion on time, but took an extended period of time to reach final completion?

no

- d. Were there any significant delays or work stoppages? If yes, was it due to external issues outside the contractors control?

no

- e. Did the contractor request project time extensions unrelated to rain days or additional work requested by the Owner?

no

- f. Other?

n/a

4. Project Budget:

- a. Were there excessive change orders unrelated to engineering design errors or additional work requests from the Owner?

no

- b. Were there any issues with payment quantities on monthly pay requests that did not match actual field conditions?

no

- c. Did the contractor pay his sub-contractors timely?

n/a

- d. Were there any liens placed on the project from vendors or sub-contractors?

no

- e. Other?

n/a

5. Safety:

- a. Were there any safety issues for the contractor's employees or safety issues with the public?

no

6. General Problems/Issues:

- a. Did the contractor work well with the City/Engineer staffs?

yes

- b. Were there any significant issues with the contractor's employees dealing with the public?

no

- c. Were there many complaints from the residents regarding the contractor?

no

- d. Did the contractor cleanup his work site sufficiently?

yes

- e. Was there excessive personnel turnover for the contractor's field workers?

no

- f. Were there any communication issues with the contractor's employees (ie. unable to speak English)?

no

7. Would you hire this contractor again?

yes

CONTRACTOR REFERENCE QUESTIONS

PROJECT NAME & NUMBER: 488727 Elgin CDBG Wastewater SCADA

CONTRACTOR: General Control Systems, Inc.

CONTACT INFO: Randall Powell (518-270-8045)

REFERENCE (NAME & COMPANY/CITY): Kyle R. Barnes (T. Morales Company Electric & Controls)

REFERENCE CONTACT INFO: 254-681-6850

DATE OF INTERVIEW: 2/9/2023

REFERENCE PROJECT AREA OF WORK:

☐ **UTILITIES (WATER, SEWER, STORM, ETC.)**

☐ **PLANT WORK (WWTP or WTP EXPANSION)**

☐ **ROADWAY (STREET RECONSTRUCTION, PAVING, ETC)**

☐ **GENERAL CONSTRUCTION**

☒ **OTHER:** Integration

REFERENCE PROJECT DESCRIPTION (LOCATION, SCOPE, YEAR OF COMPLETION, ANY UNIQUE DESIGN/CONSTRUCTION CHALLENGES, ETC.):

Includes implementing a new radio/Wi-Fi telemetry system, modification of existing control panels, design and fabrication of multiple new control panels, PLC/HMI/OIT programming, integration of new equipment into existing Wonderware SCADA system and instrumentation.

1. Is the project that the contractor did for the reference similar in nature to the bid project (type of construction, depth of utilities, etc.).

Yes, a bit smaller in scale

2. General:

- a. How much of the work was self performed versus sub contracted out?

Subcontractor for reference

- b. Did the contractor do the utilities or sub contract them out?

n/a

- c. Did the contractor do the roadway work or sub contract it out?

n/a

3. Project Time:

- b. Was the construction started and completed on time?

yes

- c. Did the contractor reach substantial completion on time, but took an extended period of time to reach final completion?

no

- d. Were there any significant delays or work stoppages? If yes, was it due to external issues outside the contractors control?

no

- e. Did the contractor request project time extensions unrelated to rain days or additional work requested by the Owner?

no

- f. Other?

n/a

4. Project Budget:

- a. Were there excessive change orders unrelated to engineering design errors or additional work requests from the Owner?

no

- b. Were there any issues with payment quantities on monthly pay requests that did not match actual field conditions?
no
 - c. Did the contractor pay his sub-contractors timely?
n/a
 - d. Were there any liens placed on the project from vendors or sub-contractors?
no
 - e. Other?
n/a
5. Safety:
- a. Were there any safety issues for the contractor's employees or safety issues with the public?
no
6. General Problems/Issues:
- a. Did the contractor work well with the City/Engineer staffs?
yes
 - b. Were there any significant issues with the contractor's employees dealing with the public?
no
 - c. Were there many complaints from the residents regarding the contractor?
no
 - d. Did the contractor cleanup his work site sufficiently?
yes
 - e. Was there excessive personnel turnover for the contractor's field workers?
no
 - f. Were there any communication issues with the contractor's employees (ie. unable to speak English)?
no
7. Would you hire this contractor again?
- yes

CONTRACTOR REFERENCE QUESTIONS

PROJECT NAME & NUMBER: 488727 Elgin CDBG Wastewater SCADA

CONTRACTOR: General Control Systems, Inc.

CONTACT INFO: Randall Powell (518-270-8045)

REFERENCE (NAME & COMPANY/CITY): Marty Flaherty (Wes Construction Corp.)

REFERENCE CONTACT INFO: 781-243-2913

DATE OF INTERVIEW: 2/9/2023

REFERENCE PROJECT AREA OF WORK:

☐ **UTILITIES (WATER, SEWER, STORM, ETC.)**

☐ **PLANT WORK (WWTP or WTP EXPANSION)**

☐ **ROADWAY (STREET RECONSTRUCTION, PAVING, ETC)**

☐ **GENERAL CONSTRUCTION**

☒ **OTHER:** Integration

REFERENCE PROJECT DESCRIPTION (LOCATION, SCOPE, YEAR OF COMPLETION, ANY UNIQUE DESIGN/CONSTRUCTION CHALLENGES, ETC.):

Improvements to the facility included a new fiber optic signal network consisting of (9) Stratix 5400 managed Ethernet Switches, (17) Patch Panel enclosures, (8) control panels and integration into the existing system. Scope of work also to include several new level measurement devices.

1. Is the project that the contractor did for the reference similar in nature to the bid project (type of construction, depth of utilities, etc.).

Project is wastewater-related, but only focuses on improvements for the WWTP

2. General:

- a. How much of the work was self performed versus sub contracted out?

Subcontractor for reference

- b. Did the contractor do the utilities or sub contract them out?

n/a

- c. Did the contractor do the roadway work or sub contract it out?

n/a

3. Project Time:

- b. Was the construction started and completed on time?

yes

- c. Did the contractor reach substantial completion on time, but took an extended period of time to reach final completion?

no

- d. Were there any significant delays or work stoppages? If yes, was it due to external issues outside the contractors control?

no

- e. Did the contractor request project time extensions unrelated to rain days or additional work requested by the Owner?

no

- f. Other?

n/a

4. Project Budget:

- a. Were there excessive change orders unrelated to engineering design errors or additional work requests from the Owner?

no

- b. Were there any issues with payment quantities on monthly pay requests that did not match actual field conditions?
no
 - c. Did the contractor pay his sub-contractors timely?
n/a
 - d. Were there any liens placed on the project from vendors or sub-contractors?
no
 - e. Other?
n/a
5. Safety:
- a. Were there any safety issues for the contractor's employees or safety issues with the public?
no
6. General Problems/Issues:
- a. Did the contractor work well with the City/Engineer staffs?
yes
 - b. Were there any significant issues with the contractor's employees dealing with the public?
no
 - c. Were there many complaints from the residents regarding the contractor?
no
 - d. Did the contractor cleanup his work site sufficiently?
yes
 - e. Was there excessive personnel turnover for the contractor's field workers?
no
 - f. Were there any communication issues with the contractor's employees (ie. unable to speak English)?
no
7. Would you hire this contractor again?
- yes

CONTRACTOR REFERENCE QUESTIONS

PROJECT NAME & NUMBER: 488727 Elgin CDBG Wastewater SCADA

CONTRACTOR: Control Panels USA

CONTACT INFO: Martin Salyer (512-863-3224)

REFERENCE (NAME & COMPANY/CITY): Justin Breithaupt, City of Georgetown

REFERENCE CONTACT INFO: 512-931-7677

DATE OF INTERVIEW: 2/8/2023

REFERENCE PROJECT AREA OF WORK:

☐ UTILITIES (WATER, SEWER, STORM, ETC.)

☐ PLANT WORK (WWTP or WTP EXPANSION)

☐ ROADWAY (STREET RECONSTRUCTION, PAVING, ETC)

☐ GENERAL CONSTRUCTION

☒ **OTHER:** Instrumentation and Controls

REFERENCE PROJECT DESCRIPTION (LOCATION, SCOPE, YEAR OF COMPLETION, ANY UNIQUE DESIGN/CONSTRUCTION CHALLENGES, ETC.):

Lift Station start-up, new development north of Georgetown

1. Is the project that the contractor did for the reference similar in nature to the bid project (type of construction, depth of utilities, etc.).

Yes, installed instrumentation and SCADA at new lift station

2. General:

- a. How much of the work was self performed versus sub contracted out?

Sub-contractor to an electrical contractor

- b. Did the contractor do the utilities or sub contract them out?

n/a

- c. Did the contractor do the roadway work or sub contract it out?

n/a

3. Project Time:

- b. Was the construction started and completed on time?

yes

- c. Did the contractor reach substantial completion on time, but took an extended period of time to reach final completion?

no

- d. Were there any significant delays or work stoppages? If yes, was it due to external issues outside the contractors control?

no

- e. Did the contractor request project time extensions unrelated to rain days or additional work requested by the Owner?

no

- f. Other?

4. Project Budget:

- a. Were there excessive change orders unrelated to engineering design errors or additional work requests from the Owner?

no

- b. Were there any issues with payment quantities on monthly pay requests that did not match actual field conditions?

no

- c. Did the contractor pay his sub-contractors timely?

n/a

- d. Were there any liens placed on the project from vendors or sub-contractors?

no

- e. Other?

5. Safety:

- a. Were there any safety issues for the contractor's employees or safety issues with the public?

no

6. General Problems/Issues:

- a. Did the contractor work well with the City/Engineer staffs?

yes

- b. Were there any significant issues with the contractor's employees dealing with the public?

no

- c. Were there many complaints from the residents regarding the contractor?

no

- d. Did the contractor cleanup his work site sufficiently?

yes

- e. Was there excessive personnel turnover for the contractor's field workers?

no

- f. Were there any communication issues with the contractor's employees (ie. unable to speak English)?

no

7. Would you hire this contractor again?

yes

CONTRACTOR REFERENCE QUESTIONS

PROJECT NAME & NUMBER: 488727 Elgin CDBG Wastewater SCADA

CONTRACTOR: Control Panels USA

CONTACT INFO: Martin Salyer (512-863-3224)

REFERENCE (NAME & COMPANY/CITY): John Tichi, Jonestown Water Supply Corp.

REFERENCE CONTACT INFO: 512-636-8147

DATE OF INTERVIEW: 2/9/2023

REFERENCE PROJECT AREA OF WORK:

☐ UTILITIES (WATER, SEWER, STORM, ETC.)

☐ PLANT WORK (WWTP or WTP EXPANSION)

☐ ROADWAY (STREET RECONSTRUCTION, PAVING, ETC)

☐ GENERAL CONSTRUCTION

☒ **OTHER:** Instrumentation and Controls

REFERENCE PROJECT DESCRIPTION (LOCATION, SCOPE, YEAR OF COMPLETION, ANY UNIQUE DESIGN/CONSTRUCTION CHALLENGES, ETC.):

Ongoing projects and maintenance

1. Is the project that the contractor did for the reference similar in nature to the bid project (type of construction, depth of utilities, etc.).

Work done for reference is for water supply corporation, but they install and maintain reference's SCADA and controls

2. General:

- a. How much of the work was self performed versus sub contracted out?

Self-performed entirely

- b. Did the contractor do the utilities or sub contract them out?

n/a

- c. Did the contractor do the roadway work or sub contract it out?

n/a

3. Project Time:

- b. Was the construction started and completed on time?

yes

- c. Did the contractor reach substantial completion on time, but took an extended period of time to reach final completion?

no

- d. Were there any significant delays or work stoppages? If yes, was it due to external issues outside the contractors control?

no

- e. Did the contractor request project time extensions unrelated to rain days or additional work requested by the Owner?

no

- f. Other?

4. Project Budget:

- a. Were there excessive change orders unrelated to engineering design errors or additional work requests from the Owner?

no

- b. Were there any issues with payment quantities on monthly pay requests that did not match actual field conditions?

no

- c. Did the contractor pay his sub-contractors timely?

n/a

- d. Were there any liens placed on the project from vendors or sub-contractors?

no

- e. Other?

5. Safety:

- a. Were there any safety issues for the contractor's employees or safety issues with the public?

no

6. General Problems/Issues:

- a. Did the contractor work well with the City/Engineer staffs?

yes

- b. Were there any significant issues with the contractor's employees dealing with the public?

no

- c. Were there many complaints from the residents regarding the contractor?

no

- d. Did the contractor cleanup his work site sufficiently?

yes

- e. Was there excessive personnel turnover for the contractor's field workers?

no

- f. Were there any communication issues with the contractor's employees (ie. unable to speak English)?

no

7. Would you hire this contractor again?

yes



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE PRIME AGREEMENT WITH BAIRD/WILLIAMS CONSTRUCTION TO PERFORM AS “CONSTRUCTION MANAGER AT RISK” FOR THE DESIGN AND CONSTRUCTION OF THE NEW CITY OF ELGIN POLICE DEPARTMENT STATION; AND MAKING CERTAIN FINDINGS RELATED

DEPARTMENT: City Manager/Police Chief

PROPOSED ACTION:

This item is for consideration of a Resolution to authorize the City Manager to execute A133-2009 Agreement Between Owner and Construction Manager as Constructor and A201-2017 General Conditions of the Contract for Construction with Baird/Williams Construction of the City of Elgin Police Department (EPD) Station Project.

BACKGROUND:

As part of the 2021A Certificates of Obligation, the City issued debt late last year in the principal amount of \$12.5M to provide funding for a wide range of capital improvement projects, including the renovation and expansion the current City of Elgin Police Station.

To guide this process, a building committee was formed that includes the EPD Police Chief, two EPD Commanders, the Public Works Director, the City Engineer & City Manager. Upon recommendation of the Committee, the Council designated Baird/Williams Construction, Ltd. as the most qualified firm to provide the CMAR delivery method for the Project, as authorized under state law.

The proposed document is the “prime contract” under the CMAR concept that provides the basic framework for our working agreement. A subsequent agenda item is an amendment to this agreement (Bid Package 1) authorizing specific construction activity under a Guaranteed Maximum Price (GMP).

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included {X} not included in the current-year budget { } N/A

***Full funding for the Project previously authorized through 2021A CO & ARPA funds*

RECOMMENDATION:

Approval of a Resolution authorizing the City Manager to execute A133-2009 Agreement Between Owner and Construction Manager as Constructor and A201-2017 General Conditions of the Contract for Construction with Baird/Williams Construction for the City of Elgin Police Department Station Project; and direction to staff, if any, regarding same.

ATTACHMENTS: Resolution, Agreement

{X} Staff will be making a detailed presentation on this agenda item at the meeting.

{ } Staff will provide brief comments and answer questions on this item at the meeting.

{ } This is a routine procedural item, and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE PRIME AGREEMENT WITH BAIRD/WILLIAMS CONSTRUCTION TO PERFORM AS “CONSTRUCTION MANAGER AT RISK” FOR THE DESIGN AND CONSTRUCTION OF THE NEW CITY OF ELGIN POLICE DEPARTMENT STATION; AND MAKING CERTAIN FINDINGS RELATED THERETO.

WHEREAS, the Elgin City Council approved the issuance the 2021A Certificates of Obligation to provide funding for a wide range of capital improvement projects, including a new City of Elgin Police Department (EPD) Station (“Project”);and,

WHEREAS, the Elgin City Council has authorized utilization of the “Construction Manager at Risk” (“CMAR”) for the Project under Texas Government Code, Chapter 2269 that allows governmental entities to use an alternative method other than competitive bidding; and,

WHEREAS, the EPD Station Building Committee including the EPD Police Chief, two EPD Commanders, the Public Works Director, the City Engineer and City Manager completed a Request for Proposals to procure CMAR services in support of this project and has determined Baird/Williams Construction, Ltd. of Temple, Texas to be the most qualified firm.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, BASTROP AND TRAVIS COUNTY, TEXAS THAT:

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

Section 2. Authorization. The City Manager is hereby authorized to finalize negotiations and execute *AIA Documents A133-2009 Agreement Between Owner and Construction Manager as Constructor* and *A201-2017 General Conditions of the Contract for Construction* with Baird/Williams Construction, Ltd. of Temple, Texas, for “Construction Manager at Risk” services related to the City of Elgin Police Department Station Project, a copy of said agreement being attached hereto and marked Exhibit A; and made part of this Resolution as if copied verbatim herein.

Section 3. 2021A Certificates of Obligation Funding. The City Council does also hereby expressly approve the utilization of proceeds from the 2021A Certificates of Obligation debt issuance in support of the project that is the subject matter of this Resolution; and does further acknowledge that an amendment to the *City of Elgin Annual Operating Budget* may be required at a future date to formally appropriate funds for this item.

Section 4. Open Meetings. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Section 5. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 21st day of February, 2023

THERESA Y. MCSHAN, Mayor
City of Elgin, Texas

ATTEST:

JENNIFER STUBBS, City Secretary



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

New Police Station
204 Depot Street, Elgin, Texas 78621

THE OWNER:

(Name, legal status and address)

The City of Elgin, Texas
310 North Main Street, Elgin, Texas 78621

THE ARCHITECT:

(Name, legal status and address)

FGM Architects, Inc.
3711 South Mopac Expressway, BLDG 2, Suite 150, Austin, Texas 78746

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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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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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, such as the AIA Document A133-2009, Exhibit A – Guaranteed Maximum Price Amendment, (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 or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the sign contract prevail.

§ 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. After execution of the Original Contract Documents, the Contract may thereafter 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 MISCELLANEOUS OTHER WORDS

§ 1.1.10.1 BUSINESS DAY

The Term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purpose of conducting candidate filing, early voting, elections, or special events.

§ 1.1.10.2 CALENDAR DAY

The Term "calendar day" is a day on the Gregorian calendar. The Contract Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

§ 1.1.10.3 HOLIDAYS

Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.1.10.4 WORK DAY

Work days include all calendar days except Holidays, Saturdays and Sundays.

§ 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the Cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The terms and conditions of this clause shall not relieve any party if any other obligation under the Contract Documents.

§ 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.

§ 1.2.4 PRECEDENCE OF THE CONTRACT DOCUMENTS

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

- .1** Contract Modifications signed by Contractor and Owner, including the AIA Document A133-2009, Exhibit A
- .2** Addenda, with those of later date having precedence over those of earlier date.
- .3** General Conditions – AIA Document A201-2017, as modified by the Owner for the Project.
- .4** Specifications and Drawings.
- .5** Agreement – AIA Document A133-2009, as modified by the Owner for the Project.

§ 1.2.5 RELATION OF SPECIFICATIONS AND DRAWINGS

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

§ 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the 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 suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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 may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Pursuant to the requirements of Texas Business and Commerce Code Section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

§ 2.2.2 [PARAGRAPH DELETED]

§ 2.2.3 [PARAGRAPH DELETED]

§ 2.2.4 [PARAGRAPH DELETED]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

§ 2.3.2 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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.

§ 2.3.5 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.

§ 2.3.6 The Contractor, Owner, and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.4 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.

§ 2.5 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 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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 Construction Manager or the Construction Manager's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents with a good and workmanlike manner.

§ 3.1.3 The Contractor shall not be relieved of its 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 2.3.4, 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 submit 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, subject to Section 15.1.7, 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.

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

§ 3.2.6 The Contractor shall use a "Request for Information" (RFI) form agreed to by the Owner, Architect, and Contractor. Absent agreement by Owner, Architect, and Contractor, the RFI form the Contractor shall use is the AIA Document G716-2004 "REQUEST FOR INFORMATION" form. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, at all times while Work on the Project is in progress.

§ 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.

§ 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.

§ 3.3.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 3.3.5 The Contractor shall review contractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 3.3.6 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 3.3.7 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 3.3.8 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on schedule. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (1) to the extent necessitated by excusable and compensable delays, and (2) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, the Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this Section shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 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. The Owner shall pay fees for public or private water, gas, electrical and other utility service, not including temporary plumbing and field office utilities as designated in the AIA Document A133-2009, Schedule A – Listing of General Conditions Categories. The Contractor shall secure and arrange for all necessary utility connections.

§ 3.4.1.1 The project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rate of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the Contract.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 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.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

§ 3.5 Warranty

§ 3.5.1 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.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor agrees to assign to the Owner at the Time of Final Completion of the Work any and all manufacturer's warranties relating to materials and labor used on the Work and further agrees to perform the Work in

such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 3.5.4 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defects, within one (1) year after discovery thereof by Owner.

§ 3.5.5 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.6 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner.

§ 3.6 Taxes

The Contractor shall not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas public entity is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 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 14 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 that an equitable adjustment be made 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, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 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.

§ 3.7.6 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 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 within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice 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 and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably 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, or fails to provide submittals in accordance with the approved 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.

§ 3.10.4 If reasonably required by Owner, Contractor shall also prepare and furnish project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

§ 3.10.5 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Guaranteed Maximum Price proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead items. The Contractor shall receive and protect all Owner supplied material.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 Contractor shall make available, at the Contractor's Corporate Office, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents.

§ 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 how 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 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 provide professional services in violation of applicable law.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 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, 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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 and 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 the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.16.1 Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

§ 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the 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 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 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.

§ 3.19 BUSINESS STANDARDS

§ 3.19.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse

impact on the interest of Owner or affiliates. Contractor shall review, wither Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 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.

§ 4.2 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 Owner's contract with the Architect terminates. 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.

§ 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) 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

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 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 13.4.2 and 13.4.3, whether or not the 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, 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 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. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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 and not expressly overruled in writing by the Owner.

§ 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 the 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, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, 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 that the Contractor, by these Contract 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.

§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

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

When the Owner accepts the assignment of 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 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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has 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 notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 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. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost (0% for change orders to be paid out of any contingency allowance).
- .2 For the Contractor, for the Work performed by the Contractor's Subcontractors, ten percent (10%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).
- .3 For each subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, fifteen percent (15%) of the cost.
- .4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.
- .5 In order to facilitate checking of quotations for extras and credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine 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 Section 7.1.4. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .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 applicable sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change only if the adjustment causes an extension of the Contract Time.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

§ 7.3.7 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.

§ 7.3.8 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 may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without

prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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 shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Guaranteed Maximum Price Amendment has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11 and the general building permit has been issued.

(Paragraph deleted)

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

§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

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

§ 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended 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

§ 9.1.1 The Contract Sum is stated in the AIA Document A133-2009, Exhibit A – Guaranteed Maximum Price Amendment and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1.3 of the Agreement, 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 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 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 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmen's liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included. There is no known basis for the filing of any mechanics' or materialmen's liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in

Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole 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 in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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. 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 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 or the Owner 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 suppliers 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 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a claim in accordance to Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

§ 9.5.4 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 supplier 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 Contractor shall reflect such payment on its next Application 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. The Owner shall notify Contractor within twenty-one (21) days of Owner disputes the Architect's Certificate for Payment, pursuant to Texas

Government Code Section 2251.042 *et. Seq.*, listing the specific reason for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or its Surety from any obligations under the Contract Documents.

§ 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 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 and suppliers 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 or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253. provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 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' 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 shutdown, 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; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permit, approvals, license, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for any reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed). Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

§ 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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 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 in writing, 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 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. 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 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, (3) a written statement that the Contractor knows of no 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, 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, corrected, 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 the 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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.

§ 9.11 AUDIT

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computers) for a period of not less than twelve (12) months after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

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, a Subcontractor, or a Sub-subcontractor; 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 implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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, notice of the 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 and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's 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 the material or substance or who are to perform the task of removal or safe containment of the 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 by the amount of the Contractor's reasonable additional costs of shutdown, 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 hazardous 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 hazardous 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.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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 reimburse 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 Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 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.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract

Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

(Paragraphs deleted)

§ 11.4 Performance and Payment Bonds

The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND and a PAYMENT BOND in the form required by Texas Statutes, in the amount of ONE HUNDRED PERCENT (100%) of the Guaranteed Maximum Price.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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 any 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 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 2.5.

§ 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.

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 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 of the Owner or Separate Contractors, whether completed or partially completed, 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

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 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 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 the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 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 thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 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. Except for tests, inspections, and approvals required to be provided by the Contractor in the Contract Documents, the Owner will contract for, independently of the Contractor, the inspection services, the testing of

construction materials, engineering, and the verification of testing services necessary for the acceptance of the Work by the Owner. The Contractor shall give the Architect 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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 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 13.4.1, 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 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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.

§ 13.4.4 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.

§ 13.4.5 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.

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

§ 13.5 Interest [PARAGRAPH DELETED]

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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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' 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 or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .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 reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner 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' 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.

§ 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 under 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 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 Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of

Subcontracts; and the termination fee, if any, set forth in the Agreement.

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, a change in the Contract Time, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the 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 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by 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 under this Section 15.1.3.1 shall 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.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 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.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

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

§ 15.1.7 Waiver of 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, 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. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a 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 the 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 receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, 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 15.1.7, 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 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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.

§ 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 those of the Owner and Contractor under this Agreement.

THE CITY OF ELGIN, TEXAS

BAIRD/WILLIAMS CONSTRUCTION, LTD.

OWNER *(Signature)*

Mr. Tom Mattis, City Manager
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Mr. Derek Marshall, Vice President, Administration
(Printed name and title)



AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 21st day of February in the year 2023
(In words, indicate day, month, and year.)

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

The City of Elgin Texas
310 North Main Street
Elgin, Texas 78621
Phone: 512-281-5724

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

Baird/Williams Construction Ltd
P.O. Box 917
Temple, Texas 76503
Phone: 254-773-3499

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

New Police Station
204 Depot Street
Elgin, Texas 78621

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

FMG Architects Inc.
3711 South Mopac Expressway, Building 2, Suite 150
Austin, Texas 78746
Phone: 512-474-8085

The Owner and Construction Manager 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™–2017, 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.

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

(Paragraphs deleted)

§ 1.1.2 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

Tom Mattis
City Manager
310 North Main Street
Elgin, Texas 78621
Phone: 512-281-5724
Email: tom.mattis@elgintexas.gov

§ 1.1.3 The Architect's representative:
(List name, address, and other contact information.)

Bob Galloway
Vice President & Principal
3711 South Mopac Expressway, Building 2, Suite 150
Austin, Texas 78746
Phone: 512-474-8085
Email: bobgalloway@fgmarchitects.com

§ 1.1.4 The
(Paragraphs deleted)
Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Derek Marshall
Vice President of Administration
P.O. Box 917
Temple, Texas 76503
Phone: 254-773-3499
Email: derek@bwconst.com

(Paragraphs deleted)

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 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. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification or the AIA A133-2019 Exhibit A Guaranteed Maximum Price Amendment, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. The Contract Documents identified in this Section shall prevail in case of inconsistency with subsequent versions made through manipulatable electronic operations involving computers. In the absence of individual signatures by Owner and Construction Manager, the Contract Documents identified in the signed contract prevail.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and

economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. In no way shall this Agreement constitute the Construction Manager as anything other than an independent contractor and shall not be deemed an employee, agent, or joint venture-er of the Owner. In no way shall this Agreement establish the Construction Manager as a fiduciary of the Owner under the Construction Manager's operation as an independent contractor.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner, shall apply as specifically provided in the Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, as modified by the Owner, which document is incorporated herein by reference.. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017, as modified by the Owner, shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017, as modified by the Owner, referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The recommendations and advice of the Construction Manager concerning design alternatives and potential cost savings shall be subject to review and approval of the Architect, Owner, and the Owner's professional consultants. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

(Paragraph deleted)

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

(Paragraph deleted)

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

(Paragraphs deleted)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager as required by law. The Construction Manager shall not include in the Guaranteed Maximum Price any sales, consumer, use, and similar taxes for the Work provided by the Construction Manager for which (1) a Texas public entity is exempt, and (2) the Owner has provided the Construction Manager with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, as modified by the Owner, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's issuance of a Notice to Proceed.

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Guaranteed Maximum Price Amendment, subject to adjustment of this Contract Time as provided in the Contract Documents.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager, and appropriate subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, as modified by the Owner.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 For purposes of Texas Business and Commerce Code Section 56.054(e)(3), the Owner represents to the Construction Manager that funds are available and have been authorized for the full contract amount for the construction improvements.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner, either directly or through the Architect or other design consultants, shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™—2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Compensation for the services described in Article 3.1 shall be included in the Construction Managers fee described in Section 6.1.2; provided however, if the Construction Phase does not commence for any reason, the Construction Manager's compensation for the services described in Article 3.1 shall be the necessary and reasonable cost of services actually performed, not to exceed the stipulated sum of TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00).

(Paragraph deleted)

(Table deleted)

(Paragraphs deleted)

§ 5.1.3 Compensation for Preconstruction Phase services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments during the Construction Phase for services shall be made monthly in proportion to services performed. If the Construction Phase does not commence for any reason, compensation for Pre-Construction Services shall be made upon the termination of the Agreement.

(Paragraphs deleted)

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Actual Cost of the Work as defined in Article 7 plus the Construction Manager's Fee and General Conditions compensation.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The Construction Manager's Fee shall be FOUR PERCENT (4.00%) of the Actual Cost of Work as described in Article 7.

§ 6.1.2.1 The Construction Manager's compensation for General Conditions shall be TEN PERCENT (10.00%) of the Actual Cost of Work as described in Article 7. Notwithstanding any other provision of the Contract Documents, the Work included in General Conditions for which the Construction Manager is compensated under this Section 6.1.2.1 are described in Schedule A attached hereto and fully incorporated herein.

§ 6.1.2.2 The Actual Cost of the Work does not include the Construction Manager's Fee or compensation for General Conditions.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) if the cost (0% for change orders to be paid out of any contingency allowance).
- .2 For the Contractor, for the Work performed by the Contractor's **Subcontractors, ten percent (10%)** of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).
- .3 For each subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, **ten percent (10%)** of the cost.
- .4 The cost to which the above percentages shall be applied will be determined in accordance with Section 7.3.7 of the modified AIA A201-2017.
- .5 In order to facilitate checking of quotations for extras and credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

See Section 6.1.3 above.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the standard rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, as modified by Owner, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, as modified by Owner, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as modified by Owner, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017, as modified by Owner, shall mean the Actual Cost of the Work as defined in Article 7 of this Agreement and the term "fee" and "general conditions" shall mean the Construction Manager's Fee and compensation for General Conditions as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

(Paragraphs deleted)

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or

value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

(Paragraph deleted)

§ 7.6 Miscellaneous Costs

(Paragraphs deleted)

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Owner (1) is not exempt under Texas law, or (2) has not timely provided a certificate of exemption or similar proof of the Owner's tax exempt status.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

(Paragraphs deleted)

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Actual Cost of the Work, notwithstanding any provision of AIA Document A201–2017, as modified by Owner, or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) calendar days after the Architect receives the Application for Payment.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 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. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017, as modified by Owner, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017, as modified by Owner;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017, as modified by Owner;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

FIVE PERCENT (5.00%)

(Paragraphs deleted)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8.

(Paragraphs deleted)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017, as modified by Owner.

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, as modified by Owner, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Actual Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017, as modified by Owner. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017, as modified by Owner. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017, as modified by Owner. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

(Paragraphs deleted)

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017, as modified by Owner. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, as modified by Owner, for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(Paragraphs deleted)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as modified by Owner, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Article 15 of AIA Document A201–2017, as modified by Owner
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, 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.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

(Paragraphs deleted)

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017, as modified by Owner.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, as modified by Owner, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017, as modified by Owner, shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Actual Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee and compensation for General Conditions, computed upon the Actual Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Actual Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

(Paragraphs deleted)

§ 13.3 Suspension

(Paragraph deleted)

Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project Work is stopped for a period of thirty (30) days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten (10) additional calendar days written notice to the Owner, terminate this Agreement and recover from the Owner payment for all Work actually performed, for any loss sustained upon any materials, equipment, tools, and machinery, and provides on only that portion of the Work actually performed prior to termination. If the cause of the Work stoppage is removed prior to the end of the ten (1) calendar day notice period, the Construction Manager may not terminate this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017, as modified by Owner. Where reference is made in this Agreement to a provision of AIA Document A201–2017, as modified by Owner, or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.1 Governing Law and Attorney's Fees

The Contract shall be governed by the laws of the State of Texas, without regard to the choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the county in which the Project is located. Any litigation to enforce or interpret any terms of the Contract or any other litigation arising out of or as a result of the Contract shall be brought in the State courts of said county.

§ 14.1.1 In any jurisdiction of a claim for breach of contract under this Agreement, reasonable and necessary attorney's fees that are equitable and just may be awarded to the prevailing party. Otherwise, no provision of this Agreement is a waiver of any immunity or defense or consent to suit.

§ 14.2 Successors and Assigns

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the adequate insurance as would typically maintained by a Construction Manager for the duration of the Preconstruction Services performed under this Agreement.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

(Paragraphs deleted)

§ 14.5 Other provisions:

§ 14.5.1 Pursuant to Texas Government Code Chapter 2270, if this contract is valued at \$100,000 or more **and** if Contractor has at least ten (10) full time employees, then Contract represents and warrants to the Owner that the

Contractor does not boycott Israel and will not boycott Israel during the term of this contract. This section does not apply to a sole proprietorship. On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of Chapter 2270 in any state contract. In compliance with the Court's order, the Owner will not seek enforcement of the current Chapter 2270 until further order of this or higher court having jurisdiction over the issue.

§ 14.5.2 Pursuant to Texas Government Code Chapter 2270, the Contractor represents and warrants that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 14.5.3 By signing this Agreement, the undersigned Contractor certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this Agreement, the Contractor certifies that the individuals or business entity named in this Agreement is not ineligible to receive the specified payments and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

§ 14.5.4 Pursuant to Texas Government Code 2269.252(b), the undersigned Contractor represents and warrants that it is not a related entity to the Architect for the Project.

§ 14.6 MATERIALS AND VERIFICATION TESTING

The Construction Manager will assist the Owner in selecting a separate contractor or contractors to provide construction materials inspections and testing, and verification testing services necessary for acceptance of the Project. The Owner shall select such contractor or contractors on the basis of demonstrated competence and qualifications in accordance with Government Code Chapter 2254, and shall pay such contractor or contractors for their services.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .2 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5

(Paragraphs deleted)

Schedule A – Listing of Work Categories that are compensated as General Conditions

(Table deleted)

(Paragraphs deleted)

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

OWNER (Signature)

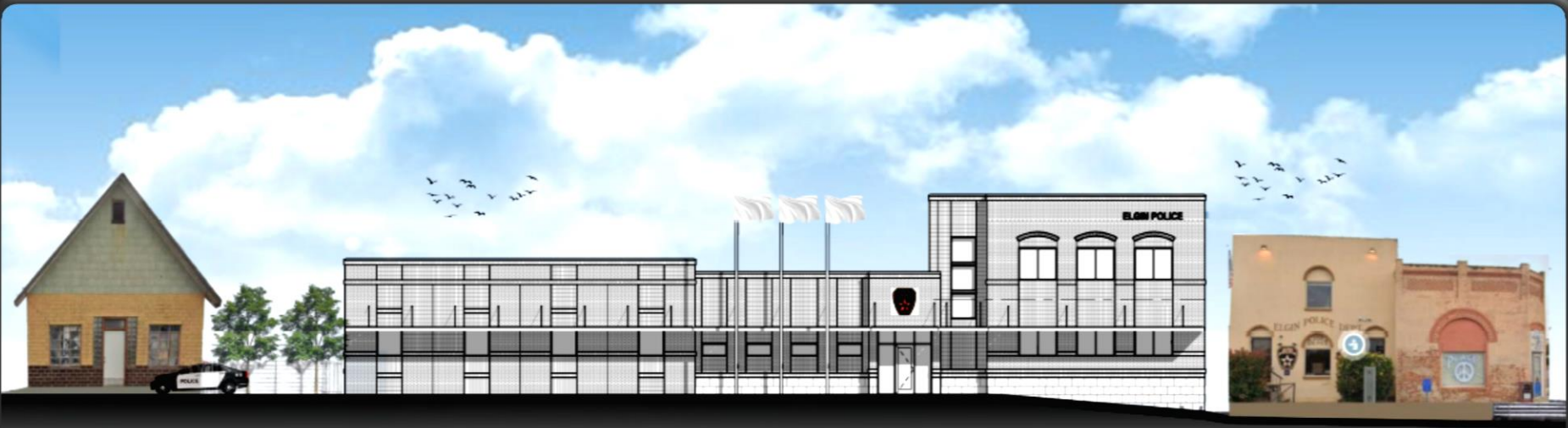
Tom Mattis City Manager
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Derek Marshall Vice President of Administration
(Printed name and title)



CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION



FRONT ELEVATION

FRONT ELEVATION

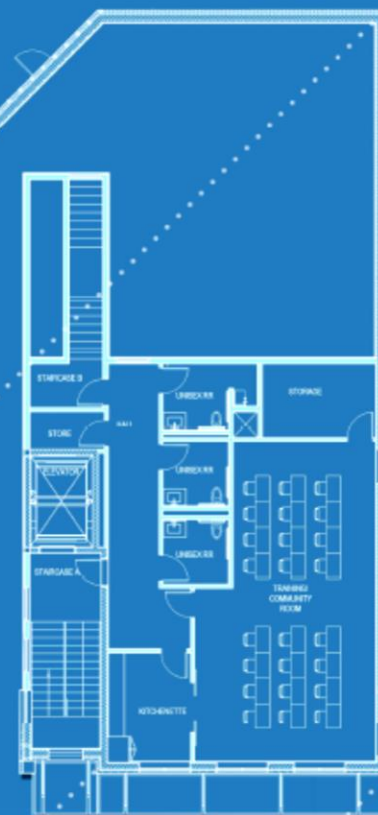


CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION



SOUTH ELEVATION
NEW POLICE STATION
ELGIN, TEXAS







CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION

Revised Schedule

- January 17 – City Council Meeting - Update Council on revised schedule
- January 25 – FGMA issues Bid Package 1.
- February 7 – City Council Meeting - Brief Council on Two-Package Bid
- February 9 – BWC receives Package 1 bid results.
- February 20 - FGMA issues Bid Package 2.
- February 21 – City Council Meeting - Package 1 bid/GMP update to Council
City Council approves Package 1 contract and mobilization
- February 27 - Mobilization begins on site – earthwork and foundations
- February 28 - Groundbreaking ceremony
- March 7 – City Council Meeting -
- March 7 - BWC receives Package 2 bid results.
- March 21 – City Council Meeting - Council approves final GMP Contract
- March 2024 - BWC completes the construction of the new Police Station.



CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION

REVISED PROJECT COST ESTIMATES

Construction Costs 4,022,552

Contingency 185,493

Subtotal..... **\$4,208,045**

Soft costs (Engineering, design, testing) 531,396

Furniture/Fixtures/Miscellaneous.... 320,700

Total..... **\$5,060,141**



CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION

REVISED FUNDING

Total Project Costs.....	\$5,060,141
2021A Certificates of Obligation	\$3,500,000
ARPA/Coronavirus State & Local Fiscal Recovery Funds.....	<u>\$1,560,141</u>
<i>Total</i>	\$5,060,141

**Enhanced project without cost increase
to residents or taxpayers**



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AMENDMENT WITH BAIRD/WILLIAMS CONSTRUCTION FOR BID PACKAGE 1 GUARANTEED MAXIMUM PRICE FOR THE NEW CITY OF ELGIN POLICE DEPARTMENT STATION; AND MAKING CERTAIN FINDINGS RELATED THERETO

DEPARTMENT: City Manager/Police Chief

PROPOSED ACTION:

This item is for consideration of a Resolution to authorize the City Manager to execute a Guaranteed Maximum Price agreement with Baird/Williams Construction for Bid Package 1 of the City of Elgin Police Department (EPD) Station Project.

BACKGROUND:

As part of the 2021A Certificates of Obligation, the City issued debt late last year in the principal amount of \$12.5M to provide funding for a wide range of capital improvement projects, including the renovation and expansion the current City of Elgin Police Station.

To guide this process, a building committee was formed that includes the EPD Police Chief, two EPD Commanders, the Public Works Director, the City Engineer and City Manager.

Upon recommendation of the Committee, the Council designated Baird/Williams Construction, Ltd. as the most qualified firm to provide the CMAR delivery method for design and construction of the Project, as authorized under state law.

Baird/Williams Construction, Ltd. has now submitted and recommended Guaranteed Maximum Price (GMP) proposed contract amendment for Bid Package 1 in support of the Project.

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included {X} not included in the current-year budget { } N/A

***Full funding for the Project previously authorized through 2021A CO & ARPA funds*

RECOMMENDATION:

Approval of a Resolution authorizing the City Manager to execute a Guaranteed Maximum Price agreement with Baird/Williams Construction for Bid Package 1 of the City of Elgin Police Department Station Project; and direction to staff, if any, regarding same.

ATTACHMENTS: Resolution, Agreement, Project Renderings

{X} Staff will be making a detailed presentation on this agenda item at the meeting.

{ } Staff will provide brief comments and answer questions on this item at the meeting.

{ } This is a routine procedural item, and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF ELGIN, TEXAS,
AUTHORIZING THE CITY MANAGER TO EXECUTE A
CONTRACT AMENDMENT WITH BAIRD/WILLIAMS
CONSTRUCTION FOR BID PACKAGE 1 GUARANTEED
MAXIMUM PRICE FOR THE NEW CITY OF ELGIN
POLICE DEPARTMENT STATION; AND MAKING
CERTAIN FINDINGS RELATED THERETO.**

WHEREAS, the Elgin City Council approved the issuance the 2021A Certificates of Obligation to provide funding for a wide range of capital improvement projects, including a new City of Elgin Police Department (EPD) Station (“Project”); and,

WHEREAS, the Elgin City Council has authorized utilization of the “Construction Manager at Risk” (“CMAR”) for the Project under Texas Government Code, Chapter 2269; and,

WHEREAS, the City Council, upon recommendation of the EPD Station Building Committee, has designated Baird/Williams Construction, Ltd. as the most qualified firm to provide the CMAR delivery method for design and construction of the Project; and,

WHEREAS, Baird/Williams Construction, Ltd. has submitted and recommended Guaranteed Maximum Price (GMP) proposed contract amendment for Bid Package 1 in support of the Project.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, BASTROP AND TRAVIS COUNTY, TEXAS THAT:

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

Section 2. Authorization. The City Manager is hereby authorized to finalize negotiations and execute a Guaranteed Maximum Price agreement with Baird/Williams Construction, Ltd. of Temple, Texas, for Bid Package 1 of the City of Elgin Police Department Station Project, a copy of said agreement being attached hereto and marked Exhibit A; and made part of this Resolution as if copied verbatim herein.

Section 3. 2021A Certificates of Obligation Funding. The City Council does also hereby expressly approve the utilization of proceeds from the 2021A Certificates of Obligation debt issuance in support of the project that is the subject matter of this Resolution; and does further acknowledge that an amendment to the *City of Elgin Annual Operating Budget* may be required at a future date to formally appropriate funds for this item.

Section 4. Open Meetings. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Section 5. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 21st day of February, 2023

THERESA Y. MCSHAN, Mayor
City of Elgin, Texas

ATTEST:

JENNIFER STUBBS, City Secretary



AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the 21st day of February in the year 2023, is incorporated into the accompanying AIA Document A133™–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 21st day of February in the year 2023 (the "Agreement")

(In words, indicate day, month, and year.)

for the following **PROJECT:**

(Name and address or location)

New Police Station – Bid Package 1 (BP1)
204 Depot Street, Elgin, Texas 78621

THE OWNER:

(Name, legal status, and address)

The City of Elgin, Texas
310 North Main Street, Elgin, Texas 78621
Phone: 512-281-5724

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Baird/Williams Construction, Ltd.
P.O. Box 917, Temple, Texas 76503
Phone: 254-773-3499

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE**
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed One Million Six Hundred One Thousand Two Hundred Seventy Five & 00/100 (\$ 1,601,275.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

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™–2017, 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.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

Please see Exhibit A attached hereto.

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
Please see Exhibit B attached hereto.	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
Please see Exhibit B attached hereto.		

§ A.1.1.6 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
Please see Exhibit C attached hereto.		

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of execution of this Amendment.

☒ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

The Date of Commencement shall be the Monday following the Construction Manager's receipt from the Owner all required project permits (e.g. Site Development Permit, General Building Permit, etc.).

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[X] Not later than Three Hundred Thirty Five (335) calendar days from the date of commencement of the Work.

[] By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
Not Applicable	

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Addendum	No. 1	January 6, 2023	19
Addendum	No. 2	February 8, 2023	6

§ A.3.1.2 The following Specifications:

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

Please see Exhibit D attached hereto.

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

§ A.3.1.3 The following Drawings:

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

Please see Exhibit E attached hereto.

Number	Title	Date
--------	-------	------

Other identifying information:

(Paragraph deleted)

(Table deleted)

(Paragraphs deleted)

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
Please see Exhibit F attached hereto.	

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:

(Identify each assumption and clarification.)

Please see Exhibit G attached hereto.

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

Please see Exhibit G attached hereto.

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

OWNER *(Signature)*

Mr. Tom Mattis City Manager
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Mr. Derek Marshall Vice President, Administration
(Printed name and title)



Baird/Williams Construction, Ltd.

900 West Irvin Avenue | P.O. Box 917
Temple, Texas 76501 | 76503-0917
Phone: (254) 773-3499 | Fax (254) 773-3548
www.bairdwilliams.com

AIA A133-2019, Exhibit A – Guaranteed Maximum Price Amendment

Exhibit Table of Contents

New Police Station – Bid Package 1
The City of Elgin, Texas

February 21, 2023

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Exhibit A – Guaranteed Maximum Price (GMP) Summary

Exhibit B – Alternates

Exhibit C – Unit Prices

Exhibit D – Specification Index

Exhibit E – Drawings Index

Exhibit F – Allowances

Exhibit G – Qualifications & Exclusions

EXHIBIT A - GMP SUMMARY

BAIRD/WILLIAMS CONSTRUCTION, LTD.

ESTIMATE NO. : GMP
PROJECT : NEW POLICE STATION - BID PACKAGE 1 (BP1)
LOCATION: ELGIN, TEXAS

CoELGIN - NEW POLICE STATION - BP1
BASE BID

OWNER: THE CITY OF ELGIN, TEXAS

BID DAY: 2/9/2023

ADDENDA: ONE (1)

CODE NO.	SPEC REF	DESCRIPTION	ACCT. # 112 SUB- CONT	ACCT. # 111 LUMP SUM MATERIAL	ACCT. # 110 MATERIALS	ACCT. # 113 LABOR
2A	02.4100	SELECTIVE DEMOLITION	IN 2B	\$0	\$0	\$0
2B	31.0000	EARTHWORK	\$93,600	\$10,000	\$0	\$0
		CLEARING & GRUBBING	IN 2B	\$0	\$0	\$0
		BUILDING & SITE EXCAVATION	IN 2B	\$0	\$0	\$0
		SUBGRADE PREPARATION	IN 2B	\$0	\$0	\$0
		BUILDING PAD - COMMON FILL / MOISTURE CONDITIONED	IN 2B	\$0	\$0	\$0
		PAVING - 6" MOISTURE CONDITIONED	IN 2B	\$0	\$0	\$0
		FLEXIBLE BASE - 8" CLB	IN 2B	\$0	\$0	\$0
		ROUGH & FINISH GRADING	IN 2B	\$0	\$0	\$0
2C		SITE SPECIALTIES	\$4,350	\$1,200	\$0	\$0
		PAVEMENT MARKINGS	IN 2C	\$0	\$0	\$0
		POST & PANEL SIGNAGE	IN 2C	\$0	\$0	\$0
		CONCRETE WHEEL STOPS	IN 2C	\$0	\$0	\$0
		SITE PAVERS (C400) - BP2	EXCLUDED	\$0	\$0	\$0
		LANDSCAPING & IRRIGATION (C400) - BP2	EXCLUDED	\$0	\$0	\$0
		FENCES & GATES (C400) - BP2	EXCLUDED	\$0	\$0	\$0
		POWER POLE & OHE UTILITY RELOCATIONS (C300)	EXCLUDED	\$0	\$0	\$0
		FIBER OPTIC LINE REMOVAL / RELOCATION (C300)	EXCLUDED	\$0	\$0	\$0
		RIGHT-OF-WAY IMPROVEMENTS - DEPOT STREET	EXCLUDED	\$0	\$0	\$0
		EARTHWORK	\$0	\$0	\$0	\$0
		SITE SPECIALTIES	\$0	\$0	\$0	\$0
		PAVEMENT MARKINGS, POST & PANEL SIGNAGE, & WHEEL STOPS	\$0	\$0	\$0	\$0
		CONCRETE	\$0	\$0	\$0	\$0
		CURBS, SIDEWALKS, RAMPS, & STEPS	\$0	\$0	\$0	\$0
		METAL FABRICATIONS	\$0	\$0	\$0	\$0
		PIPE & TUBE RAILING	\$0	\$0	\$0	\$0
2D	33.0000	SITE UTILITIES	\$79,965	\$0	\$0	\$0
		PARKING LOT DRAIN DETAIL - FLITER FABRIC & RIP RAP	\$8,500	\$0	\$0	\$0
		BUILDING FRENCH DRAIN, FILTER FABRIC, & GRAVEL - BP2	EXCLUDED	\$0	\$0	\$0
		GAS PIPING - BP2	EXCLUDED	\$0	\$0	\$0
3A	03.0000	CONCRETE	\$405,000	\$0	\$0	\$0
		DRILLED CONCRETE PIERS	IN 3A	\$0	\$0	\$0
		VAPOR BARRIER	IN 3A	\$0	\$0	\$0
		CONCRETE FORMING & ACCESSORIES	IN 3A	\$0	\$0	\$0
		CONCRETE REINFORCING	IN 3A	\$0	\$0	\$0
		CAST-IN-PLACE CONCRETE	IN 3A	\$0	\$0	\$0
		BUILDING	IN 3A	\$0	\$0	\$0
		SUB-FOUNDATION MUD SLAB	IN 3A	\$0	\$0	\$0
		GRADE BEAMS	IN 3A	\$0	\$0	\$0
		LEVEL 1 COMPOSITE SLAB ON METAL DECK	IN 3A	\$0	\$0	\$0
		LEVEL 2 COMPOSITE SLAB ON METAL DECK	IN 3A	\$0	\$0	\$0
		SITE	IN 3A	\$0	\$0	\$0
		PAVING	IN 3A	\$0	\$0	\$0
		CURBS, GUTTERS, & APPROACHES	IN 3A	\$0	\$0	\$0
		SIDEWALKS	IN 3A	\$0	\$0	\$0
		TRANSFORMER PAD	IN 3A	\$0	\$0	\$0
		GENERATOR PAD	IN 3A	\$0	\$0	\$0
4A	04.0000	MASONRY	\$192,834	\$0	\$0	\$0
		CONCRETE UNIT MASONRY	IN 4A	\$0	\$0	\$0
5A	05.2100	STRUCTURAL STEEL FRAMING	\$97,500	\$386,024	\$0	\$0
		STEEL JOIST FRAMING	BID ALT. #1	BID ALT. #1	\$0	\$0
		STEEL DECKING	IN 5A	IN 5A	\$0	\$0
	05.5000	METAL FABRICATIONS	\$5,000	\$0	\$0	\$0
		STEEL SCREEN WALL - SITE (C703) - BP2	EXCLUDED	\$0	\$0	\$0
31A		SWPPP	\$2,000	\$0	\$0	\$0
31B		EROSION CONTROLS	IN 99A	\$0	\$0	\$0
91A	01.0000	GENERAL REQUIREMENTS	\$54,654	\$0	\$0	\$0
	01 21 00	SCHEDULED ALLOWANCES	SEE BELOW	\$0	\$0	\$0
	NO. 1	OWNER'S CONTINGENCY	\$30,000	\$0	\$0	\$0
	NO. 2	CONTRACTOR'S CONTINGENCY	\$30,000	\$0	\$0	\$0
	NO. 3	EXTERIOR HOLLOW METAL DOOR FRAMES - MATERIAL	\$4,000	\$0	\$0	\$0
		SUBTOTAL	\$1,007,403	\$397,224	\$0	\$0
93A		PAYROLL INSURANCE & TAXES				IN 99A
		TOTAL SUB BIDS				\$1,007,403
		TOTAL LUMP SUM MATERIAL				\$397,224
		TOTAL MATERIAL				\$0
		TOTAL LABOR				\$0
94A		BUILDERS RISK INSURANCE				IN 99A
		PERMITS				IN 99A
95A		SPECIAL INSURANCE				N/A
96A		LIABILATY INSURANCE				IN 99A
		SUBTOTAL				\$1,404,627
98A		BOND				IN 99A
		SUBTOTAL				\$1,404,627
99A		QUOTED GENERAL CONDITIONS			10.00%	\$140,463
FEE		FEE			4.00%	\$56,185
		TOTAL				\$1,601,275



Baird/Williams Construction, Ltd.

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Exhibit B – Alternates

New Police Station – Bid Package 1 The City of Elgin, Texas

February 21, 2023

PROJECT ALTERNATES

Bid Alternate No. 01

(\$544) – *DEDUCT*

Provide roof framing per Drawing Sheet S1.2A in lieu of Drawing Sheet S1.2. (Roof framing with steel joists in lieu of steel beams.)

Bid Alternate No. 02

\$32,628.00 – *ADD*

Provide and install the “Sally-Port” steel structure framing assembly, including concrete foundation (piers).

Bid Alternate No. 03A

\$61,796.00 – *ADD*

Provide and install “eyebrow canopy” steel structure framing assembly.

Bid Alternate No. 03B

(\$4,237.00) – *DEDUCT*

Eliminate embedded steel plate for eyebrow canopies.

Approved Bid Alternates:

NONE

Value Alternate Concepts (VACs) **(Hard Cost Only)**

VAC-1A

(\$15,600.00) – *DEDUCT*

Provide **NO** flexible base and 8” moisture conditioned subgrade beneath concrete paving.

VAC-1B

(\$9,200.00) – *DEDUCT*

Provide 4” flexible base in lieu of 8” flexible base and 6” moisture conditioned subgrade beneath concrete paving.



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****NOTE:** The geotechnical report indicated for medium-duty concrete paving that only 8" of moisture conditioned subgrade is required and that flexible base beneath the concrete paving is not required. The design concrete paving section consists of 6" concrete paving over 8" flexible base over 6" moisture conditioned subgrade. VAC-1A and VAC-1B above are to modify this paving section if acceptable by the City of Elgin, Texas.

Approved Value Alternate Concepts:

NONE



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Exhibit C – Unit Prices

New Police Station – Bid Package 1
The City of Elgin, Texas

February 21, 2023

PROJECT UNIT PRICES SCHEDULE

Unit Price No. 1 – Concrete Pier Depths (per Linear Foot – LF)

	<u>Add (+)</u>	<u>Deduct (-)</u>
18" Diameter	\$135.00	\$10.00
24" Diameter	\$140.00	\$15.00
30" Diameter	\$145.00	\$20.00
36" Diameter	\$150.00	\$25.00

Unit Price No. 2 – Concrete Pier Casings (per Linear Foot – LF)

	<u>Add (+)</u>
18" Diameter	\$130.00
24" Diameter	\$135.00
30" Diameter	\$140.00
36" Diameter	\$145.00

**In addition to unit cost indicated above, a \$5,500.00 pier casing mobilization will be incurred if pier casing is required.

Unit Price No. 3 – Straight Cement Concrete Mix Designs (per Cubic Yard – CY)

	<u>Add (+)</u>
Straight Mix	\$7.00

**All concrete bid with fly ash per the Project Specifications. If fly ash is not available, and the concrete mix designs are required to be furnished as “straight cement” designs, the above cost will be applied per each cubic yard of concrete furnished.



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Exhibit D – Specification Index

New Police Station – Bid Package 1 The City of Elgin, Texas

February 21, 2023

PROJECT SPECIFICATION INDEX

Division 00 – Procurement & Contracting Requirements

- 00 01 15 List of Drawing Sheets
- 00 22 13 Supplementary Instructions to Bidders
- 00 31 00 Information Available to Bidders (Under Separate Cover)

Division 01 – General Requirements

- 01 10 00 Summary
- 01 22 00 Unit Prices
- 01 23 00 Alternates
- 01 25 00 Substitution Procedures
- 01 26 00 Contract Modification Procedures
- 01 29 00 Payment Procedures
- 01 31 00.33 Newforma: Project Management & Coordination
- 01 32 00 Construction Progress Documentation
- 01 32 33 Photographic Documentation
- 01 33 00 Submittal Procedures
- 01 40 00 Quality Requirements
- 01 42 00 References
- 01 50 00 Temporary Facilities & Controls
- 01 60 00 Product Requirements
- 01 73 00 Execution
- 01 74 19 Construction Waste Management & Disposal
- 01 77 00 Closeout Procedures
- 01 78 23 Operation & Maintenance Data
- 01 78 39 Project Record Documents
- 01 79 00 Demonstrating & Training

Division 03 – Concrete

- 03 10 00 Concrete Forming & Accessories
- 03 20 00 Concrete Reinforcement
- 03 30 00 Cast-In-Place Concrete

Division 04 – Masonry

- 04 22 00 Concrete Unit Masonry



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Division 05 – Metals

05 12 00 Structural Steel Framing
05 21 00 Steel Joist Framing (Alternate)
05 31 00 Steel Decking
05 50 00 Metal Fabrications

Division 31 – Earthwork

31 63 29 Drilled Concrete Piers & Shafts

**See Civil Engineering reference to City of Elgin Construction Standards in Division 32

Division 32 – Exterior Improvements

32 00 00 – City of Elgin Construction Standards

Division 33 – Utilities

33 00 00 Civil Engineering Specifications

**See Civil Engineering reference to City of Elgin Construction Standards in Division 32



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Exhibit E – Drawing Index

New Police Station – Bid Package 1 The City of Elgin, Texas

February 21, 2023

PROJECT DRAWING INDEX

General

G0.0	Cover Sheet
G.01	Symbols, Abbreviations, & General Notes
C0.2	Drawing Index

Civil

C100	Existing Conditions
C200	Erosion & Sediment Control Plan
C300	Demolition Plan – Civil
C400	Site Plan – Civil
C500	Grading Plan
C600	Drainage Map
C700	City of Elgin Standard Details
C701	City of Elgin Standard Details
C702	City of Elgin Standard Details
C703	Standard Details – Civil

Structural

S0.1	Notes – Structural
S0.2	Notes – Structural
S0.3	Notes – Structural
S0.4	Special Inspections
S0.5	Special Inspections
S0.6	Special Inspections
S0.7	Wind Uplift Plan
S0.8	Deck Attachment Plan
S1.1	Framing Plan – Level 1
S1.2	Framing Plan – Level 2 & Roof
S1.2A	Framing Plan – Level 2 & Roof (Alternate)
S1.3	Framing Plan – High Roof
S3.1	Concrete Details
S3.2	Concrete Details
S3.3	Concrete Details
S3.4	Concrete Details



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Structural – Continued

S4.1	Framing Details
S4.2	Framing Details
S4.3	Framing Details
S4.4	Framing Details
S4.5	Framing Details
S5.0	Framing Details (Alternate)
S5.1	Roof Framing Details
S5.2	Roof Framing Details
S5.3	Roof Framing Details
S5.4	Roof Framing Details
S6.1	Masonry Details
S6.2	Masonry Details
S6.3	Masonry Details
S7.0	Wind Frame Elevations
S7.1	Wind Frame Details
S8.0	Concrete Beam Schedule

Architectural

A0.2	Site Plan – Architectural
A0.3	Enlarged Site Details
A0.4	Enlarged Site Details
A0.5	Site Details – Architectural
A0.6	Crawlspace Grading Plan



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Exhibit F – Allowances

New Police Station – Bid Package 1
The City of Elgin, Texas

February 22, 2023

PROJECT ALLOWANCE SCHEDULE

<u>Number</u>	<u>Title</u>	<u>Valuation</u>
Allowance No. 1	Owner's Contingency	\$30,000.00
Allowance No. 2	Contractor's Contingency	\$30,000.00
Allowance No. 3	Exterior HM Door Frames – Material	\$4,000.00



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Exhibit G – Qualifications and Exclusions

New Police Station – Bid Package 1 The City of Elgin, Texas

February 21, 2023

This proposal is based upon Contract Documents as prepared by FGM Architects and design consultants dated January 26, 2023 (Drawings and Specifications), Addendum No. 1 dated January 6, 2023, Addendum No. 2 dated February 8, 2023, Accepted Bid Alternates as identified in Exhibit B, Accepted Value Alternate Concepts (VACs) as identified in Exhibit B, and qualifications and exclusions as noted herein.

Guaranteed Maximum Price (GMP):

\$1,601,275.00

(One Million Six Hundred One Thousand Two Hundred Seventy Five and 00/100 Dollars)

Qualifications:

1. Our proposal is based upon a construction schedule of 355 consecutive calendar days. The date of commencement shall be the Monday immediately following the Construction Manager's receipt from the Owner all required project permits (e.g. General Building Permit, Site Development Permit, etc.). The payment for such permitting fee(s) are included in our Proposal.
2. Our proposal includes trade permits and /or license fees.
3. Our proposal includes installation of all materials designated Owner Furnished, Contractor Installed (OFCI).

Exclusions:

1. Impact fees, permanent utility fees (Oncor or other).
2. Water meters and water tap fees.
3. Hazardous material abatement and/or removal.
4. Independent material laboratory testing costs and/or fee(s).
5. Sales taxes for which the City of Elgin, Texas is exempt.
6. Liquidated damages.
7. Building Information Modeling (BIM) and clash detection services.
8. Material pricing guarantee from future price increases.
9. AISC certifications.
10. Directional boring.
11. Confined space, low clearance, and/or limited access drill rigs.
12. Masonry testing.
13. Pier casings.
14. Seismic bracing.
15. Rock excavation.
16. Material furnish of materials designated Owner Furnished, Contractor Installed (OFCI).
17. Material furnish and installation of materials designated Owner Furnished, Owner Installed (OFOI).
18. Site pavers.
19. Landscaping and irrigation system.



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- 20. Fences and gates.
- 21. Power pole and overhead electrical utility (OHE) relocation(s).
- 22. Fiber optic line removal and/or relocation(s).
- 23. Right-of-way improvements along Depot Street.
- 24. Building French drain system.
- 25. Gas piping.
- 26. Site steel screen wall.



CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION



FRONT ELEVATION

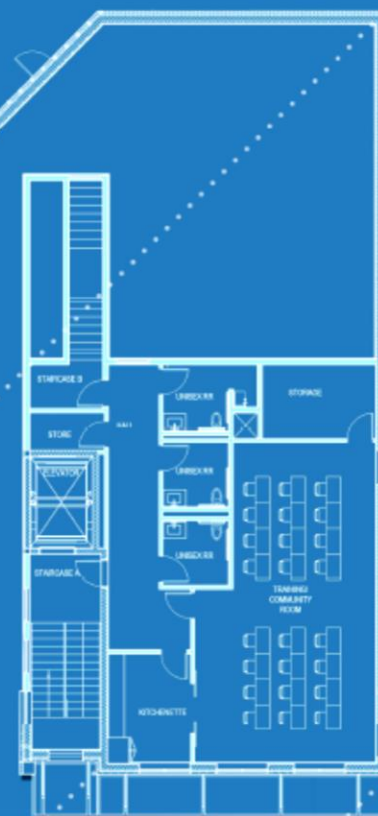
FRONT ELEVATION



CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION



SOUTH ELEVATION
NEW POLICE STATION
ELGIN, TEXAS





CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION

Revised Schedule

- January 17 – City Council Meeting - Update Council on revised schedule
- January 25 – FGMA issues Bid Package 1.
- February 7 – City Council Meeting - Brief Council on Two-Package Bid
- February 9 – BWC receives Package 1 bid results.
- February 20 - FGMA issues Bid Package 2.
- February 21 – City Council Meeting - Package 1 bid/GMP update to Council
City Council approves Package 1 contract and mobilization
- February 27 - Mobilization begins on site – earthwork and foundations
- February 28 - Groundbreaking ceremony
- March 7 – City Council Meeting -
- March 7 - BWC receives Package 2 bid results.
- March 21 – City Council Meeting - Council approves final GMP Contract
- March 2024 - BWC completes the construction of the new Police Station.



CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION

REVISED PROJECT COST ESTIMATES

Construction Costs 4,022,552

Contingency 185,493

Subtotal..... **\$4,208,045**

Soft costs (Engineering, design, testing) 531,396

Furniture/Fixtures/Miscellaneous.... 320,700

Total..... **\$5,060,141**



CITY OF ELGIN POLICE DEPARTMENT PROPOSED NEW POLICE STATION

REVISED FUNDING

Total Project Costs.....	\$5,060,141
2021A Certificates of Obligation	\$3,500,000
ARPA/Coronavirus State & Local Fiscal Recovery Funds.....	<u>\$1,560,141</u>
<i>Total</i>	\$5,060,141

**Enhanced project without cost increase
to residents or taxpayers**



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ROY D. RIVERS III FOR THE DONATION OF GIGAFFE, SCUPLTURE, IN MORRIS MEMORIAL PARK; AND MAKING CERTAIN FINDINGS RELATED THERETO.

.

DEPARTMENT: Community Services

PROPOSED ACTION: Consideration and possible action

BACKGROUND: Sculpture of a giraffe called Gigaffe created by Jeffie Brewers to be donated to the City of Elgin and installed in Morris Memorial Park. Parks & Recreation Advisory board reviewed and approved the donation of this sculpture for Morris park. Sculpture to be installed by artist and is donated to the city by Tres and Sherri Rivers.

BUDGET/FINANCIAL IMPACT:

Funding for this item was { } included { } not included in the current-year budget { X } N/A

RECOMMENDATION: Consideration and possible action to authorize City Manager to execute agreement.

ATTACHMENTS:

Contract

{X } Staff will be making a detailed presentation on this agenda item at the meeting.

{ } Staff will provide brief comments and answer questions on this item at the meeting.

{ } This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF ELGIN, TEXAS,
AUTHORIZING THE CITY MANAGER TO EXECUTE
AN AGREEMENT WITH ROY D. RIVERS III FOR THE
DONATION OF GIGAFFE, SCUPLTURE, IN MORRIS
MEMORIAL PARK; AND MAKING CERTAIN
FINDINGS RELATED THERETO.**

WHEREAS, Roy D. Rivers III is donating the Gigaffe Sculpture to the City of Elgin for Morris Memorial Park; and

WHEREAS, the Elgin Parks & Recreation Advisory Board reviewed and approved the sculpture donation (“Project”)and;

WHEREAS, Jeffie Brewers will install the sculpture on a concrete pad provided by the City of Elgin;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, BASTROP AND TRAVIS COUNTY, TEXAS THAT:

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

Section 2. Authorization. The City Manager is hereby authorized to execute an agreement with *Roy D Rivers III*.

Section 3. Funding. The project is being donated by Roy D. Rivers III, installed by the artist and the city of Elgin is providing a concrete pad for the sculpture.

Section 4. Open Meetings. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Section 5. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 21st day of February 2023

THERESA Y. MCSHAN, Mayor
City of Elgin, Texas

ATTEST:

JENNIFER STUBBS, City Secretary



Elgin City Council Meeting Agenda Item Executive Summary

ITEM: Presentation of the TDA Form A1024 CDBG Section 3 Program Goals Presentation for the TxCDBG Project CDV21-0026

SUMMARY: TDA issued a revised Section 3 Rule, Policy Issuance CDBG 20-01 on July 1, 2021, that now applies to all projects receiving CDBG funds. As part of this policy issuance, localities are required to present the Section 3 CDBG program goals in a City Council meeting. The intent of the Section 3 Program goals is to promote economic opportunities for low and very low-income persons in projects using CDBG funds.

DEPARTMENT: Finance - Grants

PROPOSED ACTION: N/A

BACKGROUND: HUD published a final rule updating requirements related to Section 3 of the Housing and Urban Development Act of 1968, as amended, which became effective on November 30, 2020. The Texas Department of Agriculture issued Policy Issuance CDBG 20-01 on July 1, 2021 to update the Section 3 requirements within the CDBG Implementation Manual. The purpose of the final rule is to improve the reporting and promotion of economic opportunities for low- and very low-income persons in projects using CDBG funds.

BUDGET/FINANCIAL IMPACT:

Funding for this item was ☐ included ☐ not included in the current-year budget ☒ N/A

Finance Approval: N/A

Signature: Rebekah Grimm Date: 01/13/2023

RECOMMENDATION:

ATTACHMENTS:

- ☐ Staff will be making a detailed presentation on this agenda item at the meeting.
- ☒ Staff will provide brief comments and answer questions on this item at the meeting.
- ☐ This is a routine procedural item, and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.